

**H. B. 3046**

(By Delegates Manypenny, Fleischauer and Morgan)

[Introduced March 22, 2013; referred to the

Committee on the Judiciary then Finance.]

A BILL to amend and reenact §22-6-9, §22-6-10 and §22-6-11 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22-6A-8, §22-6A-10 and §22-6A-11 of said code, all relating to requiring the Department of Environmental Protection to issue a procedural rule to allow surface owners a right to a hearing and appeal of a decision of the department to issue, condition or deny a permit for certain well work on the surface owner's land.

*Be it enacted by the Legislature of West Virginia:*

That §22-6-9, §22-6-10 and §22-6-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §22-6A-8, §22-6A-10 and §22-6A-11 of said code be amended and reenacted, all to read as follows:

**ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS;  
ADMINISTRATION; ENFORCEMENT.**

1 **§22-6-9. Notice to property owners.**

2 (a) No later than the filing date of the application, the  
3 applicant for a permit for any well work shall deliver by personal  
4 service or by certified mail, return receipt requested, copies of  
5 the application, well plat and erosion and sediment control plan  
6 required by section six of this article to each of the following  
7 persons:

8 (1) The owners of record of the surface of the tract on which  
9 the well is, or is to be located; and

10 (2) The owners of record of the surface tract or tracts  
11 overlying the oil and gas leasehold being developed by the proposed  
12 well work, if such surface tract is to be utilized for roads or  
13 other land disturbance as described in the erosion and sediment  
14 control plan submitted pursuant to section six of this article.

15 (b) If more than three tenants in common or other coowners of  
16 interests described in subsection (a) of this section hold  
17 interests in such lands, the applicant may serve the documents  
18 required upon the person described in the records of the sheriff  
19 required to be maintained pursuant to section eight, article one,  
20 chapter eleven-a of this code, or publish in the county in which  
21 the well is located or to be located a Class II legal advertisement  
22 as described in section two, article three, chapter fifty-nine of  
23 this code, containing such notice and information as the director  
24 shall prescribe by rule, with the first publication date being at

1 least ten days prior to the filing of the permit application:  
2 *Provided*, That all owners occupying the tracts where the well work  
3 is, or is proposed to be located at the filing date of the permit  
4 application shall receive actual service of the documents required  
5 by subsection (a) of this section.

6 (c) Materials served upon persons described in subsections (a)  
7 and (b) of this section shall contain a statement of the methods  
8 and time limits for filing comments and requesting a hearing, who  
9 may file comments and request a hearing and the name and address of  
10 the director for the purpose of filing comments, requesting a  
11 hearing and obtaining additional information and a statement that  
12 such persons may request, at the time of submitting comments,  
13 notice of the permit decision and a list of persons qualified to  
14 test water as provided in this section.

15 (d) Any person entitled to submit comments shall also be  
16 entitled to receive a copy of the permit as issued or a copy of the  
17 order denying the permit if such person requests the receipt  
18 thereof as a part of the comments concerning said permit  
19 application.

20 (e) Persons entitled to notice may contact the district office  
21 of the division to ascertain the names and location of water  
22 testing laboratories in the area capable and qualified to test  
23 water supplies in accordance with standard accepted methods. In  
24 compiling such list of names the division shall consult with the

1 State Bureau of Public Health and local health departments.

2 **§22-6-10. Procedure for filing comments; certification of notice.**

3 (a) All persons described in subsections (a) and (b), section  
4 nine of this article may file comments and may also request a  
5 hearing with the director as to the location or construction of the  
6 applicant's proposed well work within fifteen days after the  
7 application is filed with the director.

8 (b) Prior to the issuance of any permit for well work, the  
9 applicant shall certify to the director that the requirements of  
10 section nine of this article have been completed by the applicant.  
11 Such certification may be by affidavit of personal service or the  
12 return receipt card, or other postal receipt for certified mailing.

13 **§22-6-11. Review of application; issuance of permit in the absence**  
14 **of objections; copy of permits to county assessor.**

15 The director shall review each application for a well work  
16 permit and shall determine whether or not a permit shall be issued.

