

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 535

BY SENATOR SMITH

[Introduced January 20, 2020; referred
to the Committee on the Judiciary]

1 A BILL to amend and reenact §22C-9-3 and §22C-9-4 of the Code of West Virginia, 1931, as
 2 amended, all relating to eliminating the requirement that oil and gas operators file
 3 applications for variance and exceptions from certain deep well spacing requirements;
 4 withdrawing the authority of the Oil and Gas Conservation Commission to regulate the
 5 spacing of deep wells other than in the context of an application for drilling units or pooling
 6 of interests related to drilling units filed pursuant to §22C-9-7 of said code, which will allow
 7 exploration and production companies to implement evidence-based best practices for
 8 spacing of deep wells; and updating and clarifying language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-3. Application of article; exclusions.

1 (a) Except as provided in subsection (b) of this section, the provisions of this article shall
 2 apply to all lands located in this state, however owned, including any lands owned or administered
 3 by any government or any agency or subdivision thereof, over which the state has jurisdiction
 4 under its police power. The provisions of this article are in addition to and not in derogation of or
 5 substitution for the provisions of §22-6-1 *et seq.* or §22-6A-1 *et seq.* of this code.

6 (b) This article shall not apply to or affect:

7 (1) Shallow wells other than those utilized in secondary recovery programs as set forth in
 8 in §22C-9-8 of this code and those provided for in §22C-9-4 of this code;

9 (2) Any well commenced or completed prior to March 9, 1972, unless such well is, after
 10 completion (whether such completion is prior or subsequent to that date):

11 (A) Deepened subsequent to that date to a formation at or below the top of the uppermost
 12 member of the "Onondaga Group"; or

13 (B) Involved in secondary recovery operations for oil under an order of the commission
 14 entered pursuant to §22C-9-8 of this code;

15 (3) Gas storage operations or any well employed to inject gas into or withdraw gas from a

16 gas storage reservoir or any well employed for storage observation; ~~or~~

17 (4) Free gas rights; or

18 (5) Spacing of deep wells, except in connection with an application for drilling units or
19 pooling of interests related to drilling units filed pursuant to §22C-9-7 of this code.

20 (c) The provisions of this article shall not be construed to grant to the commissioner or the
21 commission authority or power to:

22 (1) Limit production or output, or prorate production of any oil or gas well, except as
23 provided in §22C-9-7(a)(6) of this code; or

24 (2) Fix prices of oil or gas.

25 (d) Nothing contained in either this chapter or §22-1-1 *et seq.* of this code may be
26 construed so as to require, prior to commencement of plugging operations, a lessee under a lease
27 covering a well to give or sell the well to any person owning an interest in the well, including, but
28 not limited to, a respective lessor, or agent of the lessor, nor shall the lessee be required to grant
29 to a person owning an interest in the well, including, but not limited to, a respective lessor, or
30 agent of a lessor, an opportunity to qualify under §22-6-26 of this code to continue operation of
31 the well.

§22C-9-4. Oil and Gas Conservation Commissioner and Commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.

1 (a) The “oil and gas conservation commission” shall be composed of five members. The
2 ~~director~~ Secretary of the ~~Division~~ Department of Environmental Protection and the chief of the
3 office of oil and gas shall be members of the commission ex officio. The remaining three members
4 of the commission shall be appointed by the Governor, by and with the advice and consent of the
5 Senate, and may not be employees of the ~~Division~~ Department of Environmental Protection. Of
6 the three members appointed by the Governor, one shall be an independent producer and at least

7 one shall be a public member not engaged in an activity under the jurisdiction of the Public Service
8 Commission or the federal energy regulatory commission. The third appointee shall possess a
9 degree from an accredited college or university in petroleum or reservoir engineering, or geology
10 ~~and must be a registered professional engineer~~ with particular knowledge and experience in the
11 oil and gas industry and shall serve as commissioner and as chair of the commission; except that
12 in the absence or unavailability of the chair for any reason, the Secretary of the Department of
13 Environmental Protection shall serve as chair of the commission for all purposes.

