

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

### **Committee Substitute**

**for**

### **Senate Bill 541**

BY SENATORS ROMANO, AZINGER, BALDWIN, BEACH,  
BOSO, CLEMENTS, FACEMIRE, HARDESTY, JEFFRIES,  
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WOELFEL, PLYMALE, MARONEY, AND CLINE

[Originating in the Committee on Energy, Industry,  
and Mining; Reported on February 21, 2019]

1 A BILL to amend and reenact §22-6-26 of the Code of West Virginia, 1931, as amended; to amend  
2 said code by adding thereto a new section, designated §22-6-26a; and to amend and  
3 reenact §22-10-6 of said code; all relating to the plugging of orphaned oil and gas wells;  
4 providing plugging assurance upon transfer of a well; providing exemptions from plugging  
5 assurance where a well is providing free gas and not causing pollution; and requiring  
6 money that results from the forfeiture of an oil and gas operator's bond as a result of the  
7 operator's failure to plug a well or otherwise comply with state statutes and rules to first  
8 be applied to correct or mitigate an immediate threat to the environment or hindrance or  
9 impediment to the development of mineral resources of this state that caused the forfeiture  
10 of the bond.

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

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

**§22-6-26. Performance bonds; corporate surety or other security.**

1 (a) No permit shall be issued pursuant to this article unless a bond as described in  
2 subsection (d) of this section which is required for a particular activity by this article is or has been  
3 furnished as provided in this section.

4 (b) A separate bond as described in subsection (d) of this section may be furnished for a  
5 particular oil or gas well, or for a particular well for the introduction of liquids for the purposes  
6 provided in §22-6-25 of this code. A separate bond as described in subsection (d) of this section  
7 shall be furnished for each well drilled or converted for the introduction of liquids for the disposal  
8 of pollutants or the effluent therefrom. Each of these bonds shall be in the sum of \$5,000, payable  
9 to the State of West Virginia, conditioned on full compliance with all laws, rules relating to the  
10 drilling, redrilling, deepening, casing and stimulating of oil and gas wells (or, if applicable, with all  
11 laws, rules relating to drilling or converting wells for the introduction of liquids for the purposes

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12 provided in section §22-6-25 of this code or for the introduction of liquids for the disposal of  
13 pollutants or the effluent therefrom) and to the plugging, abandonment and reclamation of wells  
14 and for furnishing such reports and information as may be required by the director.

15 (c) When an operator makes or has made application for permits to drill or stimulate a  
16 number of oil and gas wells or to drill or convert a number of wells for the introduction of liquids  
17 for the purposes provided in §22-6-25 of this code, the operator may in lieu of furnishing a  
18 separate bond furnish a blanket bond in the sum of \$50,000, payable to the State of West Virginia,  
19 and conditioned as aforesaid in subsection (b) of this section.

20 (d) The form of the bond required by this article shall be approved by the director and may  
21 include, at the option of the operator, surety bonding, collateral bonding (including cash and  
22 securities) letters of credit, establishment of an escrow account, self-bonding or a combination of  
23 these methods. If collateral bonding is used, the operator may elect to deposit cash, or collateral  
24 securities or certificates as follows: Bonds of the United States or its possessions, of the federal  
25 land bank, or the homeowners' loan corporation; full faith and credit general obligation bonds of  
26 the State of West Virginia, or other states, and of any county, district or municipality of the State  
27 of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates  
28 shall be in favor of the division. The cash deposit or market value of such securities or certificates  
29 shall be equal to or greater than the amount of the bond. The director shall, upon receipt of any  
30 such deposit of cash, securities or certificates, promptly place the same with the Treasurer of the  
31 State of West Virginia whose duty it shall be to receive and hold the same in the name of the state  
32 in trust for the purpose of which the deposit is made when the permit is issued. The operator shall  
33 be entitled to all interest and income earned on the collateral securities filed by such operator.  
34 The operator making the deposit shall be entitled from time to time to receive from the State  
35 Treasurer, upon the written approval of the director, the whole or any portion of any cash,  
36 securities or certificates so deposited, upon depositing with the Treasurer in lieu thereof, cash or

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37 other securities or certificates of the classes herein specified having value equal to or greater than  
38 the amount of the bond.

