

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2170**

BY DELEGATES FLEISCHAUER

[Introduced February 8, 2017; Referred  
to the Committee on Energy then the Judiciary.]

1 A BILL to amend and reenact §22-6A-8, §22-6A-10 and §22-6A-12 of the Code of West Virginia,  
 2 1931, as amended; to amend said code by adding thereto a new section, designated §22-  
 3 6A-12a; and amend and reenact §22-6B-3, §22-6B-5 and §22-6B-7 of said code, all  
 4 relating generally to horizontal well control standards; changing an elective obligation to a  
 5 mandatory one; requiring notice in certain instances be sent to the occupants of residential  
 6 property; prohibiting the limit of disturbance of a well site to be closer than fifteen hundred  
 7 feet of an occupied dwelling; providing that a notice include certain information;  
 8 establishing standards relating to air, noise, light and dust; permitting landowners be  
 9 compensated for any decrease in the values of the land for its highest and best use;  
 10 requiring the notice of a claim be also provided to an occupant of residential structure on  
 11 the property; and establishing a statute of limitations for claims being filed.

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

1 That §22-6A-8, §22-6A-10 and §22-6A-12 of the Code of West Virginia, 1931, as  
 2 amended, be amended and reenacted; that said code be amended by adding thereto a new  
 3 section, designated §22-6A-12a; and that §22-6B-3, §22-6B-5 and §22-6B-7 of said code be  
 4 amended and reenacted, all to read as follows:

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

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

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

3 (b) No permit may be issued less than thirty days after the filing date of the application for  
 4 any well work except plugging or replugging; and no permit for plugging or replugging may be  
 5 issued less than five days after the filing date of the application except a permit for plugging or  
 6 replugging a dry hole: *Provided*, That if the applicant certifies that all persons entitled to notice of

7 the application under the provisions of subsection (b), section ten of this article have been served  
8 in person or by certified mail, return receipt requested, with a copy of the well work application,  
9 including the erosion and sediment control plan, if required, and the well plat, and further files  
10 written statements of no objection by all such persons, the secretary may issue the well work  
11 permit at any time.

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

26 (d) The secretary may cause such inspections to be made of the proposed well work  
27 location as necessary to assure adequate review of the application. The permit may not be  
28 issued, or ~~may~~ shall be conditioned including conditions with respect to the location of the well  
29 and access roads prior to issuance if the director determines that:

- 30 (1) The proposed well work will constitute a hazard to the safety of persons;
- 31 (2) The plan for soil erosion and sediment control is not adequate or effective;
- 32 (3) Damage would occur to publicly owned lands or resources; or
- 33 (4) The proposed well work fails to protect fresh water sources or supplies.

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

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

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

42 (f) The secretary shall promptly review all written comments filed by persons entitled to  
43 notice pursuant to subsection (b), section ten of this article. If after review of the application and  
44 all written comments received from persons entitled to notice pursuant to subsection (b), section  
45 ten of this article, the application for a well work permit is approved, and no timely objection has  
46 been filed with the secretary by the coal operator operating coal seams beneath the tract of land,  
47 or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said coal  
48 seams, or made by the secretary under the provisions of section ten and eleven of this article, the  
49 permit shall be issued, with conditions, if any. This section does not supersede the provisions of  
50 section seven or subdivisions (6) through (9), subsection (a), section five of this article.

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

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

55 (2) With respect to disposal of cuttings at the well site, all drill cuttings and associated  
56 drilling mud generated from horizontal well sites shall be disposed of in an approved solid waste  
57 facility, or if the surface owner consents, the drill cuttings and associated drilling mud may be  
58 managed on-site in a manner approved by the secretary;

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

61 and sedimentation;

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

64 (5) Protect the quantity and the quality of water in surface and groundwater systems both  
65 during and after drilling operations and during reclamation by: (A) Withdrawing water from surface  
66 waters of the state by methods deemed appropriate by the secretary, so as to maintain sufficient  
67 in-stream flow immediately downstream of the withdrawal location. In no case shall an operator  
68 withdraw water from ground or surface waters at volumes beyond which the waters can sustain;  
69 (B) casing, sealing or otherwise managing wells to keep returned fluids from entering ground and  
70 surface waters; (C) conducting oil and gas operations so as to prevent, to the extent possible  
71 using the best management practices, additional contributions of suspended or dissolved solids  
72 to streamflow or runoff outside the permit area, but in no event shall the contributions be in excess  
73 of requirements set by applicable state or federal law; and (D) registering all water supply wells  
74 drilled and operated by the operator with the Office of Oil and Gas. All drinking water wells within  
75 one thousand five hundred feet of a water supply well shall be flow and quality tested by the  
76 operator upon request of the drinking well owner prior to operating the water supply well. The  
77 secretary shall propose legislative rules to identify appropriate methods for testing water flow and  
78 quality.