17 No permit shall be issued less than fifteen days after the  
18 filing date of the application for any well work except plugging or  
19 replugging; and no permit for plugging or replugging shall be  
20 issued less than five days after the filing date of the application  
21 except a permit for plugging or replugging a dry hole: *Provided,*  
22 That if the applicant certifies that all persons entitled to notice  
23 of the application under the provisions of this article have been

1 served in person or by certified mail, return receipt requested,  
2 with a copy of the well work application, including the erosion and  
3 sediment control plan, if required, and the plat required by  
4 section six of this article, and further files written statements  
5 of no objection waiving, in the case of those entitled notice under  
6 section nine of this article, the right to a hearing by all such  
7 persons, the director may issue the well work permit at any time.

8       If any person entitled to a notice pursuant to subsections (a)  
9 and (b) of section nineteen of this article requests a hearing on  
10 the permit on issues upon which the director can condition or deny  
11 issuance of a permit, the director shall provide such a hearing.  
12 The hearing does not have to be provided pursuant to the  
13 administrative provisions for contested cases as provided in  
14 article five, chapter twenty-nine-a of this code. The secretary  
15 shall promulgate a procedural rule for the hearing pursuant to this  
16 provision. Appeals shall be pursuant to article five, chapter  
17 twenty-nine-a of this code.

18       The director may cause such inspections to be made of the  
19 proposed well work location as to assure adequate review of the  
20 application. The permit shall not be issued, or shall be  
21 conditioned including conditions with respect to the location of  
22 the well and access roads prior to issuance if the director  
23 determines that:

24       (1) The proposed well work will constitute a hazard to the

1 safety of persons; or

2 (2) The plan for soil erosion and sediment control is not  
3 adequate or effective; or

4 (3) Damage would occur to publicly owned lands or resources;  
5 or

6 (4) The proposed well work fails to protect fresh water  
7 sources or supplies.

8 The director shall promptly review all comments filed. If  
9 after review of the application and all comments received, and  
10 after holding any hearing requested pursuant to this section by  
11 persons entitled to a notice pursuant to subsections (a) and (b) of  
12 section nineteen of this article, the application for a well work  
13 permit is approved, and no timely objection or comment has been  
14 filed with the director or made by the director under the  
15 provisions of section fifteen, sixteen or seventeen of this  
16 article, the permit shall be issued, with conditions, if any.  
17 Nothing in this section shall be construed to supersede the  
18 provisions of sections six, twelve, thirteen, fourteen, fifteen,  
19 sixteen and seventeen of this article.

20 The director shall mail a copy of the permit as issued or a  
21 copy of the order denying a permit to any person who submitted  
22 comments to the director concerning said permit and requested such  
23 copy.

24 Upon the issuance of any permit pursuant to the provisions of

1 this article, the director shall transmit a copy of such permit to  
2 the office of the assessor for the county in which the well is  
3 located.

4 **ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.**

5 **§22-6A-8. Review of application; issuance of permit; performance**  
6 **standards; copy of permits to county assessor.**

7 (a) The secretary shall review each application for a well  
8 work permit and shall determine whether or not a permit is issued.

9 (b) No permit may be issued less than thirty days after the  
10 filing date of the application for any well work except plugging or  
11 replugging; and no permit for plugging or replugging may be issued  
12 less than five days after the filing date of the application except  
13 a permit for plugging or replugging a dry hole: *Provided*, That if  
14 the applicant certifies that all persons entitled to notice of the  
15 application under the provisions of subsection (b), section ten of  
16 this article have been served in person or by certified mail,  
17 return receipt requested, with a copy of the well work application,  
18 including the erosion and sediment control plan, if required, and  
19 the well plat, and further files written statements of no objection  
20 waiving, in the case of those entitled notice under section ten-b  
21 (1), (2) and (4) of this article, the right to a hearing by all  
22 such persons, the secretary may issue the well work permit at any  
23 time.