39 (e) When an operator has furnished a separate bond from a corporate bonding or surety  
40 company to drill, fracture or stimulate an oil or gas well and the well produces oil or gas or both,  
41 its operator may deposit with the director cash from the sale of the oil or gas or both until the total  
42 deposited is \$5,000. When the sum of the cash deposited is ~~at least~~ \$5,000, the separate bond for the  
43 well shall be released by the director. Upon receipt of such cash, the director shall immediately  
44 deliver the same to the Treasurer of the State of West Virginia. The Treasurer shall hold such  
45 cash in the name of the state in trust for the purpose for which the bond was furnished and the  
46 deposit was made. The operator shall be entitled to all interest and income which may be earned  
47 on the cash deposited so long as the operator is in full compliance with all laws, rules relating to  
48 the drilling, redrilling, deepening, casing, plugging, abandonment and reclamation of the well for  
49 which the cash was deposited and so long as the operator has furnished all reports and  
50 information as may be required by the director. If the cash realized from the sale of oil or gas or  
51 both from the well is not sufficient for the operator to deposit with the director the sum of \$10,000  
52 within one year of the day the well started producing, the corporate or surety company which  
53 issued the bond on the well may notify the operator and the director of its intent to terminate its  
54 liability under its bond. The operator then shall have 30 days to furnish a new bond from a  
55 corporate bonding or surety company or collateral securities or other forms of security, as  
56 provided in the next preceding paragraph of this section with the director. If a new bond or  
57 collateral securities or other forms of security are furnished by the operator, the liability of the  
58 corporate bonding or surety company under the original bond shall terminate as to any acts and  
59 operations of the operator occurring after the effective date of the new bond or the date the  
60 collateral securities or other forms of security are accepted by the Treasurer of the State of West  
61 Virginia. If the operator does not furnish a new bond or collateral securities or other forms of

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62 security, as provided in the next preceding paragraph of this section, with the director, the operator  
63 shall immediately plug, fill and reclaim the well in accordance with all of the provisions of law and  
64 rules applicable thereto. In such case, the corporate or surety company which issued the original  
65 bond shall be liable for any plugging, filling or reclamation not performed in accordance with such  
66 laws and rules.

67 (f) Any separate bond furnished for a particular well prior to the effective date of this  
68 chapter shall continue to be valid for all work on the well permitting prior to July 11, 1985; but no  
69 permit shall hereafter be issued on such a particular well without a bond complying with the  
70 provisions of this section. Any blanket bond furnished prior to July 11, 1985 shall be replaced with  
71 a new blanket bond conforming to the requirements of this section, at which time the prior bond  
72 shall be discharged by operation of law; and if the director determines that any operator has not  
73 furnished a new blanket bond, the director shall notify the operator by certified mail, return receipt  
74 requested, of the requirement for a new blanket bond; and failure to submit a new blanket bond  
75 within sixty days after receipt of the notice from the director shall work a forfeiture under  
76 subsection (i) of this section of the blanket bond furnished prior to July 11, 1985.

77 (g) Any such bond shall remain in force until released by the director and the director shall  
78 release the same upon satisfaction that the conditions thereof have been fully performed. Upon  
79 the release of any such bond, any cash or collateral securities deposited shall be returned by the  
80 director to the operator who deposited same.

81 (h) Whenever the right to operate a well is assigned or otherwise transferred, the assignor  
82 or transferor shall notify the department of the name and address of the assignee or transferee  
83 by certified mail, return receipt requested, not later than five days after the date of the assignment  
84 or transfer. No assignment or transfer by the owner shall relieve the assignor or transferor of the  
85 obligations and liabilities unless and until the assignee or transferee files with the department the  
86 well name and the permit number of the subject well, the county and district in which the subject

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87 well is located, the names and addresses of the assignor or transferor, and assignee or transferee,  
88 a copy of the instrument of assignment or transfer accompanied by the applicable bond, cash,  
89 collateral security or other forms of security, described in §22-6-12, §22-6-14, §22-6-23 or §22-6-  
90 26 of this code, plugging assurance as required by §22-6-6a of this code and the name and  
91 address of the assignee's or transferee's designated agent if assignee or transferee would be  
92 required to designate such an agent under §22-6-6 of this code, if assignee or transferee were an  
93 applicant for a permit under said section six: Provided, That plugging assurance is not required  
94 if the well is providing free gas to a residence or farm facility, and: (1) The operator furnishes to  
95 the Chief of the Office of Oil and Gas a current certification from an owner or occupant of the  
96 residence or farm facility that the well is providing free gas; and (2) the well is not causing pollution  
97 on the surface, subsurface, or groundwater, or otherwise creating a present risk to public safety  
98 of persons or property. Every well operator required to designate an agent under this section shall  
99 within five days after the termination of such designation notify the department of such termination  
100 and designate a new agent.

