

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

Senate Bill 448

By Senators Smith, Clements, and Woodrum

[Introduced January 24, 2023; referred
to the Committee on Energy, Industry, and Mining; and
then to the Committee on Finance]

1 A BILL to amend and reenact §11-13A-5a of the Code of West Virginia, 1931, as amended, and to
 2 amend and reenact §22-6-2, §22-6-29, and §22-6A-7 of said code; all relating to funding
 3 the Office of Oil and Gas in the Department of Environmental Protection; providing for the
 4 apportionment of oil and gas severance taxes; establishing annual varied inspection fees
 5 for wells producing more than 10,000 cubic feet of gas per day; increasing the expedited
 6 modification fee while eliminating the cap on collections of fees for expedited permits and
 7 expedited modifications ;and providing that those fees, if not used for other purposes, may
 8 be moved to the Oil and Gas Reclamation special revenue fund.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-5a. Dedication of ten percent of oil and gas severance tax for benefit of counties and municipalities and of three fourths of one percent of oil and gas severance tax for the benefit of the Office of Oil and Gas in the Department of Environmental Protection; distribution of major portion of such dedicated tax to oil and gas producing counties; distribution of minor portion of such dedicated tax to all counties and municipalities; reports; rules; special funds in the office of state treasurer; methods and formulae for distribution of such dedicated tax; expenditure of funds by counties and municipalities for public purposes; and requiring special county and municipal budgets and reports thereon.

1 (a) Effective July 1, 1996, five percent of the tax attributable to the severance of oil and gas
 2 imposed by section three-a of this article is hereby dedicated for the use and benefit of counties
 3 and municipalities within this state and shall be distributed to the counties and municipalities as
 4 provided in this section. Effective July 1, 1997, and thereafter, 10 percent of the tax attributable to
 5 the severance of oil and gas imposed by section three-a of this article is hereby dedicated for the

6 use and benefit of counties and municipalities within this state and shall be distributed to the
7 counties and municipalities as provided in this section. Effective July 1, 2023, and every year
8 thereafter, three fourths of one percent of the tax attributable to the severance of oil and gas
9 imposed by section three-a of this article is hereby dedicated for the use and benefit of regulating
10 the oil and gas industry by the Office of Oil and Gas in the Department of Environmental Protection
11 and shall be deposited in the Oil and Gas Operating Permit and Processing Fund to ensure that
12 the Office of Oil and Gas has sufficient funding to support its regulatory mission of ensuring the
13 safety of the natural environment of this state.

14 (b) Seventy-five percent of this the dedicated tax for counties and municipalities shall be
15 distributed by the State Treasurer in the manner specified in this section to the various counties of
16 this state in which the oil and gas upon which this additional tax is imposed was located at the time
17 it was removed from the ground. Those counties are referred to in this section as the "oil and gas
18 producing counties". The remaining 25 percent of the net proceeds of this additional tax on oil and
19 gas shall be distributed among all the counties and municipalities of this state in the manner
20 specified in this section.

21 (c) The Tax Commissioner is hereby granted plenary power and authority to promulgate
22 reasonable rules requiring the furnishing by oil and gas producers of such additional information
23 as may be necessary to compute the allocation required under the provisions of subsection (f) of
24 this section. The Tax Commissioner is also hereby granted plenary power and authority to
25 promulgate such other reasonable rules as may be necessary to implement the provisions of this
26 section.

27 (d) In order to provide a procedure for the distribution of 75 percent of the dedicated tax for
28 counties and municipalities on oil and gas to the oil and gas producing counties, the special fund
29 known as the oil and gas county revenue fund established in State Treasurer's office by chapter
30 two hundred forty-two, acts of the Legislature, 1995 regular session, as amended and reenacted in
31 the subsequent act of the Legislature, is hereby continued. In order to provide a procedure for the

32 distribution of the remaining 25 percent of the dedicated tax for counties and municipalities on oil
33 and gas to all counties and municipalities of the state, without regard to oil and gas having been
34 produced in those counties or municipalities, the special fund known as the all counties and
35 municipalities revenue fund established in State Treasurer's office by chapter two hundred forty-
36 two, acts of the Legislature, 1995 regular session, as amended and reenacted in the subsequent
37 act of the Legislature, is hereby redesignated as the "all counties and municipalities oil and gas
38 revenue fund" and is hereby continued.

