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ENGROSSED

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 280**

(By Senators Cole (Mr. President), Boley, Ferns, Mullins, Nohe, Sypolt, Prezioso, Facemire, D.

Hall, Williams, Kessler, Palumbo and Beach)

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[Originating in the Committee on the Judiciary;

reported January 23, 2015.]

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A BILL to amend and reenact §22-6A-7 of the Code of West Virginia, 1931, as amended, relating to allowing transfer of well work permits upon prior written approval of the Secretary of the Department of Environmental Protection; providing for forms prescribed by the secretary; requiring transferee to give notice of transfer; requiring transferee to update their emergency point of contact; and providing for permit transfer fee.

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

That §22-6A-7 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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

**§22-6A-7. Horizontal well permit required; permit fee; application; soil erosion control plan;**

1                    **well site safety plan; site construction plan; water management plan; permit fee;**  
2                    **installation of permit number; suspension and transfer of a permit.**

3            (a) It is unlawful for any person to commence any well work, including site preparation work  
4 which involves any disturbance of land, for a horizontal well without first securing from the  
5 secretary a well work permit pursuant to this article.

6            (b) Every permit application filed under this section shall be on a form as may be prescribed  
7 by the secretary, shall be verified and shall contain the following information:

8            (1) The names and addresses of: (i) The well operator; (ii) the agent required to be  
9 designated under subsection (h) of this section; and (iii) every person whom the applicant shall notify  
10 under any section of this article, together with a certification and evidence that a copy of the  
11 application and all other required documentation has been delivered to all such persons;

12            (2) The names and addresses of every coal operator operating coal seams under the tract of  
13 land on which the well is or may be located, and the coal seam owner of record and lessee of record  
14 required to be given notice by subdivision (6), subsection (a), section five of this article, if any, if  
15 ~~said~~ the owner or lessee is not yet operating ~~said~~ the coal seams;

16            (3) The number of the well or ~~such~~ other identification ~~as~~ the secretary may require;

17            (4) The well work for which a permit is requested;

18            (5) The approximate total depth to which the well is to be drilled or deepened, or the actual  
19 depth if the well has been drilled; the proposed angle and direction of the well; the actual depth or  
20 the approximate depth at which the well to be drilled deviates from vertical, the angle and direction  
21 of the nonvertical well bore until the well reaches its total target depth or its actual final depth; and

1 the length and direction of any actual or proposed horizontal lateral or well bore;

2 (6) Each formation in which the well will be completed if applicable;

3 (7) A description of any means used to stimulate the well;

4 (8) If the proposed well work will require casing or tubing to be set, the entire casing program  
5 for the well, including the size of each string of pipe, the starting point and depth to which each  
6 string is to be set and the extent to which each such string is to be cemented;

7 (9) If the proposed well work is to convert an existing well, all information required by this  
8 section, all formations from which production is anticipated and any plans to plug any portion of the  
9 well;

10 (10) If the proposed well work is to plug or replug the well, all information necessary to  
11 demonstrate compliance with the legislative rules promulgated by the secretary in accordance with  
12 section thirteen of this article;

13 (11) If the proposed well work is to stimulate a horizontal well, all information necessary to  
14 demonstrate compliance with the requirements of subdivision (7), subsection (a), section five of this  
15 article;

16 (12) The erosion and sediment control plan required under subsection (c) of this section for  
17 applications for permits to drill;

18 (13) A well site safety plan to address proper safety measures to be employed for the  
19 protection of persons on the site as well as the general public. The plan shall encompass all aspects  
20 of the operation, including the actual well work for which the permit was obtained, completion  
21 activities and production activities, and shall provide an emergency point of contact for the well

1 operator. The well operator shall provide a copy of the well site safety plan to the local emergency  
2 planning committee established pursuant to section seven, article five-a, chapter fifteen of this code  
3 for the emergency planning district in which the well work will occur at least seven days before  
4 commencement of well work or site preparation work that involves any disturbance of land;

5 (14) A certification from the operator that: (i) It has provided the owners of the surface  
6 described in subdivisions (1), (2) and (4), subsection (b), section ten of this article, the information  
7 required by subsections (b) and (c), section sixteen of this article; (ii) that the requirement was  
8 deemed satisfied as a result of giving the surface owner notice of entry to survey pursuant to  
9 subsection (a), section ten of this article; or (iii) the notice requirements of subsection (b), section  
10 sixteen of this article were waived in writing by the surface owner; and

11 (15) Any other relevant information which the secretary may reasonably require.

12 (c) (1) An erosion and sediment control plan shall accompany each application for a well  
13 work permit under this article. The plan shall contain methods of stabilization and drainage,  
14 including a map of the project area indicating the amount of acreage disturbed. The erosion and  
15 sediment control plan shall meet the minimum requirements of the West Virginia Erosion and  
16 Sediment Control Manual as adopted and from time to time amended by the department. The  
17 erosion and sediment control plan shall become part of the terms and conditions of any well work  
18 permit that is issued pursuant to this article and the provisions of the plan shall be carried out where  
19 applicable in the operation. The erosion and sediment control plan shall set out the proposed method  
20 of reclamation which shall comply with the requirements of section fourteen of this article.

21 (2) For well sites that disturb three acres or more of surface, excluding pipelines, gathering

1 lines and roads, the erosion and sediment control plan submitted in accordance with this section shall  
2 be certified by a registered professional engineer.

3 (d) For well sites that disturb three acres or more of surface, excluding pipelines, gathering  
4 lines and roads, the operator shall submit a site construction plan that shall be certified by a  
5 registered professional engineer and contains information that the secretary may require by rule.