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

82 (A) Identification of water withdrawal locations. Within forty-eight hours prior to the  
83 withdrawal of water, the operator shall identify to the department the location of withdrawal by  
84 latitude and longitude and verify that sufficient flow exists to protect designated uses of the stream.  
85 The operator shall use methods deemed appropriate by the secretary to determine if sufficient  
86 flow exists to protect designated uses of the stream.

87 (B) Signage for water withdrawal locations. All water withdrawal locations and facilities

88 identified in the water management plan shall be identified with a sign that identifies that the  
89 location is a water withdrawal point, the name and telephone number of the operator and the  
90 permit numbers(s) for which the water withdrawn will be utilized.

91 (C) Recordkeeping and reporting. For all water used for hydraulic fracturing of horizontal  
92 wells and for flowback water from hydraulic fracturing activities and produced water from  
93 production activities from horizontal wells, an operator shall comply with the following record  
94 keeping and reporting requirements:

95 (h) For production activities, the following information shall be recorded and retained by  
96 the well operator:

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

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

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

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

102 (I) The quantity of water transported;

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

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

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

108 (iv) This subdivision is intended to be consistent with and does not supersede, revise,  
109 repeal or otherwise modify articles eleven, twelve or twenty-six of this chapter and does not revise,  
110 repeal or otherwise modify the common law doctrine of riparian rights in West Virginia law.

111 (i) The secretary shall mail a copy of the permit as issued or a copy of the order denying  
112 a permit to any person entitled to submit written comments pursuant to subsection (a), section  
113 eleven of this article and who requested a copy.

114 (j) Upon the issuance of any permit pursuant to the provisions of this article, the secretary

115 shall transmit a copy of the permit to the office of the assessor for the county in which the well is  
116 located.

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

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

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

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

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

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

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

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

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

34           (c) (1) If more than three tenants in common or other coowners of interests described in  
35 subsection (b) of this section hold interests in the lands, the applicant may serve the documents  
36 required upon the person described in the records of the sheriff required to be maintained  
37 pursuant to section eight, article one, chapter eleven-a of this code plus the occupant of any  
38 residential structure on the property.

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

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

46           (e) Prior to filing an application for a permit for a horizontal well under this article, the  
47 applicant shall publish in the county in which the well is located or is proposed to be located a  
48 Class II legal advertisement as described in section two, article three, chapter fifty-nine of this  
49 code, containing notice of the public website required to be established and maintained pursuant  
50 to section twenty-one of this article and language indicating the ability of the public to submit  
51 written comments on the proposed permit, with the first publication date being at least ten days



52 prior to the filing of the permit application. The secretary shall consider, in the same manner  
53 required by subsection (f), section eight of this article and subdivision one, subsection (c), section  
54 eleven of this article, written comments submitted in response to the legal advertisement received  
55 by the secretary within thirty days following the last required publication date: *Provided, That*  
56 such parties submitting written comments pursuant to this subsection are not entitled to participate  
57 in the processes and proceedings that exist under sections fifteen, seventeen or forty, article six  
58 of this chapter, as applicable and incorporated into this article by section five of this article.

59 (f) Materials served upon persons described in subsection (b) of this section shall contain  
60 a statement of the time limits for filing written comments, who may file written comments, the  
61 name and address of the secretary for the purpose of filing the comments and obtaining additional  
62 information, and a statement that the persons may request, at the time of submitting written  
63 comments, notice of the permit decision and a list of persons qualified to test water.

64 (g) Any person entitled to submit written comments to the secretary pursuant to subsection  
65 (a), section eleven of this article, shall also be entitled to receive from the secretary a copy of the  
66 permit as issued or a copy of the order modifying or denying the permit if the person requests  
67 receipt of them as a part of the written comments submitted concerning the permit application.