39 Seventy-five percent of the dedicated tax for counties and municipalities on oil and gas
40 shall be deposited in the oil and gas county revenue fund and 25 percent of the this dedicated tax
41 on oil and gas shall be deposited in the all counties and municipalities oil and gas revenue fund,
42 from time to time, as the proceeds are received by the Tax Commissioner. The moneys in the
43 funds shall be distributed to the respective counties and municipalities entitled to the moneys in
44 the manner set forth in subsection (e) of this section.

45 (e) The moneys in the oil and gas county revenue fund and the moneys in the all counties
46 and municipalities oil and gas revenue fund shall be allocated among and distributed annually to
47 the counties and municipalities entitled to the moneys by the State Treasurer in the manner
48 specified in this section. On or before each distribution date, the State Treasurer shall determine
49 the total amount of moneys in each fund which will be available for distribution to the respective
50 counties and municipalities entitled to the moneys on that distribution date. The amount to which
51 an oil and gas producing county is entitled from the oil and gas county revenue fund shall be
52 determined in accordance with subsection (f) of this section, and the amount to which every county
53 and municipality shall be entitled from the all counties and municipalities oil and gas revenue fund
54 shall be determined in accordance with subsection (g) of this section. After determining, as set
55 forth in subsections (f) and (g) of this section, the amount each county and municipality is entitled
56 to receive from the respective fund or funds, a warrant of the State Auditor for the sum due to the
57 county or municipality shall issue and a check drawn thereon making payment of the sum shall

58 thereafter be distributed to the county or municipality.

59 (f) The amount to which an oil and gas producing county is entitled from the oil and gas
60 county revenue fund shall be determined by:

61 (1) In the case of moneys derived from tax on the severance of gas:

62 (A) Dividing the total amount of moneys in the fund derived from tax on the severance of
63 gas then available for distribution by the total volume of cubic feet of gas extracted in this state
64 during the preceding year; and

65 (B) Multiplying the quotient thus obtained by the number of cubic feet of gas taken from the
66 ground in the county during the preceding year; and

67 (2) In the case of moneys derived from tax on the severance of oil:

68 (A) Dividing the total amount of moneys in the fund derived from tax on the severance of oil
69 then available for distribution by the total number of barrels of oil extracted in this state during the
70 preceding year; and

71 (B) Multiplying the quotient thus obtained by the number of barrels of oil taken from the
72 ground in the county during the preceding year.

73 (g) The amount to which each county and municipality is entitled from the all counties and
74 municipalities oil and gas revenue fund shall be determined in accordance with the provisions of
75 this subsection. For purposes of this subsection "population" means the population as determined
76 by the most recent decennial census taken under the authority of the United States:

77 (1) The treasurer shall first apportion the total amount of moneys available in the all
78 counties and municipalities oil and gas revenue fund by multiplying the total amount in the fund by
79 the percentage which the population of each county bears to the total population of the state. The
80 amount thus apportioned for each county is the county's "base share".

81 (2) Each county's base share shall then be subdivided into two portions. One portion is
82 determined by multiplying the base share by that percentage which the total population of all
83 unincorporated areas within the county bears to the total population of the county, and the other

84 portion is determined by multiplying the base share by that percentage which the total population
85 of all municipalities within the county bears to the total population of the county. The former portion
86 shall be paid to the county and the latter portion shall be the "municipalities' portion" of the county's
87 base share. The percentage of the latter portion to which each municipality in the county is entitled
88 shall be determined by multiplying the total of the latter portion by the percentage which the
89 population of each municipality within the county bears to the total population of all municipalities
90 within the county.

91 (h) Moneys distributed to any county or municipality under the provisions of this section,
92 from either or both special funds, shall be deposited in the county or municipal general fund and
93 may be expended by the county commission or governing body of the municipality for such
94 purposes as the county commission or governing body shall determine to be in the best interest of
95 its respective county or municipality: *Provided*, That in counties with population in excess of two
96 hundred thousand, at least 75 percent of the funds received from the oil and gas county revenue
97 fund shall be apportioned to and expended within the oil and gas producing area or areas of the
98 county, the oil and gas producing areas of each county to be determined generally by the State Tax
99 Commissioner: *Provided, however*, That the moneys distributed to any county or municipality
100 under the provisions of this section shall not be budgeted for personal services in an amount to
101 exceed one fourth of the total amount of the moneys.