6 (e) In addition to the other requirements of this section, if the drilling, fracturing or  
7 stimulating of the horizontal well requires the use of water obtained by withdrawals from waters of  
8 this state in amounts that exceed two hundred ten thousand gallons during any thirty-day period, the  
9 application for a well work permit shall include a water management plan, which may be submitted  
10 on an individual well basis or on a watershed basis, and which shall include the following  
11 information:

12 (1) The type of water source, such as surface or groundwater, the county of each source to  
13 be used by the operation for water withdrawals and the latitude and longitude of each anticipated  
14 withdrawal location;

15 (2) The anticipated volume of each water withdrawal;

16 (3) The anticipated months when water withdrawals will be made;

17 (4) The planned management and disposition of wastewater after completion from fracturing,  
18 refracturing, stimulation and production activities;

19 (5) A listing of the anticipated additives that may be used in water utilized for fracturing or  
20 stimulating the well. Upon well completion, a listing of the additives that were actually used in the  
21 fracturing or stimulating of the well shall be submitted as part of the completion log or report

1 required by subdivision (14), subsection (a), section five of this article;

2 (6) For all surface water withdrawals, a water management plan that includes the information  
3 requested in subdivisions (1) through (5) of this subsection and the following:

4 (A) Identification of the current designated and existing water uses, including any public  
5 water intakes within one mile downstream of the withdrawal location;

6 (B) For surface waters, a demonstration, using methods acceptable to the secretary, that  
7 sufficient in-stream flow will be available immediately downstream of the point of withdrawal. A  
8 sufficient in-stream flow is maintained when a pass-by flow that is protective of the identified use  
9 of the stream is preserved immediately downstream of the point of withdrawal; and

10 (C) Methods to be used for surface water withdrawal to minimize adverse impact to aquatic  
11 life; and

12 (7) This subsection is intended to be consistent with and does not supersede, revise, repeal  
13 or otherwise modify articles eleven, twelve or twenty-six of this chapter and does not revise, repeal  
14 or otherwise modify the common law doctrine of riparian rights in West Virginia law.

15 (f) An application may propose and a permit may approve two or more activities defined as  
16 well work; however, a separate permit shall be obtained for each horizontal well drilled.

17 (g) The application for a permit under this section shall be accompanied by the applicable  
18 bond as required by section fifteen of this article, the applicable plat required by subdivision (6),  
19 subsection (a), section five of this article and a permit fee of \$10,000 for the initial horizontal well  
20 drilled at a location and a permit fee of \$5,000 for each additional horizontal well drilled on a single  
21 well pad at the same location.

1 (h) The well operator named in the application shall designate the name and address of an  
2 agent for the operator who is the attorney-in-fact for the operator and who is a resident of the State  
3 of West Virginia upon whom notices, orders or other communications issued pursuant to this article  
4 or article eleven of this chapter may be served, and upon whom process may be served. Every well  
5 operator required to designate an agent under this section shall, within five days after the termination  
6 of the designation, notify the secretary of the termination and designate a new agent.

7 (i) The well owner or operator shall install the permit number as issued by the secretary and  
8 a contact telephone number for the operator in a legible and permanent manner to the well upon  
9 completion of any permitted work. The dimensions, specifications and manner of installation shall  
10 be in accordance with the rules of the secretary.

11 (j) The secretary may waive the requirements of this section and sections eight, ten, eleven  
12 and twenty-four of this article in any emergency situation if the secretary ~~deems~~ considers the action  
13 necessary. In ~~such~~ that case the secretary may issue an emergency permit which is effective for not  
14 more than thirty days, unless reissued by the secretary.

15 (k) The secretary shall deny the issuance of a permit if the secretary determines that the  
16 applicant has committed a substantial violation of a previously issued permit for a horizontal well,  
17 including the applicable erosion and sediment control plan associated with the previously issued  
18 permit, or a substantial violation of one or more of the rules promulgated under this article, and in  
19 each instance has failed to abate or seek review of the violation within the time prescribed by the  
20 secretary pursuant to the provisions of subdivisions (1) and (2), subsection (a), section five of this  
21 article and the rules promulgated hereunder, which time may not be unreasonable.

1           (1) ~~In the event~~ If the secretary finds that a substantial violation has occurred and that the  
2 operator has failed to abate or seek review of the violation in the time prescribed, the secretary may  
3 suspend the permit on which ~~said~~ the violation exists, after which suspension the operator shall  
4 forthwith cease all well work being conducted under the permit. However, the secretary may  
5 reinstate the permit without further notice, at which time the well work may be continued. The  
6 secretary shall make written findings of ~~any such~~ the suspension and may enforce the same in the  
7 circuit courts of this state. The operator may appeal a suspension pursuant to the provisions of  
8 subdivision (23), subsection (a), section five of this article. The secretary shall make a written  
9 finding of any such determination.

10           (m) Any well work permit issued in accordance with this section may be transferred with the  
11 prior written approval of the secretary upon his or her finding that the proposed transferee meets all  
12 requirements for holding a well work permit, notwithstanding any other provision of this article or  
13 rule adopted pursuant to this article. Application for the transfer of any well work permit shall be  
14 upon forms prescribed by the secretary and submitted with a permit transfer fee of \$500.00. Within  
15 ninety days of the receipt of approval by the secretary, the transferee shall give notice of the transfer  
16 to those persons entitled to notice in subsection (b), section ten of this article by personal service or  
17 by registered mail or by any method of delivery that requires a receipt or signature confirmation, and  
18 shall further update the emergency point of contact provided pursuant to subdivision (13), subsection  
19 (b) of this section.