1       (c) Prior to the issuance of any permit, the secretary shall  
2 ascertain from the Executive Director of Workforce West Virginia  
3 and the Insurance Commissioner whether the applicant is in default  
4 pursuant to the provisions of section six-c, article two, chapter  
5 twenty-one-a of this code, and in compliance with section five,  
6 article two, chapter twenty-three of this code, with regard to any  
7 required subscription to the Unemployment Compensation Fund or  
8 mandatory workers' compensation insurance, the payment of premiums  
9 and other charges to the fund, the timely filing of payroll reports  
10 and the maintenance of adequate deposits. If the applicant is  
11 delinquent or defaulted, or has been terminated by the executive  
12 director or the Insurance Commissioner, the permit may not be  
13 issued until the applicant returns to compliance or is restored by  
14 the executive director or the Insurance Commissioner under a  
15 reinstatement agreement: *Provided, That in all inquiries the*  
16 *Executive Director of Workforce West Virginia and the Insurance*  
17 *Commissioner shall make response to the Department of Environmental*  
18 *Protection within fifteen calendar days; otherwise, failure to*  
19 *respond timely is considered to indicate the applicant is in*  
20 *compliance and the failure will not be used to preclude issuance of*  
21 *the permit.*

22       (d) The secretary may cause such inspections to be made of the  
23 proposed well work location as necessary to assure adequate review  
24 of the application. The permit may not be issued, or may be



1 conditioned including conditions with respect to the location of  
2 the well and access roads prior to issuance if the director  
3 determines that:

4       (1) The proposed well work will constitute a hazard to the  
5 safety of persons;

6       (2) The plan for soil erosion and sediment control is not  
7 adequate or effective;

8       (3) Damage would occur to publicly owned lands or resources;  
9 or

10       (4) The proposed well work fails to protect fresh water  
11 sources or supplies.

12       (e) In addition to the considerations set forth in subsection  
13 (d) of this section, in determining whether a permit should be  
14 issued, issued with conditions, or denied, the secretary shall  
15 determine that:

16       (1) The well location restrictions of section twelve of this  
17 article have been satisfied, unless the requirements have been  
18 waived by written consent of the surface owner or the secretary has  
19 granted a variance to the restrictions, each in accordance with  
20 section twelve of this article;

21       (2) The water management plan submitted to the secretary, if  
22 required by subdivision (e), section seven of this article, has  
23 been received and approved.

24       (f) The secretary shall promptly review all written comments

1 filed by persons entitled to notice pursuant to subsection (b),  
2 section ten of this article. If after review of the application  
3 and all written comments received from persons entitled to notice  
4 pursuant to subsection (b), section ten of this article, and after  
5 holding any hearing requested pursuant to subsection (d) of section  
6 eleven of this article, the application for a well work permit is  
7 approved, and no timely objection has been filed with the secretary  
8 by the coal operator operating coal seams beneath the tract of  
9 land, or the coal seam owner or lessee, if any, if said owner or  
10 lessee is not yet operating said coal seams, or made by the  
11 secretary under the provisions of section ten and eleven of this  
12 article, the permit shall be issued, with conditions, if any. This  
13 section does not supersede the provisions of section seven or  
14 subdivisions (6) through (9), subsection (a), section five of this  
15 article.

16 (g) Each permit issued by the secretary pursuant to this  
17 article shall require the operator at a minimum to:

18 (1) Plug all wells in accordance with the requirements of this  
19 article and the rules promulgated pursuant thereto when the wells  
20 become abandoned;

21 (2) With respect to disposal of cuttings at the well site, all  
22 drill cuttings and associated drilling mud generated from  
23 horizontal well sites shall be disposed of in an approved solid  
24 waste facility, or if the surface owner consents, the drill

1 cuttings and associated drilling mud may be managed on-site in a  
2 manner approved by the secretary;

3       (3) Grade, terrace and plant, seed or sod the area disturbed  
4 that is not required in production of the horizontal well where  
5 necessary to bind the soil and prevent substantial erosion and  
6 sedimentation;

7       (4) Take action in accordance with industry standards to  
8 minimize fire hazards and other conditions which constitute a  
9 hazard to health and safety of the public;