102 (i) On or before March 28, 1997, and each March 28, each county commission or
103 governing body of a municipality receiving any such moneys shall submit to the Tax Commissioner
104 on forms provided by the Tax Commissioner a special budget, detailing how the moneys are to be
105 spent during the subsequent fiscal year. The budget shall be followed in expending the moneys
106 unless a subsequent budget is approved by the State Tax Commissioner. All unexpended
107 balances remaining in the county or municipality general fund at the close of a fiscal year shall
108 remain in the General Fund and may be expended by the county or municipality without restriction.

109 (j) On or before December 15, 1996, and each December 15 thereafter, the Tax

110 Commissioner shall deliver to the clerk of the Senate and the Clerk of the House of Delegates a
 111 consolidated report of the budgets, created by subsection (i) of this section, for all county
 112 commissions and municipalities as of July 15, of the current year.

113 (k) The State Tax Commissioner shall retain for the benefit of the state from the dedicated
 114 tax attributable to the severance of oil and gas the amount of \$35,000 annually as a fee for the
 115 administration of the additional tax by the Tax Commissioner.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

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

§22-6-2. Secretary – powers and duties generally; department records open to public; inspectors.

1 (a) The secretary shall have as his or her duty the supervision of the execution and
 2 enforcement of matters related to oil and gas set out in §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1
 3 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code.

4 (b) The secretary is authorized to propose rules for legislative approval in accordance with
 5 the provisions of §29A-3-1 *et seq.* of this code necessary to effectuate the above stated purposes.

6 (c) The secretary shall have full charge of the oil and gas matters set out in §22-6-1 *et seq.*,
 7 §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this
 8 code. In addition to all other powers and duties conferred upon him or her, the secretary shall have
 9 the power and duty to:

10 (1) Supervise and direct the activities of the Office of Oil and Gas and see that the
 11 purposes set forth in §22-6-2(a) and §22-6-2(b) of this code are carried out;

12 (2) Determine the number of supervising oil and gas inspectors and oil and gas inspectors
 13 needed to carry out the purposes of §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et*
 14 *seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code and appoint them as such. All appointees

15 must be qualified civil service employees, but no person is eligible for appointment until he or she
16 has served in a probationary status for a period of six months to the satisfaction of the secretary;

17 (3) Supervise and direct such oil and gas inspectors and supervising inspectors in the
18 performance of their duties;

19 (4) Make investigations or inspections necessary to ensure compliance with and to enforce
20 the provisions of §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et*
21 *seq.*, and §22-21-1 *et seq.* of this code;

22 (5) Prepare report forms to be used by oil and gas inspectors or the supervising inspector
23 in making their findings, orders, and notices upon inspections made in accordance with §22-6-1 *et*
24 *seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of
25 this code;

26 (6) Employ a hearing officer and such clerks, stenographers, and other employees as may
27 be necessary to carry out his or her duties and the purposes of the Office of Oil and Gas and fix
28 their compensation;

29 (7) Hear and determine applications made by owners, well operators, and coal operators
30 for the annulment or revision of orders made by oil and gas inspectors or the supervising inspector,
31 and to make inspections, in accordance with the provisions of §22-6-1 *et seq.*, §22-6A-1 *et seq.*,
32 §22-8-1 *et seq.*, and §22-9-1 *et seq.* of this code;

33 (8) Cause a properly indexed permanent and public record to be kept of all inspections
34 made by the secretary or by oil and gas inspectors or the supervising inspector;

35 (9) Conduct research and studies as the secretary shall deem necessary to aid in
36 protecting the health and safety of persons employed within or at potential or existing oil or gas
37 production fields within this state, to improve drilling and production methods, and to provide for
38 the more efficient protection and preservation of oil and gas-bearing rock strata and property used
39 in connection therewith;

40 (10) Collect a permit fee of \$400 for each permit application filed other than an application