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

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

78 (j) (1) Prior to conducting any seismic activity for seismic exploration for natural gas to be

79 extracted using horizontal drilling methods, the company or person performing the activity shall  
80 provide notice to Miss Utility of West Virginia Inc. and to all surface owners, coal owners and  
81 lessees, and natural gas storage field operators on whose property blasting, percussion or other  
82 seismic-related activities will occur.

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

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

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

**§22-6A-12. Well location restrictions.**

1 (a) Wells may not be drilled within two hundred fifty feet measured horizontally from any  
2 existing water well or developed spring used for human or domestic animal consumption. ~~The~~  
3 ~~center of well pads may not be located within six hundred twenty-five~~ The limit of disturbance of  
4 a well site may not be closer than fifteen hundred feet of an occupied dwelling structure, or a  
5 building two thousand five hundred square feet or larger used to house or shelter dairy cattle or  
6 poultry husbandry. This limitation is applicable to those wells, developed springs, dwellings or  
7 agricultural buildings that existed on the date a notice to the surface owner of planned entry for  
8 surveying or staking as provided in section ten of this article was provided or a notice of intent to  
9 drill a horizontal well as provided in subsection (b), section sixteen of this article if the notice  
10 includes the same statement required for the notice in section ten of this article that copies of the  
11 state Erosion and Sediment Control Manual and the statutes and rules related to oil and gas  
12 exploration and production may be obtained from the secretary was provided, whichever occurs  
13 first, and to any dwelling under construction prior to that date. This limitation may be waived by  
14 written consent of the surface owner transmitted to the department and recorded in the real  
15 property records maintained by the clerk of the county commission for the county in which such

16 property is located. Furthermore, the well operator may be granted a variance by the secretary  
17 from these distance restrictions upon submission of a plan which identifies the sufficient  
18 measures, facilities or practices to be employed during well site construction, drilling and  
19 operations. The variance, if granted, shall include terms and conditions the department requires  
20 to ensure the safety and protection of affected persons and property. The terms and conditions  
21 may include insurance, bonding and indemnification, as well as technical requirements.

22 (b) No well pad may be prepared or well drilled within one hundred feet measured  
23 horizontally from any perennial stream, natural or artificial lake, pond or reservoir, or a wetland,  
24 or within three hundred feet of a naturally reproducing trout stream. No well pad may be located  
25 within one thousand feet of a surface or ground water intake of a public water supply. The  
26 distance from the public water supply as identified by the department shall be measured as  
27 follows:

28 (1) For a surface water intake on a lake or reservoir, the distance shall be measured from  
29 the boundary of the lake or reservoir.

30 (2) For a surface water intake on a flowing stream, the distance shall be measured from a  
31 semicircular radius extending upstream of the surface water intake.

32 (3) For a groundwater source, the distance shall be measured from the wellhead or spring.  
33 The department may, in its discretion, waive these distance restrictions upon submission of a plan  
34 identifying sufficient measures, facilities or practices to be employed during well site construction,  
35 drilling and operations to protect the waters of the state. A waiver, if granted, shall impose any  
36 permit conditions as the secretary considers necessary.

37 (c) Notwithstanding the foregoing provisions of this section, nothing contained in this  
38 section prevents an operator from conducting the activities permitted or authorized by a Clean  
39 Water Act Section 404 permit or other approval from the United States Army Corps of Engineers  
40 within any waters of the state or within the restricted areas referenced in this section.

41 (d) The well location restrictions set forth in this section shall not apply to any well on a  
42 multiple well pad if at least one of the wells was permitted or has an application pending prior to

43 the effective date of this article.

44 (e) The secretary shall, by December 31, 2012, report to the Legislature on the noise,  
45 light, dust and volatile organic compounds generated by the drilling of horizontal wells as they  
46 relate to the well location restrictions regarding occupied dwelling structures pursuant to this  
47 section. Upon a finding, if any, by the secretary that the well location restrictions regarding  
48 occupied dwelling structures are inadequate or otherwise require alteration to address the items  
49 examined in the study required by this subsection, the secretary shall have the authority to  
50 propose for promulgation legislative rules establishing guidelines and procedures regarding  
51 reasonable levels of noise, light, dust and volatile organic compounds relating to drilling horizontal  
52 wells, including reasonable means of mitigating such factors, if necessary.

