

H. B. 4350

(By Delegate Manypenny)

[Introduced January 30, 2012; referred to the
Committee on the Judiciary then Finance.]

A BILL to amend and reenact §22-6A-10 and §22-6A-11 of the Code of West Virginia, 1931, as amended, all relating to providing landowners of property adjacent to proposed well sites copies of the application, the erosion and sediment control plan and the well plat by personal service, registered mail or other method requiring a receipt or signature confirmation; giving notice to the public and those required to receive written notice of a proposed permit of their option to request a hearing on a proposed permit; requiring the secretary to consider all comments submitted; and authorizing the secretary to call and hold a public hearing.

Be it enacted by the Legislature of West Virginia:

That §22-6A-10 and §22-6A-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.

1 **§22-6A-10. Notice to property owners.**

2 (a) Prior to filing a permit application, the operator shall
3 provide notice of planned entry on to the surface tract to conduct
4 any plat surveys required pursuant to this article. Such notice
5 shall be provided at least seven days but no more than forty-five
6 days prior to such entry to: (1) The surface owner of such tract;
7 (2) to any owner or lessee of coal seams beneath such tract that
8 has filed a declaration pursuant to section thirty-six, article
9 six, chapter twenty-two of this code; and (3) any owner of minerals
10 underlying such tract in the county tax records. The notice shall
11 include a statement that copies of the state Erosion and Sediment
12 Control Manual and the statutes and rules related to oil and gas
13 exploration and production may be obtained from the secretary,
14 which statement shall include contact information, including the
15 address for a web page on the secretary's website, to enable the
16 surface owner to obtain copies from the secretary.

17 (b) No later than the filing date of the application, the
18 applicant for a permit for any well work or for a certificate of
19 approval for the construction of an impoundment or pit as required
20 by this article shall deliver, by personal service or by registered
21 mail or by any method of delivery that requires a receipt or
22 signature confirmation, copies of the application, the erosion and
23 sediment control plan required by section seven of this article,
24 and the well plat to each of the following persons:

1 (1) The owners of record of the surface of the tract on which
2 the well is or is proposed to be located;

3 (2) The owners of record of the surface tract or tracts
4 overlying the oil and gas leasehold being developed by the proposed
5 well work, if the surface tract is to be used for roads or other
6 land disturbance as described in the erosion and sediment control
7 plan submitted pursuant to subsection (c), section seven of this
8 article;

9 (3) The coal owner, operator or lessee, in the event the tract
10 of land on which the well proposed to be drilled is located is
11 known to be underlain by one or more coal seams;

12 (4) The owners of record of the surface tract or tracts
13 overlying the oil and gas leasehold being developed by the proposed
14 well work, if the surface tract is to be used for the placement,
15 construction, enlargement, alteration, repair, removal or
16 abandonment of any impoundment or pit as described in section nine
17 of this article;

18 (5) Any surface owner or water purveyor who is known to the
19 applicant to have a water well, spring or water supply source
20 located within one thousand five hundred feet of the center of the
21 well pad which is used to provide water for consumption by humans
22 or domestic animals; ~~and~~

23 (6) The operator of any natural gas storage field within which
24 the proposed well work activity is to take place; and

1 (7) Adjacent landowners to those identified in subdivisions
2 (1), (2), (4) and (5) of this subsection.

3 (c) (1) If more than three tenants in common or other coowners
4 of interests described in subsection (b) of this section hold
5 interests in the lands, the applicant may serve the documents
6 required upon the person described in the records of the sheriff
7 required to be maintained pursuant to section eight, article one,
8 chapter eleven-a of this code.

9 (2) Notwithstanding any provision of this article to the
10 contrary, notice to a lien holder is not notice to a landowner,
11 unless the lien holder is the landowner.

12 (d) With respect to surface landowners identified in
13 subsection (b) or water purveyors identified in subdivision (5),
14 subsection (b) of this section, notification shall be made on forms
15 and in a manner prescribed by the secretary sufficient to identify,
16 for those persons, the rights afforded them under sections eleven
17 and twelve of this article, and the opportunity for testing their
18 water well.

19 (e) Prior to filing an application for a permit for a
20 horizontal well under this article, the applicant shall publish in
21 the county in which the well is located or is proposed to be
22 located a Class II legal advertisement as described in section two,
23 article three, chapter fifty-nine of this code, containing notice
24 of the public website required to be established and maintained

1 pursuant to section twenty-one of this article and language
2 indicating the ability of the public to submit written comments and
3 request a public hearing on the proposed permit, with the first
4 publication date being at least ten days prior to the filing of the
5 permit application. The secretary shall consider, in the same
6 manner required by subsection (f), section eight of this article
7 and subdivision(1), subsection (c), section eleven of this article,
8 written comments submitted in response to the legal advertisement
9 received by the secretary within thirty days following the last
10 required publication date. ~~Provided, That such~~ Parties submitting
11 written comments pursuant to this subsection are not entitled to
12 participate in the processes and proceedings that exist under
13 sections fifteen, seventeen or forty, article six of this chapter,
14 as applicable and incorporated into this article by section five of
15 this article. The secretary may, however, call and hold a public
16 hearing at the request of parties submitting comments pursuant to
17 this subsection or at the request of parties required to receive
18 notice under subsection (b) of this section.