41 for a deep well, horizontal wells regulated pursuant to §22-6A-1 *et seq.* of this code, or a coalbed
42 methane well; and collect a permit fee of \$650 for each permit application filed for a deep well:
43 *Provided*, That no permit application fee is required when an application is submitted solely for the
44 plugging or replugging of a well, or to modify an existing application for which the operator
45 previously has submitted a permit fee under this section. All application fees required hereunder
46 are in lieu of and not in addition to any fees imposed under §22-11-1 *et seq.* of this code relating to
47 discharges of stormwater but are in addition to any other fees required by the provisions of §22-6-1
48 *et seq.* of this code: *Provided, however*, That upon a final determination by the United States
49 Environmental Protection Agency regarding the scope of the exemption under ~~section~~ Section
50 402(l)(2) of the federal Clean Water Act (33 U.S.C. 1342(l)(2)), which determination requires a
51 "national pollutant discharge elimination system" permit for stormwater discharges from the oil and
52 gas operations described therein, any permit fees for stormwater permits required under §22-11-1
53 *et seq.* of this code for such operations may not exceed \$100;

54 (11) On or after July 1 of each year, collect from the responsible operator of the first 400
55 wells subject to §22-6-1 *et seq.*, §22-6A-1 *et seq.* or §22-21-1 *et seq.* of this code that has not yet
56 been plugged, and that produces more than an average, calculated by dividing the annual
57 production by 365, of 250,000 cubic feet of gas per day or more as reported to the State Tax
58 Commissioner in the previous reporting year, an annual oversight fee of \$350 for each well;

59 (12) On or after July 1 of each year, collect from the responsible operator of the first 400
60 wells subject to §22-6-1 *et seq.*, §22-6A-1 *et seq.* or §22-21-1 *et seq.* of this code that has not yet
61 been plugged, and that produces an average, calculated by dividing the annual production by 365,
62 of less than or equal to 250,000 cubic feet of gas but more than 60,000 cubic feet of gas per day as
63 reported to the State Tax Commissioner in the previous reporting year, an annual oversight fee of
64 \$75 for each well;

65 (13) On or after July 1 of each year, collect from the responsible operator of the first 4,000
66 wells subject to §22-6-1 *et seq.*, §22-6A-1 *et seq.* or §22-21-1 *et seq.* of this code that has not yet

67 been plugged, and that produces an average, calculated by dividing the annual production by 365,
68 of less than or equal to 60,000 cubic feet of gas but more than 10,000 cubic feet of gas per day as
69 reported to the State Tax Commissioner in the previous reporting year, an annual oversight fee of
70 \$25 for each well;

71 ~~(11)~~ (14) Perform all other duties which are expressly imposed upon the secretary by the
72 provisions of this chapter;

73 ~~(12)~~ (15) Perform all duties as the permit issuing authority for the state in all matters
74 pertaining to the exploration, development, production, storage, and recovery of this state's oil and
75 gas;

76 ~~(13)~~ (16) Adopt rules with respect to the issuance, denial, retention, suspension, or
77 revocation of permits, authorizations, and requirements of this chapter, which rules shall assure
78 that the rules, permits, and authorizations issued by the secretary are adequate to satisfy the
79 purposes of §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-7-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*,
80 §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code particularly with respect to the consolidation of
81 the various state and federal programs which place permitting requirements on the exploration,
82 development, production, storage, and recovery of this state's oil and gas; and

83 ~~(14)~~ (17) Perform such acts as may be necessary or appropriate to secure to this state the
84 benefits of federal legislation establishing programs relating to the exploration, development,
85 production, storage, and recovery of this state's oil and gas, which programs are assumable by the
86 state.

87 (d) The secretary shall have authority to visit and inspect any well or well site and any other
88 oil or gas facility in this state and may call for the assistance of any oil and gas inspector or
89 inspectors or supervising inspector whenever such assistance is necessary in the inspection of
90 any such well or well site or any other oil or gas facility. Similarly, all oil and gas inspectors and
91 supervising inspectors shall have authority to visit and inspect any well or well site and any other
92 oil or gas facility in this state. Such inspectors shall make all necessary inspections of oil and gas

93 operations required by §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-
94 1 *et seq.*, and §22-21-1 *et seq.* of this code; administer and enforce all oil and gas laws and rules;
95 and perform other duties and services as may be prescribed by the secretary. The inspectors shall
96 note and describe all violations of §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et*
97 *seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code and promptly report those violations to the
98 secretary in writing, furnishing at the same time a copy of the report to the operator concerned.
99 Any well operator, coal operator operating coal seams beneath the tract of land, or the coal seam
100 owner or lessee, if any, if said owner or lessee is not yet operating said coal seams beneath said
101 tract of land, may request the secretary to have an immediate inspection made. The operator or
102 owner of every well or well site or any other oil or gas facility shall cooperate with the secretary, all
103 oil and gas inspectors and the supervising inspector in making inspections or obtaining
104 information.