**§22-6A-12a. Air, noise, light and dust standards.**

1 (a) This section does not apply to or affect any well work permitted for a horizontal well  
2 prior to the enactment of this section, or to permit applications pending prior to the effective date  
3 of this section. However, to this section the secretary has the authority granted him or her  
4 pursuant to subdivision (5), subsection (b) section two of this article and other applicable  
5 provisions of this code.

6 (b) The operator shall set up continuous real-time monitoring of air, noise, dust and  
7 particulates at the residence or other point of impact that is closest or most likely to be impacted  
8 by the well work, including traffic associated with the site. The operator shall continuously monitor  
9 those parameters in real time. If there is a five percent chance or greater that the monitored levels  
10 could exceed any of the required parameters as determined by continuous process control  
11 analysis during any running twenty-four hour averaging period, the operator shall implement the  
12 best available control technology available to limit the levels. The monitored levels need to be  
13 continuously available by wireless or other transmission to those persons or entities within fifteen  
14 hundred feet of the limit of disturbance who request it. When levels exceed parameters, alerts  
15 shall be sent to those persons or entities. The data shall be available to the public for study.  
16 Unless altered by legislative rule, the parameters are:

17 (1) For noise during site construction, 70 dBA average an hour.

18 (2) For noise at all other times, 55 dBA at any time.

19 (3) For dust, the national ambient air quality standard level for a twenty-four hour period  
20 and no visible dust on residences or crops.

21 (4) For air, the minimal risk levels for chronic (three hundred sixty-five days or more)  
22 exposure of organic compounds set by the Agency for Toxic Substances and Disease Registry  
23 of the Centers for Disease Control and Prevention of the United States Department of Health and  
24 Human Services.

25 (c) No light from artificial illumination, flares or other sources shall shine directly on any  
26 residence or livestock or structure containing livestock.

27 (d) Notwithstanding the provisions of subsection (a) of this section if, after completion of  
28 well work, production or production facilities cause a violation of the standards set out in  
29 subsection (b) of this section at a residence, then the operator shall implement the best available  
30 control technology available to limit the levels that violate the standards.

## **ARTICLE 6B. OIL AND GAS HORIZONTAL WELL PRODUCTION DAMAGE COMPENSATION.**

### **§22-6B-3. Compensation of surface owners for drilling operations.**

1 (a) The oil and gas developer is obligated to pay the surface owner compensation for:

2 (1) Lost income or expenses incurred as a result of being unable to dedicate land actually  
3 occupied by the driller's operation, or to which access is prevented by the drilling operation, to the  
4 uses to which it was dedicated prior to commencement of the activity for which a permit was  
5 obtained, measured from the date the operator enters upon the land and commences drilling  
6 operations until the date reclamation is completed;

7 (2) The market value of crops, including timber, destroyed, damaged or prevented from  
8 reaching market;

9 (3) Any damage to a water supply in use prior to the commencement of the permitted

10 activity;

11 (4) The cost of repair of personal property up to the value of replacement by personal  
12 property of like age, wear and quality; and

13 (5) The diminution in value, if any, of the ~~surface lands~~ entire surface tract and other  
14 property after completion of the surface disturbance done pursuant to the activity for which the  
15 permit was issued determined according to the market value of the ~~actual use made thereof by~~  
16 ~~the surface owner~~ land for its highest and best use that could be made of the land immediately  
17 prior to the commencement of the permitted activity.

18 The amount of damages may be determined by any formula mutually agreeable between  
19 the surface owner and the oil and gas developer.

20 (b) Any reservation or assignment of the compensation provided in this section apart from  
21 the surface estate except to a tenant of the surface estate is prohibited.

22 (c) In the case of surface lands owned by more than one person as tenants in common,  
23 joint tenants or other coownership, any claim for compensation under this article shall be for the  
24 benefit of all coowners. The resolution of a claim for compensation provided in this article operates  
25 as a bar to the assertion of additional claims under this section arising out of the same drilling  
26 operations.