10       (5) Protect the quantity and the quality of water in surface  
11 and groundwater systems both during and after drilling operations  
12 and during reclamation by: (A) Withdrawing water from surface  
13 waters of the state by methods deemed appropriate by the secretary,  
14 so as to maintain sufficient in-stream flow immediately downstream  
15 of the withdrawal location. In no case shall an operator withdraw  
16 water from ground or surface waters at volumes beyond which the  
17 waters can sustain; (B) casing, sealing or otherwise managing wells  
18 to keep returned fluids from entering ground and surface waters;  
19 (C) conducting oil and gas operations so as to prevent, to the  
20 extent possible using the best management practices, additional  
21 contributions of suspended or dissolved solids to stream flow or  
22 run-off outside the permit area, but in no event shall the  
23 contributions be in excess of requirements set by applicable state  
24 or federal law; and (D) registering all water supply wells drilled

1 and operated by the operator with the Office of Oil and Gas. All  
2 drinking water wells within one thousand five hundred feet of a  
3 water supply well shall be flow and quality tested by the operator  
4 upon request of the drinking well owner prior to operating the  
5 water supply well. The secretary shall propose legislative rules  
6 to identify appropriate methods for testing water flow and quality.

7       (6) In addition to the other requirements of this subsection,  
8 an operator proposing to drill any horizontal well requiring the  
9 withdrawal of more than two hundred ten thousand gallons in a  
10 thirty-day period shall have the following requirements added to  
11 its permit:

12       (A) Identification of water withdrawal locations. Within  
13 forty-eight hours prior to the withdrawal of water, the operator  
14 shall identify to the department the location of withdrawal by  
15 latitude and longitude and verify that sufficient flow exists to  
16 protect designated uses of the stream. The operator shall use  
17 methods deemed appropriate by the secretary to determine if  
18 sufficient flow exists to protect designated uses of the stream.

19       (B) Signage for water withdrawal locations. All water  
20 withdrawal locations and facilities identified in the water  
21 management plan shall be identified with a sign that identifies  
22 that the location is a water withdrawal point, the name and  
23 telephone number of the operator and the permit numbers(s) for  
24 which the water withdrawn will be utilized.

1       (C) Record keeping and reporting. For all water used for  
2 hydraulic fracturing of horizontal wells and for flowback water  
3 from hydraulic fracturing activities and produced water from  
4 production activities from horizontal wells, an operator shall  
5 comply with the following record keeping and reporting  
6 requirements:

7       (i) For production activities, the following information shall  
8 be recorded and retained by the well operator:

9       (I) The quantity of flowback water from hydraulic fracturing  
10 the well;

11       (II) The quantity of produced water from the well; and

12       (III) The method of management or disposal of the flowback and  
13 produced water.

14       (ii) For transportation activities, the following information  
15 shall be recorded and maintained by the operator:

16       (I) The quantity of water transported;

17       (II) The collection and delivery or disposal locations of  
18 water; and

19       (III) The name of the water hauling company.

20       (iii) The information maintained pursuant to this subdivision  
21 shall be available for inspection by the department along with  
22 other required permits and records and maintained for three years  
23 after the water withdrawal activity.

24       (iv) This subdivision is intended to be consistent with and

1 does not supersede, revise, repeal or otherwise modify articles  
2 eleven, twelve or twenty-six of this chapter and does not revise,  
3 repeal or otherwise modify the common law doctrine of riparian  
4 rights in West Virginia law.

5 (h) The secretary shall mail a copy of the permit as issued or  
6 a copy of the order denying a permit to any person entitled to  
7 submit written comments pursuant to subsection (a), section eleven  
8 of this article and who requested a copy.

9 (i) Upon the issuance of any permit pursuant to the provisions  
10 of this article, the secretary shall transmit a copy of the permit  
11 to the office of the assessor for the county in which the well is  
12 located.