105 (e) Subject to the provisions of §29B-1-1 *et seq.* of this code, all records of the office shall
106 be open to the public.

§22-6-29. Operating permit and processing fund; special reclamation fund; fees.

1 (a) There is hereby continued within the Treasury of the State of West Virginia the special
2 fund known as the Oil and Gas Operating Permit and Processing Fund, and the secretary shall
3 deposit with the state Treasurer to the credit of such special fund all fees collected under the
4 provisions of ~~subdivision ten, subsection (c), section two of this article~~ §22-6-2(c)(10), §22-6-
5 2(c)(11), §22-6-2(c)(12) and §22-6-2(c)(13) of this code.

6 The Oil and Gas Operating Permit and Processing Fund shall be administered by the
7 secretary for the purposes of carrying out the provisions of this chapter. Fees collected under §22-
8 6-2(c)(11), (12) and (13) of this code not used for other purposes may only be transferred to the Oil
9 and Gas Reclamation Fund that is continued in §22-6-29(b) of this code at the discretion of the
10 secretary.

11 The secretary shall make an annual report to the Governor and to the Legislature on the

12 use of the fund, and shall make a detailed accounting of all expenditures from the Oil and Gas
13 Operating Permit and Processing Fund.

14 (b) In addition to any other fees required by the provisions of §22-6-1 *et seq.* of this code,
15 every applicant for a permit to drill a well shall, before the permit is issued, pay to the secretary a
16 special reclamation fee of \$150 for each activity for which a well work application is required to be
17 filed: *Provided*, That a special reclamation fee shall not be assessed for plugging activities. Such
18 special reclamation fee shall be paid at the time the application for a drilling permit is filed with the
19 secretary and the payment of such reclamation fee shall be a condition precedent to the issuance
20 of said permit.

21 There is hereby continued within the Treasury of the State of West Virginia the special fund
22 known as the oil and gas reclamation fund, and the secretary shall deposit with the state Treasurer
23 to the credit of such special fund all special reclamation fees collected. The proceeds of any bond
24 forfeited under the provisions of §22-6-1 *et seq.* of this code shall inure to the benefit of, and shall
25 be deposited in, such oil and gas reclamation fund.

26 The oil and gas reclamation fund shall be administered by the secretary. The secretary
27 shall cause to be prepared plans for the reclaiming and plugging of abandoned wells which have
28 not been reclaimed or plugged or which have been improperly reclaimed or plugged. The
29 secretary, as funds become available in the oil and gas reclamation fund, shall reclaim and
30 properly plug wells in accordance with said plans and specifications and in accordance with the
31 provisions of §22-6-1 *et seq.* of this code relating to the reclaiming and plugging of wells and all
32 rules promulgated thereunder. Such funds may also be utilized for the purchase of abandoned
33 wells, where such purchase is necessary, and for the reclamation of such abandoned wells, and
34 for any engineering, administrative, and research costs as may be necessary to properly
35 effectuate the reclaiming and plugging of all wells, abandoned or otherwise.

36 The secretary may avail the division of any federal funds provided on a matching basis that
37 may be made available for the purpose of reclaiming or plugging any wells.

38 The secretary shall make an annual report to the Governor and to the Legislature setting
39 forth the number of wells reclaimed or plugged through the use of the Oil and Gas Reclamation
40 Fund provided for herein. Such report shall identify each such reclamation and plugging project,
41 state the number of wells reclaimed or plugged thereby, show the county wherein such wells are
42 located, and shall make a detailed accounting of all expenditures from the Oil and Gas
43 Reclamation Fund.

44 All wells shall be reclaimed or plugged by contract entered into by the secretary on a
45 competitive bid basis as provided for under the provisions of §5A-3-1 *et seq.* of this code and the
46 rules promulgated thereunder.

ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.

§22-6A-7. Horizontal well permit required; permit fee; application; soil erosion control plan; well site safety plan; site construction plan; water management plan; permit fee; installation of permit number; suspension and transfer of a permit.