14 (b) The members of the commission appointed by the Governor shall be appointed for
15 overlapping terms of six years each, except that the original appointments shall be for terms of
16 two, four and six years, respectively. Each member appointed by the Governor shall serve until
17 the member's successor has been appointed and qualified. Members may be appointed by the
18 Governor to serve any number of terms. The members of the commission appointed by the
19 Governor, before performing any duty hereunder, shall take and subscribe to the oath required
20 by section 5, article IV of the Constitution of West Virginia. Vacancies in the membership
21 appointed by the Governor shall be filled by appointment by the Governor for the unexpired term
22 of the member whose office is vacant and such appointment shall be made by the Governor within
23 60 days of the occurrence of such vacancy. Any member appointed by the Governor may be
24 removed by the Governor in case of incompetency, neglect of duty, gross immorality or
25 malfeasance in office. A commission member's appointment shall be terminated as a matter of
26 law if that member fails to attend three consecutive meetings. The Governor shall appoint a
27 replacement within 30 days of the termination.

28 (c) The commission shall meet at such times and places as shall be designated by the
29 chair. The chair may call a meeting of the commission at any time, and shall call a meeting of the
30 commission upon the written request of two members or upon the written request of the ~~oil and~~
31 ~~gas conservation commissioner~~ Secretary of the Department of Environmental Protection or the
32 chief of the office of oil and gas. Notification of each meeting shall be given in writing to each

33 member by the chair at least 14 calendar days in advance of the meeting. Three members of the
34 commission, at least two of whom are appointed members, shall constitute a quorum for the
35 transaction of any business.

36 (d) The commission shall pay each member appointed by the Governor the same
37 compensation as is paid to members of the Legislature for their interim duties as recommended
38 by the citizens legislative compensation commission and authorized by law for each day or portion
39 thereof engaged in the discharge of official duties and shall reimburse each member for actual
40 and necessary expenses incurred in the discharge of official duties.

41 (e) The commission is hereby empowered and it is the commission's duty to execute and
42 carry out, administer and enforce the provisions of this article in the manner provided herein.
43 Subject to the provisions of section three of this article, the commission has jurisdiction and
44 authority over all persons and property necessary therefor. The commission is authorized to make
45 such investigation of records and facilities as the commission deems proper. In the event of a
46 conflict between the duty to prevent waste and the duty to protect correlative rights, the
47 commission's duty to prevent waste shall be paramount.

48 (f) Without limiting the commission's general authority, the commission shall have specific
49 authority to:

50 ~~(1) Regulate the spacing of deep wells~~

51 ~~(2)~~ (1) Make and enforce reasonable rules and orders reasonably necessary to prevent
52 waste, protect correlative rights, govern the practice and procedure before the commission and
53 otherwise administer the provisions of this article;

54 ~~(3)~~ (2) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for
55 the production of any books, records, maps, charts, diagrams and other pertinent documents, and
56 administer oaths and affirmations to such witnesses, whenever, in the judgment of the
57 commission, it is necessary to do so for the effective discharge of the commission's duties under
58 the provisions of this article; and

59 ~~(4)~~ (3) Serve as technical advisor regarding oil and gas to the Legislature, its members
 60 and committees, to the chief of office of oil and gas, to the ~~Division~~ Department of Environmental
 61 Protection and to any other agency of state government having responsibility related to the oil
 62 and gas industry.

63 (g) The commission may delegate to the commission staff the authority to approve or deny
 64 an application for new well permits, to establish drilling units or special field rules if:

65 (1) The application conforms to the rules of the commission; and

66 (2) No request for hearing has been received.

67 (h) The commission may not delegate its authority to:

68 (1) Propose legislative rules;

69 (2) Approve or deny an application for new well permits, to establish drilling units or special
 70 field rules if the conditions set forth in subsection (g) of this section are not met; or

71 (3) Approve or deny an application for the pooling of interests within a drilling unit.

72 (i) Any exception to the field rules ~~or the spacing of wells~~ which does not conform to the
 73 rules of the commission, and any application for the pooling of interests within a drilling unit, must
 74 be presented to and heard before the commission.

75 (j) The commission is hereby empowered and it is the commission's duty to execute and
 76 carry out, administer, and enforce the relevant provisions of §37B-1-1 *et seq.* of this code
 77 concerning mineral development by covenants for all wells at all depths. The commission has
 78 jurisdiction and authority over all persons and property necessary therefor. The commission is
 79 authorized to make such investigation of records and facilities as the commission deems proper.

NOTE: The purpose of this bill is to eliminate the minimum spacing requirements for the drilling of deep wells which will authorize oil and gas operators to efficiently utilize changing drilling practices and techniques developed in recent years, and encourage cost-effective and efficient exploration and production of oil and gas using evidence based best practices.

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