13 **§22-6A-10. Notice to property owners.**

14 (a) Prior to filing a permit application, the operator shall  
15 provide notice of planned entry on to the surface tract to conduct  
16 any plat surveys required pursuant to this article. Such notice  
17 shall be provided at least seven days but no more than forty-five  
18 days prior to such entry to: (1) The surface owner of such tract;  
19 (2) to any owner or lessee of coal seams beneath such tract that  
20 has filed a declaration pursuant to section thirty-six, article  
21 six, chapter twenty-two of this code; and (3) any owner of minerals  
22 underlying such tract in the county tax records. The notice shall  
23 include a statement that copies of the State Erosion and Sediment  
24 Control Manual and the statutes and rules related to oil and gas

1 exploration and production may be obtained from the Secretary,  
2 which statement shall include contact information, including the  
3 address for a web page on the Secretary's website, to enable the  
4 surface owner to obtain copies from the secretary, and a statement  
5 that a notice of rights to a hearing on the permit will be included  
6 in a notice to them of the permit application at a later time.

7       (b) No later than the filing date of the application, the  
8 applicant for a permit for any well work or for a certificate of  
9 approval for the construction of an impoundment or pit as required  
10 by this article shall deliver, by personal service or by registered  
11 mail or by any method of delivery that requires a receipt or  
12 signature confirmation, copies of the application, the erosion and  
13 sediment control plan required by section seven of this article,  
14 and the well plat to each of the following persons:

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

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

23       (3) The coal owner, operator or lessee, in the event the tract  
24 of land on which the well proposed to be drilled is located is

1 known to be underlain by one or more coal seams;

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

8       (5) Any surface owner or water purveyor who is known to the  
9 applicant to have a water well, spring or water supply source  
10 located within one thousand five hundred feet of the center of the  
11 well pad which is used to provide water for consumption by humans  
12 or domestic animals; and

13       (6) The operator of any natural gas storage field within which  
14 the proposed well work activity is to take place.

15       (c) (1) If more than three tenants in common or other co-  
16 owners of interests described in subsection (b) of this section  
17 hold interests in the lands, the applicant may serve the documents  
18 required upon the person described in the records of the sheriff  
19 required to be maintained pursuant to section eight, article one,  
20 chapter eleven-a of this code.

21       (2) Notwithstanding any provision of this article to the  
22 contrary, notice to a lien holder is not notice to a landowner,  
23 unless the lien holder is the landowner.

24       (d) With respect to surface landowners identified in



1 subsection (b) or water purveyors identified in subdivision (5),  
2 subsection (b) of this section, notification shall be made on forms  
3 and in a manner prescribed by the secretary sufficient to identify,  
4 for those persons, the rights afforded them under sections eleven  
5 and twelve of this article, and the opportunity for testing their  
6 water well.

7       (e) Prior to filing an application for a permit for a  
8 horizontal well under this article, the applicant shall publish in  
9 the county in which the well is located or is proposed to be  
10 located a Class II legal advertisement as described in section two,  
11 article three, chapter fifty-nine of this code, containing notice  
12 of the public website required to be established and maintained  
13 pursuant to section twenty-one of this article and language  
14 indicating the ability of the public to submit written comments on  
15 the proposed permit, with the first publication date being at least  
16 ten days prior to the filing of the permit application. The  
17 secretary shall consider, in the same manner required by subsection  
18 (f), section eight of this article and subdivision (1), subsection  
19 (c), section eleven of this article, written comments submitted in  
20 response to the legal advertisement received by the secretary  
21 within thirty days following the last required publication date:  
22 *Provided*, That such parties submitting written comments pursuant to  
23 this subsection are not entitled to participate in the processes  
24 and proceedings that exist under sections fifteen, seventeen or

1 forty, article six of this chapter, as applicable and incorporated  
2 into this article by section five of this article.

3       (f) Materials served upon persons described in subsection (b)  
4 of this section shall contain a statement of the time limits for  
5 filing written comments and requesting a hearing, who may file  
6 written comments and request a hearing, the name and address of the  
7 secretary for the purpose of filing the comments, requesting a  
8 hearing and obtaining additional information, and a statement that  
9 the persons may request, at the time of submitting written  
10 comments, notice of the permit decision and a list of persons  
11 qualified to test water.

12       (g) Any person entitled to submit written comments to the  
13 secretary pursuant to subsection (a), section eleven of this  
14 article, shall also be entitled to receive from the secretary a  
15 copy of the permit as issued or a copy of the order modifying or  
16 denying the permit if the person requests receipt of them as a part  
17 of the written comments submitted concerning the permit  
18 application.