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

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

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

10 (2) The names and addresses of every coal operator operating coal seams under the tract
11 of land on which the well is or may be located, and the coal seam owner of record and lessee of
12 record required to be given notice by §22-6A-5(a)(6) of this code, if any, if the owner or lessee is
13 not yet operating the coal seams;

- 14 (3) The number of the well or other identification the secretary may require;
- 15 (4) The well work for which a permit is requested;
- 16 (5) The approximate total depth to which the well is to be drilled or deepened, or the actual
17 depth if the well has been drilled; the proposed angle and direction of the well; the actual depth or
18 the approximate depth at which the well to be drilled deviates from vertical, the angle, and direction
19 of the nonvertical well bore until the well reaches its total target depth or its actual final depth; and
20 the length and direction of any actual or proposed horizontal lateral or well bore;
- 21 (6) Each formation in which the well will be completed if applicable;
- 22 (7) A description of any means used to stimulate the well;
- 23 (8) If the proposed well work will require casing or tubing to be set, the entire casing
24 program for the well, including the size of each string of pipe, the starting point and depth to which
25 each string is to be set and the extent to which each such string is to be cemented;
- 26 (9) If the proposed well work is to convert an existing well, all information required by this
27 section, all formations from which production is anticipated, and any plans to plug any portion of
28 the well;
- 29 (10) If the proposed well work is to plug or replug the well, all information necessary to
30 demonstrate compliance with the legislative rules promulgated by the secretary in accordance
31 with §22-6A-13 of this code;
- 32 (11) If the proposed well work is to stimulate a horizontal well, all information necessary to
33 demonstrate compliance with the requirements of §22-6A-5(a)(7) of this code;
- 34 (12) The erosion and sediment control plan required under subsection (c) of this section for
35 applications for permits to drill;
- 36 (13) A well site safety plan to address proper safety measures to be employed for the
37 protection of persons on the site as well as the general public. The plan shall encompass all
38 aspects of the operation, including the actual well work for which the permit was obtained,
39 completion activities and production activities, and shall provide an emergency point of contact for

40 the well operator. The well operator shall provide a copy of the well site safety plan to the local
41 emergency planning committee established pursuant to §15-5A-7 of this code for the emergency
42 planning district in which the well work will occur at least seven days before commencement of
43 well work or site preparation work that involves any disturbance of land;

44 (14) A certification from the operator that: (A) It has provided the owners of the surface
45 described in §22-6A-10(b)(1), §22-6A-10(b)(2), and §22-6A-10(b)(4) of this code, the information
46 required by §22-6A-16(b) and §22-6A-16(c) of this code; (B) that the requirement was deemed
47 satisfied as a result of giving the surface owner notice of entry to survey pursuant to §22-6A-10(a)
48 of this code; or (C) the notice requirements of §22-6A-16(b) of this code were waived in writing by
49 the surface owner; and

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

51 (c)(1) An erosion and sediment control plan shall accompany each application for a well
52 work permit under this article. The plan shall contain methods of stabilization and drainage,
53 including a map of the project area indicating the amount of acreage disturbed. The erosion and
54 sediment control plan shall meet the minimum requirements of the West Virginia Erosion and
55 Sediment Control Manual as adopted and from time to time amended by the department. The
56 erosion and sediment control plan shall become part of the terms and conditions of any well work
57 permit that is issued pursuant to this article and the provisions of the plan shall be carried out
58 where applicable in the operation. The erosion and sediment control plan shall set out the
59 proposed method of reclamation which shall comply with the requirements of §22-6A-14 of this
60 code.

61 (2) For well sites that disturb three acres or more of surface, excluding pipelines, gathering
62 lines and roads, the erosion and sediment control plan submitted in accordance with this section
63 shall be certified by a registered professional engineer.

64 (d) For well sites that disturb three acres or more of surface, excluding pipelines, gathering
65 lines and roads, the operator shall submit a site construction plan that shall be certified by a

66 registered professional engineer and contains information that the secretary may require by rule.