19 (f) Materials served upon persons described in subsection (b)
20 of this section shall contain a statement of the time limits for
21 filing written comments, who may file written comments, the name
22 and address of the secretary for the purpose of filing the comments
23 and obtaining additional information, and a statement that the
24 persons may request, at the time of submitting written comments,

1 notice of the permit decision and a list of persons qualified to
2 test water.

3 (g) Any person entitled to submit written comments to the
4 secretary pursuant to subsection (a), section eleven of this
5 article and subsection (e) of this section shall also be entitled
6 to request a public hearing and to receive from the secretary a
7 copy of the permit as issued or a copy of the order modifying or
8 denying the permit if the person requests receipt of them as a part
9 of the written comments submitted concerning the permit
10 application.

11 (h) The surface owners described in subdivisions (1), (2), ~~and~~
12 (4), (5) and (7), subsection (b) of this section, and the coal
13 owner, operator or lessee described in subdivision (3) of that
14 subsection is also entitled to receive notice within seven days
15 but no less than two days before commencement that well work or
16 site preparation work that involves any disturbance of land is
17 expected to commence.

18 (i) Persons entitled to notice pursuant to subsection (b) of
19 this section may contact the department to ascertain the names and
20 locations of water testing laboratories in the subject area capable
21 and qualified to test water supplies in accordance with standard
22 accepted methods. In compiling that list of names the department
23 shall consult with the state Bureau for Public Health and local
24 health departments.

1 (j) (1) Prior to conducting any seismic activity for seismic
2 exploration for natural gas to be extracted using horizontal
3 drilling methods, the company or person performing the activity
4 shall provide notice to Miss Utility of West Virginia Inc. and to
5 all surface owners, coal owners and lessees, and natural gas
6 storage field operators on whose property blasting, percussion or
7 other seismic-related activities will occur. This notice shall
8 also be provided to surface owners whose property is adjacent to
9 property where blasting, percussion or other seismic-related
10 activities will occur.

11 (2) The notice shall be provided at least three days prior to
12 commencement of the seismic activity.

13 (3) The notice shall also include a reclamation plan in
14 accordance with the erosion and sediment control manual that
15 provides for the reclamation of any areas disturbed as a result of
16 the seismic activity, including filling of shotholes used for
17 blasting.

18 (4) Nothing in this subsection decides questions as to whether
19 seismic activity may be secured by mineral owners, surface owners
20 or other ownership interests.

21 **§22-6A-11. Procedure for filing written comments; procedures for**
22 **considering objections and comments; issues to be**
23 **considered; and newspaper notice.**

24 (a) All persons described in ~~subsection (b)~~ subsections (b)

1 and (e), section ten of this article may file written comments with
2 the secretary as to the location or construction of the applicant's
3 proposed well work within thirty days after the application is
4 filed with the secretary.

5 (b) The applicant shall tender proof of and certify to the
6 secretary that the notice requirements of section ten of this
7 article have been completed by the applicant. The certification of
8 notice to the person may be made by affidavit of personal service,
9 the return receipt card or other postal receipt for certified
10 mailing.

11 (c) (1) The secretary shall promptly review all written
12 comments filed by the persons entitled to notice under subsection
13 (b), section ten of this article and persons filing comments under
14 subsection (e), section ten of this article. The secretary may
15 call and hold a public hearing if requested. The secretary shall
16 notify the applicant of the character of the written comments
17 submitted no later than fifteen days after the close of the comment
18 period and notify the applicant if a public hearing has been
19 called.

20 (2) Any objections of the affected coal operators and coal
21 seam owners and lessees shall be addressed through the processes
22 and procedures that exist under sections fifteen, seventeen and
23 forty, article six of this chapter, as applicable and as
24 incorporated into this article by section five of this article.

1 The written comments filed by the parties entitled to notice under
2 subdivisions (1), (2), (4), (5), ~~and (6)~~ and (7), subsection (b),
3 section ten of this article and comments filed by persons described
4 in subsection (e), section ten of this article shall be considered
5 by the secretary in the permit issuance process but the parties are
6 not entitled to participate in the processes and proceedings that
7 exist under sections fifteen, seventeen or forty, article six of
8 this chapter, as applicable and as incorporated into this article
9 by section five of this article.

10 (3) The secretary shall retain all applications, plats and
11 other documents filed with the secretary, any proposed revisions
12 thereto, all notices given and proof of service thereof and all
13 orders issued and all permits issued. Subject to the provisions of
14 article one, chapter twenty-nine-b of this code, the record
15 prepared by the secretary is open to inspection by the public.

NOTE: The purpose of this bill is to provide landowners of property adjacent to proposed well sites copies of the application, the erosion and sediment control plan and the well plat by personal service, registered mail or other method requiring a receipt or signature confirmation; to provide notice to the public and those required to receive written notice of a proposed permit of their option to request a hearing on a proposed permit; to require the secretary to consider all comments submitted; and to authorize the secretary to call and hold a public hearing in response to hearing requests or comments.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.