101       Upon compliance with the requirements of this section by assignor or transferor and  
102 assignee or transferee, the director shall release assignor or transferor from all duties and  
103 requirements of this article, and the deputy director shall give written notice of release unto  
104 assignor or transferor of any bond and return unto assignor or transferor any cash or collateral  
105 securities deposited pursuant to §22-6-12, §22-6-14, §22-6-23, or §22-6-26 of this code.

106       (i) If any of the requirements of this article or rules promulgated pursuant thereto or the  
107 orders of the director have not been complied with within the time limit set by the violation notice  
108 as defined in sections §22-6-3, §22-6-4, and §22-6-5 of this code, the performance bond shall  
109 then be forfeited.

110       (j) When any bond is forfeited pursuant to the provisions of this article or rules promulgated  
111 pursuant thereto, the director shall give notice to the Attorney General who shall collect the

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112 forfeiture without delay.

113 (k) All forfeitures shall be deposited in the Treasury of the State of West Virginia in the  
114 special reclamation fund as defined in §22-6-29 of this code.

**§22-6-26a. Plugging assurance.**

1 (a) The Chief of the Office of Oil and Gas shall set an estimated future plugging cost for  
2 each type of well for which plugging assurance is required based on:

3 (1) The date the well was drilled;

4 (2) The engineering design of the well;

5 (3) The formation or formations from which it is producing;

6 (4) The expected amount of time during which the well will produce in paying quantities;

7 (5) An estimated rate of inflation of the cost of plugging;

8 (6) The administrative costs to the State Treasurer and the Office of Oil and Gas to  
9 administer the plugging assurance method chosen by the operator, which cost the State  
10 Treasurer is authorized to deduct from the well plugging funds and pay the costs to the Treasure's  
11 banking services account and to an Office of Oil and Gas account; and

12 (7) Any other relevant data at the discretion of the Chief of the Office of Oil and Gas.

13 The operator may contest an estimated future plugging cost established by the Chief of  
14 the Office of Oil and Gas for a well for which plugging assurance is required using certified  
15 estimates from registered professional engineers in conjunction with other licensed professionals  
16 knowledgeable in the fields of petroleum engineering and finance who have experience with  
17 reservoir development and plugging.

18 (b) When plugging assurance is required by this section, the assurance may be satisfied  
19 by one of the following methods:

20 (1) Bonding. — A single well bond which meets the requirements of the Office of Oil and  
21 Gas as determined by the State Treasurer and which is equal to the estimated future plugging

22 cost for the well: *Provided*, That self-bonding is prohibited.

23 (2) *Cash or collateral*. — A deposit of cash or collateral with the State Treasurer which  
24 meets the requirements of the Office of Oil and Gas and is equal to the estimated future plugging  
25 cost for the well.

26 (3) *Escrow account*. — The operator may establish and make payments into an escrow  
27 account with the State Treasurer for estimated future plugging costs. The State Treasurer shall  
28 establish the escrow account when requested by the operator and shall accept and deposit  
29 payments therein. Payments to the escrow account shall require proportionately higher payments  
30 during current production and decrease as production declines. The payment schedule into the  
31 escrow account for the estimated future plugging costs for the well shall be determined by the  
32 Chief of the Office of Oil and Gas in consultation with the State Treasurer considering the following  
33 criteria:

34 (i) Production estimates made by the Chief of the Office of Oil and Gas;

35 (ii) Estimated prices for the product from recognized futures exchanges or other estimates  
36 made by the Chief of the Office of Oil and Gas;

37 (iii) Estimated future plugging costs; and

38 (iv) Earnings and discount rates estimated by the State Treasurer.

39 (4)(A) *Staggered assurance payments*. — For wells that are not producing in paying  
40 quantities on or before December 31, 2019, and not providing free gas to a residence or farm  
41 facility and: (1) The operator furnishes to the Chief of the Office of Oil and Gas a current  
42 certification from an owner or occupant of the residence or farm facility that the well is providing  
43 free gas; and (2) the well is not causing pollution on the air, surface, subsurface, or groundwater,  
44 or otherwise a creating a present risk to public safety of persons or property, if an operator  
45 chooses to provide plugging assurance in cash or collateral, an operator may furnish plugging  
46 assurance at a rate of 20 percent of the estimated future plugging cost for the well for five years:  
47 *Provided*, That the operator demonstrates to the satisfaction of the Chief of the Office of Oil and

48 Gas that an unjust hardship to an operator will occur as a result of the financial responsibility  
49 requirements of this section.

