

# **WEST VIRGINIA LEGISLATURE**

## **2020 REGULAR SESSION**

**Introduced**

### **House Bill 4827**

BY DELEGATES HANSEN AND PYLES

[Introduced February 11, 2020; referred to the  
Committee on Energy then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,  
 2 designated §22-10A-1, §22-10A-2, §22-10A-3, §22-10A-4, §22-10A-5, §22-10A-6, §22-  
 3 10A-7, §22-10A-8, §22-10A-9, §22-10A-10, and §22-10A-11, all relating to creating the  
 4 Orphan Oil and Gas Well Prevention Act; making findings; providing for new, transferred  
 5 and nonproducing wells; requiring operators to set aside plugging costs; establishing State  
 6 Treasurer and Office of Oil and Gas responsibilities; establishing the responsibilities of  
 7 previous operators; providing for consent of surface owners; and requiring rule-making.

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

**ARTICLE 10A. ORPHAN WELL PREVENTION ACT.**

**§22-10A-1. Short title.**

1 This article shall be known as the Orphan Oil and Gas Well Prevention Act.

**§22-10A-2. Legislative findings and declarations.**

1 (a) The Legislature declares it to be the public policy of this state and in the public interest  
 2 that an oil or gas well that does not have any present or future economic use must be plugged:

3 (1) In order to prevent it from leaking gas up into the air or groundwater;

4 (2) In order to prevent it from leaking oil and other liquids up onto the surface;

5 (3) In order to prevent it from leaking surface and near surface bacterial and other pollution  
 6 down into groundwater;

7 (4) In order to preserve the ability to safely and economically produce from coal seams  
 8 and other oil and gas bearing seams through which the well bore passed;

9 (5) In order to stop the unnecessary imposition of the well on the surface owners resulting  
 10 in devaluation of their property arising from the very existence of the well on their surface property  
 11 together with the risks associated with unplugged wells; and

12 (6) In order to clarify that any previous lease by a mineral owner is no longer held by  
 13 production from that well.

14 (b) The Legislature finds that thousands of gas and oil wells in West Virginia no longer

15 have a responsible operator or have any bond in any form, and as a result those wells and have  
16 in effect become orphaned. As no operator or other responsible person is available to plug those  
17 wells, unless an “interested person” as per §22-10-1 et seq. of this code can be located or an  
18 operator has set aside plugging funds pursuant to this article, the effort and expense of plugging  
19 orphaned wells falls to the state.

20 (c) The existence of these orphaned wells has been caused by the inadequacy of current  
21 statutes and rules and practices.

22 (d) As a result, health considerations, property rights, environmental concerns, and future  
23 developmental concerns need new safeguards to prevent more wells from being orphaned.

**§22-10A-3. New wells.**

1 Notwithstanding any other provision of this code to the contrary, no permit filed after July  
2 1, 2020, may be issued for a new well unless the operator furnishes plugging funds set aside as  
3 required in §22-10A-8 of this code.

**§22-10A-4. Transferred wells.**

1 Notwithstanding any provision of this code to the contrary, no assignment or transfer after  
2 the effective date of this article by the owner or operator of a well relieves the assignor or  
3 transferor of the obligations and liability under this code until the new operator or owner furnish  
4 plugging funds set aside required in §22-10A-8 of this code.

**§22-10A-5. Responsibility of previous operators.**

1 Notwithstanding any other provision of this code to the contrary, if a well that has been  
2 transferred to a new operator needs to be plugged due to: (1) Leakage into the air, the  
3 groundwater or another formation; (2) the leakage of oil or other liquids onto the ground or into  
4 other formations; or (3) leakage of surface or septic contamination into groundwater or causes a  
5 loss of groundwater, the previous operator of the well is responsible for the plugging of the well if  
6 it has been determined that the cause of the problem was a violation of law or was a failure to act  
7 as a prudent operator by that previous operator: *Provided*, That the current operator has not

8 plugged the well.

**§22-10A-6. Nonproducing wells.**

1 (a) No new well work permit may be granted to an operator if that well operated by that  
2 operator that has not been in use for a period of 12 consecutive months. That well is required to  
3 be plugged by §22-6-19 of this code, unless: (1) The operator provides satisfactory evidence to  
4 the director that there is a bona fide future use for the well; or (2) the operator has deposited  
5 sufficient plugging funds as required in §22-10A-8 of this code.

**§22-10A-7. Wells producing in paying quantities.**

1 Notwithstanding any provision of this code to the contrary, for a well that produces the  
2 amount of oil or gas necessary to produce, process and transport the gas from that well in paying  
3 quantities, not including the cost of drilling and completing the well, the operator shall furnish the  
4 plugging set aside moneys required in §22-10A-8 of this code in the amount of 15 cents per one  
5 mcf of gas produced. A well paying any reduced rate of severance tax as allowed in §11-13A-3a  
6 of this code is rebuttably presumed to not be producing in paying quantities. A well producing in  
7 excess of 60 mcf of gas per day or 10 barrels of oil per day is rebuttably presumed to be producing  
8 in paying quantities. The Office of Oil and Gas may from year to year establish standard costs to  
9 produce, process and transport the gas from wells in paying quantities for categories it may  
10 establish. In determining whether a well is producing in paying quantities the operator may use  
11 the standard costs established by the office and published gas market prices from sources  
12 approved by it, or the operator may submit audited statements of its reasonable and relevant  
13 costs for the well and actual sales documentation.