19       (h) The surface owners described in subdivisions (1), (2) and  
20 (4), subsection (b) of this section, and the coal owner, operator  
21 or lessee described in subdivision (3) of that subsection is also  
22 entitled to receive notice within seven days but no less than two  
23 days before commencement that well work or site preparation work  
24 that involves any disturbance of land is expected to commence.

1       (i) Persons entitled to notice pursuant to subsection (b) of  
2 this section may contact the department to ascertain the names and  
3 locations of water testing laboratories in the subject area capable  
4 and qualified to test water supplies in accordance with standard  
5 accepted methods. In compiling that list of names the department  
6 shall consult with the State Bureau for Public Health and local  
7 health departments.

8       (j) (1) Prior to conducting any seismic activity for seismic  
9 exploration for natural gas to be extracted using horizontal  
10 drilling methods, the company or person performing the activity  
11 shall provide notice to Miss Utility of West Virginia Inc. and to  
12 all surface owners, coal owners and lessees, and natural gas  
13 storage field operators on whose property blasting, percussion or  
14 other seismic-related activities will occur.

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

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

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

1 **§22-6A-11. Procedure for filing written comments; procedures for**  
2 **considering objections and comments; procedures for**  
3 **a hearing; issues to be considered; and newspaper**  
4 **notice.**

5 (a) All persons described in subsection (b), section ten of  
6 this article may file written comments with the secretary as to the  
7 location or construction of the applicant's proposed well work  
8 within thirty days after the application is filed with the  
9 secretary and the persons entitled to notice pursuant to paragraphs  
10 (1), (2) and (4), subsection (b), section ten of this article may  
11 request a hearing.

12 (b) The applicant shall tender proof of and certify to the  
13 secretary that the notice requirements of section ten of this  
14 article have been completed by the applicant. The certification of  
15 notice to the person may be made by affidavit of personal service,  
16 the return receipt card or other postal receipt for certified  
17 mailing.

18 (c) (1) The secretary shall promptly review all written  
19 comments filed by the persons entitled to notice under subsection  
20 (b), section ten of this article. The secretary shall notify the  
21 applicant of the character of the written comments submitted no  
22 later than fifteen days after the close of the comment period.

23 (2) Any objections of the affected coal operators and coal

1 seam owners and lessees shall be addressed through the processes  
2 and procedures that exist under sections fifteen, seventeen and  
3 forty, article six of this chapter, as applicable and as  
4 incorporated into this article by section five of this article.  
5 The written comments filed by the parties entitled to notice under  
6 subdivisions (1), (2), (4), (5) and (6), subsection (b), section  
7 ten of this article shall be considered by the secretary in the  
8 permit issuance process, but the parties are not entitled to  
9 participate in the processes and proceedings that exist under  
10 sections fifteen, seventeen or forty, article six of this chapter,  
11 as applicable and as incorporated into this article by section five  
12 of this article provided that the persons entitled to notice  
13 pursuant to paragraphs (1), (2) and (4), subsection (b), section  
14 ten of this article who request a hearing may have a hearing as  
15 provided by this section.

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

22 (d) If any person entitled to a notice pursuant to  
23 paragraphs (1), (2) and (4), subsection (b), section ten of this  
24 article requests a hearing on the permit on issues upon which the

1 director can condition or deny issuance of a permit, the director  
2 shall provide such a hearing. The hearing shall provide all  
3 elements for those required for those entitled to constitutional  
4 due process rights to notice and hearing, but does not have to be  
5 provided pursuant to the administrative provisions for contested  
6 cases as provided in article five, chapter twenty-nine-a of this  
7 code. The secretary shall promulgate a procedural rule for the  
8 hearing pursuant to this provision. Appeals shall be pursuant to  
9 article five, chapter twenty-nine-a of this code.

NOTE: The purpose of this bill is to require the Department of Environmental Protection to issue a procedural rule to allow surface owners a right to a hearing and appeal of a decision of the department to issue, condition or deny a permit for certain well work on the surface owner's land pursuant to the Supreme Court opinion in *Martin v. Hamblet*, No. 11-1157 (W.Va., 2012) to re-examine these procedures.

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