50 (c) If the operator posts plugging assurance in the form of cash or collateral, the State  
51 Treasurer shall hold the funds in an account in the State Treasury and shall invest the funds with  
52 the West Virginia Board of Treasury Investments. All interest or other earnings in excess of the  
53 estimated future plugging cost shall be paid yearly to the operator by the State Treasurer.

54 (d) The funds to plug the well, for which the escrow account was established, shall be paid  
55 by the State Treasurer to the operator or to the contractor or contractors selected by the operator  
56 to plug the well once the Chief of the Office of Oil and Gas certifies that the well has been plugged  
57 according to all lawful requirements. Excess funds and earnings in excess of actual plugging costs  
58 may be credited toward future assurance payments for other wells or shall be refunded to the  
59 operator within 60 days of plugging certification by the Chief of the Office of Oil and Gas.

60 (e) The State Treasurer is authorized to deduct the costs incurred to administer the  
61 program by the State Treasurer and by the Office of Oil and Gas once a year after providing notice  
62 and a summary of the incurred costs to the operator and pay the costs to the Treasure's banking  
63 services account and to an Office of Oil and Gas account.

64 (f) Nothing in this section may be interpreted or deemed to require plugging assurance or  
65 plugging of a well by a mineral owner or surface owner.

## **ARTICLE 10. ABANDONED WELL ACT.**

### **§22-10-6. Establishment of priorities for plugging expenditures.**

1 (a) Within one year of the effective date of this article, the director shall promulgate  
2 legislative rules establishing a priority system by which available funds from the Oil and Gas  
3 Reclamation Fund, established pursuant to §22-6-29 of this code, will be expended to plug  
4 abandoned wells. The rules shall, at a minimum, establish three primary classifications to be as  
5 follows:

6 (1) Wells which are an immediate threat to the environment or which may hinder or impede

7 the development of mineral resources of this state so as to require immediate plugging;

8 (2) Wells which are not an immediate threat to the environment or which do not hinder or  
9 impede the development of mineral resources of this state, but which should be plugged  
10 consistent with available resources; and

11 (3) Wells which are not a threat to the environment and which do not hinder or impede the  
12 development of mineral resources of this state and for which plugging may be deferred for an  
13 indefinite period.

14 (b) ~~Such~~ The classifications shall, among other things, take into consideration the following  
15 factors, as appropriate:

16 (1) The age of the well;

17 (2) The length of time the well has been abandoned;

18 (3) The casing remaining in the well;

19 (4) The presence of any leaks either at the surface or underground;

20 (5) The possibility or existence of groundwater contamination;

21 (6) Whether the well is located in an area to be developed for enhanced recovery;

22 (7) Whether the well hinders or impedes mineral development; and

23 (8) Whether the well is located in close proximity to population.

24 (c) Notwithstanding the other provisions of this section, the bond posted for a specific well  
25 shall first be used to plug the well or correct or mitigate problems or issues on the land where the  
26 well is located if:

27 (1) The bond is forfeited as a result of failure to plug an abandoned well or repair a well  
28 that is causing immediate threat to the environment or which hinders or impedes the development  
29 of mineral resources of this state;

30 (2) The operator was cited for and then failed to correct an immediate threat to the  
31 environment or hinderance or impediment to the development of mineral resources of this state  
32 with the well or the well site; or

- 33            (3) The operator failed to reclaim surface disturbance causing immediate threat to the  
34 environment or which hinders or impedes the development of mineral resources of this state.

NOTE: The purpose of this bill is to require “plugging assurance” for an oil or gas well that is transferred from one operator to another in order to prevent additional orphaned wells with no solvent operator to plug them. This problem is in part caused by operators who can afford to plug wells transferring them to operators who will not be able to plug wells and who, under current law, only have to post one \$50,000 “blanket” “performance” bond no matter how many wells they operate. The bill requires money that results from the forfeiture of an oil and gas operator’s bond as a result of the operator’s failure to plug a well or otherwise comply with state statutes and rules to first be applied to correct or mitigate an immediate threat to the environment or hindrance or impediment to the development of mineral resources of this state that caused the forfeiture of the bond.

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