67 (e) In addition to the other requirements of this section, if the drilling, fracturing, or
68 stimulating of the horizontal well requires the use of water obtained by withdrawals from waters of
69 this state in amounts that exceed 210,000 gallons during any 30-day period, the application for a
70 well work permit shall include a water management plan, which may be submitted on an individual
71 well basis or on a watershed basis, and which shall include the following information:

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

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

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

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

79 (5) A listing of the anticipated additives that may be used in water utilized for fracturing or
80 stimulating the well. Upon well completion, a listing of the additives that were actually used in the
81 fracturing or stimulating of the well shall be submitted as part of the completion log or report
82 required by §22-6A-5(a)(14) of this code;

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

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

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

91 (C) Methods to be used for surface water withdrawal to minimize adverse impact to aquatic

92 life; and

93 (7) This subsection is intended to be consistent with and does not supersede, revise,
94 repeal, or otherwise modify §22-11-1 *et seq.*, §22-12-1 *et seq.*, or §22-26-1 *et seq.* of this code
95 and does not revise, repeal, or otherwise modify the common law doctrine of riparian rights in
96 West Virginia law.

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

99 (g) The application for a permit under this section shall be accompanied by the applicable
100 bond as required by §22-6A-15 of this code, the applicable plat required by §22-6A-5(a)(6) of this
101 code, and a permit fee of \$10,000 for the initial horizontal well drilled at a location and a permit fee
102 of \$5,000 for each additional horizontal well drilled on a single well pad at the same location.

103 (h)(1) An applicant may enter into an expedited permit application process with the
104 secretary for a well permit and pay an additional expedited permit fee of \$20,000 for the initial
105 horizontal well drilled at a location and an additional expedited permit fee of \$10,000 for each
106 additional horizontal well drilled on a single well pad at the same location: *Provided*, That deep
107 well permitting is excluded from this expedited permit process due to the independent board
108 review and approval requirement which is outside the secretary's control.

109 (2) Upon entering into an expedited permit process and meeting all the criteria set forth in
110 this article, the secretary shall issue or deny a permit within 45 days of the submission of a permit
111 application under this article, unless the secretary seeks additional information or modification
112 from the applicant, which would toll the 45 day period until the secretary receives the required
113 responsive information from the applicant.

114 (3) Each day the agency exceeds: (A) The 45-day deadline for approval or denial of an
115 expedited initial horizontal well drilled, the secretary shall refund \$1,333.33 per day up to and
116 including day 60 after the submission of a permit application until the expedited fee is reduced to
117 the normal permit fee amount; or (B) the 45-day deadline for approval or denial of an expedited

118 permit for any additional horizontal well drilled on a single well pad at the same location, the
119 secretary shall be required to refund \$666.66 per day up to and including day 60 after the
120 submission of a permit application, until the expedited fee is reduced to the normal permit fee
121 amount.

122 (4)(A) After all refunds are paid by the secretary, one half of the additional expedited permit
123 fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and shall be used
124 by the agency to cover costs to review, process, and approve or deny the applicable horizontal
125 well permit applications and modifications pending before the agency, ~~but not to exceed \$1 million~~
126 ~~annually in combination with proceeds received through §22-6A-7(i)(4)(A) of this code and any~~
127 ~~residuary fee proceeds to be distributed as set forth in §22-6A-7(h)(4)(B) of this code.~~

128 (B) After all refunds are paid by the secretary, one half of the additional expedited permit
129 fee, plus any residuary as set forth in §22-6A-7(h)(4)(A) of this code, shall be deposited in the Oil
130 and Gas Reclamation Fund and used specifically for the reclamation and plugging of orphaned oil
131 or gas wells.

132 (i)(1) An applicant may enter into an expedited permit modification application process with
133 the secretary for a well permit and pay an additional expedited permit modification fee of \$5,000
134 for the modification of the permit for any horizontal well drilled at a location: *Provided*, That deep
135 well permit modifications are excluded from this expedited permit modification process if the
136 modification is subject to independent board review and approval.

137 (2) Upon entering into an expedited permit modification process and meeting all the criteria
138 set forth in this article, the secretary shall issue or deny a permit modification within 20 days of the
139 submission of a permit modification application under this article, unless the secretary seeks
140 additional information or further modification from the applicant, which would toll the 20 day period
141 until the secretary receives the required responsive information from the applicant.

142 (3) Each day the agency exceeds the 20-day deadline for approval or denial of an
143 expedited horizontal well permit modification, the secretary shall refund \$500 per day up to and

144 including day 30 after the submission of an expedited permit modification application, until the
145 expedited permit modification fee of \$5,000 is reduced to zero.