**§22-10A-8. Plugging funds set aside.**

1 (a) If required to do so by this article, or at the request of an operator, the operator of an  
2 oil or gas well shall transfer the appropriate plugging funds to the State Treasurer who shall  
3 establish separate accounts for each well. The funds shall be invested with the West Virginia  
4 Board of Treasury Investments. Funds may be paid out of the account by order of the Office of

5 Oil and Gas only to the person or entity that plugs the well or to the operator if the office certifies  
6 that the well has been plugged according to lawful requirements.

7 (b) The rate of payment into the account for categories of wells shall be determined by  
8 agreement of the operator and the Office of Oil and Gas considering production estimates made  
9 by the office considering: (1) Estimated prices for the product from recognized futures exchanges  
10 or, if no such estimates are available for all years, considering other estimates made by the chief  
11 of the Office of Oil and Gas; (2) current plugging costs; (3) estimated rate of inflation of plugging  
12 costs made by the office; (4) earnings and discount rates estimated by the State Treasurer; and  
13 (5) the costs to the State Treasurer to manage the escrow account and costs to the Office of Oil  
14 and Gas to administer the program. In lieu of the estimates as determined by the office, an  
15 operator and the office may consider estimates made by a registered professional reservoir  
16 engineer provided by the well operator. The payment schedule shall include proportionately  
17 higher payments during initial production and decreasing payments as production declines based  
18 on production and price estimates. Earnings of the fund in excess of projected plugging costs  
19 shall be credited to future payments or refunded to the operator.

20 (c) The State Treasurer may deduct from the accounts the costs of managing the  
21 accounts, and deduct from the accounts and to transfer to the credit of the Office of Oil and Gas  
22 the costs of administering the program: *Provided*, That notice has been given to the operator and  
23 the office.

24 (d) The State Treasurer shall propose rules for legislative approval in accordance with  
25 §29A-3-1 et seq. of this code to implement this section..

**§22-10A-9. Plugging of orphaned and abandoned wells by drillers of new wells.**

1 In order to obtain a permit to drill a new well, the driller must agree to plug all orphaned  
2 and abandoned wells in the leased area to be drained by the well. The operator applying for the  
3 permit is deemed to be an interested party for the purposes of the Abandoned Well Act, §22-10-  
4 1 et seq. of this code. The operator may recover from the owner, the previous operator, or the

5 lessor or successors to the lessor all reasonable costs incidental to the plugging as provided in  
6 that act: *Provided*, That costs recovered from the lessor or future lessors may only be recovered  
7 from the lessor, and its successors, from future royalties payable to the lessor. The drainage area  
8 for the purposes of this section is presumed to be the entire length of any horizontal proposed  
9 well bore and a width determined by the half the distance between the permitted or proposed  
10 permitted horizontal well bores of the applicant, but a different drainage area may be prescribed  
11 by the Office of Oil and Gas.

**§22-10A-10. Surface owner consent to temporary deferral of plugging.**

1 The owner of the surface where the well is located, whether or not they receive free gas,  
2 may sign a consent to a deferral of plugging a well. The Office of Oil and Gas shall prepare and  
3 use a form that outlines and explains the risks of unplugged wells. The surface owner may revoke  
4 a consent up to 30 days after signing it. The office, after inspecting the well and determining that  
5 there is no significant current or imminent risk to persons, property or the environment from the  
6 particular well, may delay the requirement or enforcement of plugging the well for so long as that  
7 owner owns the surface and there is a lack of significant current or imminent risk continues. If  
8 any owner, operator or lessee of the surface, oil, gas, water, coal or other mineral resource under,  
9 on, adjacent or in close proximity to any lands upon which an abandoned well exists, and whose  
10 lands, rights or interests are or might be affected by such unplugged well objects, the requirement  
11 or enforcement of plugging the well may not be deferred.

**§22-10A-11. Rule-making.**

1 The director shall promulgate legislative rules, procedural rules and interpretive rules in  
2 accordance with the provisions of chapter 29A of this code in order to carry out and implement  
3 the provisions of this article.

NOTE: The purpose of this bill is to prevent oil and gas wells from being orphaned. The bill creates the Orphan Oil and Gas Well Prevention Act. The bill makes findings. The bill provides for new, transferred and non-producing wells. The bill requires operators to set

aside plugging costs. The bill establishes State Treasurer and Office of Oil and Gas responsibilities. The bill establishes the responsibilities of previous operators. The bill provides for consent of surface owners. The bill requires rule-making.

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