**§22-6B-5. Notification of claim.**

1 Any surface owner, to receive compensation under section three of this article, shall notify  
2 the oil and gas developer of the damages sustained by the person within two years after the date  
3 that the oil and gas developer files notice that final reclamation is commencing under section  
4 fourteen, article six-a of this chapter. The notice of reclamation shall be given to surface owners  
5 by registered or certified mail, return receipt requested, and is complete upon mailing. If more  
6 than three tenants in common or other coowners hold interests in the lands, the oil and gas  
7 developer may give the notice to the person described in the records of the sheriff required to be  
8 maintained pursuant to section eight, article one, chapter eleven-a of this code or publish in the  
9 county in which the well is located ~~or to be located a Class II legal advertisement as described in~~

10 ~~section two, article three, chapter fifty-nine of this code, containing the notice and information the~~  
11 ~~secretary prescribes by rule~~ plus the occupant of any residential structure on the property.

**§22-6B-7. Rejection; legal action; arbitration; fees and costs.**

1 (a) (1) Unless the oil and gas developer has paid the surface owner a negotiated  
2 settlement of compensation within seventy-five days after the date the notification of claim was  
3 mailed under section five of this article, the surface owner may either: (A) Within eighty days after  
4 the notification mail date either (i) ~~Bring~~ or within two years after the date that the oil and gas  
5 developer files notice that final reclamation is commencing under section fourteen, article six-a of  
6 this chapter bring an action for compensation in the circuit court of the county in which the well is  
7 located; or ~~(ii) (B) within eighty days after the notification mail date~~ elect instead, by written notice  
8 delivered by personal service or by certified mail, return receipt requested, to the designated  
9 agent named by the oil and gas developer under the provisions of section seven, article six-a of  
10 this chapter, to have his, her or its compensation finally determined by binding arbitration pursuant  
11 to article ten, chapter fifty-five of this code.

12 (2) Settlement negotiations, offers and counter-offers between the surface owner and the  
13 oil and gas developer are not admissible as evidence in any arbitration or judicial proceeding  
14 authorized under this article, or in any proceeding resulting from the assertion of common law  
15 remedies.

16 (b) The compensation to be awarded to the surface owner shall be determined by a panel  
17 of three disinterested arbitrators. The first arbitrator shall be chosen by the surface owner in the  
18 party's notice of election under this section to the oil and gas developer; the second arbitrator  
19 shall be chosen by the oil and gas developer within ten days after receipt of the notice of election;  
20 and the third arbitrator shall be chosen jointly by the first two arbitrators within twenty days  
21 thereafter. If they are unable to agree upon the third arbitrator within twenty days, then the two  
22 arbitrators shall immediately submit the matter to the court under the provisions of section one,  
23 article ten, chapter fifty-five of this code, so that, among other things, the third arbitrator can be  
24 chosen by the judge of the circuit court of the county in which the surface estate lies.

25 (c) The following persons are considered interested and may not be appointed as  
26 arbitrators: Any person who is personally interested in the land on which horizontal drilling is being  
27 performed or has been performed, or in any interest or right therein, or in the compensation and  
28 any damages to be awarded therefor, or who is related by blood or marriage to any person having  
29 such personal interest, or who stands in the relation of guardian and ward, master and servant,  
30 principal and agent, or partner, real estate broker, or surety to any person having such personal  
31 interest, or who has enmity against or bias in favor of any person who has such personal interest  
32 or who is the owner of, or interested in, the land or the oil and gas development of the land. A  
33 person is not considered interested or incompetent to act as arbitrator by reason of being an  
34 inhabitant of the county, district or municipal corporation in which the land is located, or holding  
35 an interest in any other land therein.

36 (d) The panel of arbitrators shall hold hearings and take testimony and receive exhibits  
37 necessary to determine the amount of compensation to be paid to the surface owner. However,  
38 no award of compensation may be made to the surface owner unless the panel of arbitrators has  
39 first viewed the surface estate in question. A transcript of the evidence may be made but is not  
40 required.

41 (e) Each party shall pay the compensation of the party's arbitrator and one half of the  
42 compensation of the third arbitrator, or each party's own court costs as the case may be.

NOTE: The purpose of this bill is to change an elective obligation to a mandatory one. The bill requires notice in certain instances to the occupants of residential property. The bill prohibits the disturbance of a well site be no closer than fifteen hundred feet of an occupied dwelling. The bill provides notices include certain information. The bill establishes standards relating to air, noise, light and dust. The bill permits landowners be compensated for any decrease in the values of the land for its highest and best use. The bill requires the notice of a claim be also provided to an occupant of residential structure on the property. The bill establishes a statute of limitations for claims being filed.

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