146 (4)(A) After all refunds are paid by the secretary, one half of the expedited permit
147 modification fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and
148 shall be used by the agency to cover costs to review, process, and approve or deny the applicable
149 horizontal well permit applications and modifications pending before the agency, ~~but not to exceed~~
150 ~~\$1 million annually in combination with proceeds received through §22-6A-7(h)(4)(A) of this code~~
151 ~~and any residuary fee proceeds to be distributed as set forth in §22-6A-7(i)(4)(B) of this code.~~

152 (B) After all refunds are paid by the secretary, one half of the expedited permit modification
153 fee, plus any residuary as set forth in §22-6A-7(i)(4)(A) of this code, shall be deposited in the Oil
154 and Gas Reclamation Fund and used specifically for the reclamation and plugging of orphaned oil
155 or gas wells.

156 (j) Any balance in the Oil and Gas Reclamation Fund, earmarked specifically for the
157 reclamation and plugging of orphaned oil or gas wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-
158 7(i)(4)(B) of this code, which remains at the end of any state fiscal year does not revert to the
159 General Revenue Fund but shall remain in the special revenue account as indicated and may be
160 used only as provided in §22-6-29(b) of this code. The revenues deposited in the Oil and Gas
161 Reclamation Fund, earmarked specifically for the reclamation and plugging of orphaned oil or gas
162 wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-7(i)(4)(B) of this code may not be designated as
163 nonaligned state special revenue funds under §11B-2-32 of this code.

164 (k) The well operator named in the application shall designate the name and address of an
165 agent for the operator who is the attorney-in-fact for the operator and who is a resident of the State
166 of West Virginia upon whom notices, orders, or other communications issued pursuant to this
167 article or §22-11-1 *et seq.* of this code may be served, and upon whom process may be served.
168 Every well operator required to designate an agent under this section shall, within five days after
169 the termination of the designation, notify the secretary of the termination and designate a new

170 agent.

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

175 (m) The secretary may waive the requirements of this section and §22-6A-8, §22-6A-10,
176 §22-6A-11, and §22-6A-24 of this code in any emergency situation if the secretary considers the
177 action necessary. In that case the secretary may issue an emergency permit which is effective for
178 not more than 30 days, unless reissued by the secretary.

179 (n) The secretary shall deny the issuance of a permit if the secretary determines that the
180 applicant has committed a substantial violation of a previously issued permit for a horizontal well,
181 including the applicable erosion and sediment control plan associated with the previously issued
182 permit, or a substantial violation of one or more of the rules promulgated under this article, and in
183 each instance has failed to abate or seek review of the violation within the time prescribed by the
184 secretary pursuant to the provisions of §22-6A-5(a)(1) and §22-6A-5(a)(2) of this code and the
185 rules promulgated hereunder, which time may not be unreasonable.

186 (o) If the secretary finds that a substantial violation has occurred and that the operator has
187 failed to abate or seek review of the violation in the time prescribed, the secretary may suspend
188 the permit on which the violation exists, after which suspension the operator shall forthwith cease
189 all well work being conducted under the permit. However, the secretary may reinstate the permit
190 without further notice, at which time the well work may be continued. The secretary shall make
191 written findings of the suspension and may enforce the same in the circuit courts of this state. The
192 operator may appeal a suspension pursuant to the provisions of §22-6A-5(a)(23) of this code. The
193 secretary shall make a written finding of any such determination.

194 (p) Any well work permit issued in accordance with this section may be transferred with the
195 prior written approval of the secretary upon his or her finding that the proposed transferee meets

196 all requirements for holding a well work permit, notwithstanding any other provision of this article or
197 rule adopted pursuant to this article. Application for the transfer of any well work permit shall be
198 upon forms prescribed by the secretary and submitted with a permit transfer fee of \$500. Within 90
199 days of the receipt of approval by the secretary, the transferee shall give notice of the transfer to
200 those persons entitled to notice in §22-6A-10(b) of this code by personal service or by registered
201 mail or by any method of delivery that requires a receipt or signature confirmation, and shall further
202 update the emergency point of contact provided pursuant to subdivision (13), subsection (b) of this
203 section.

NOTE: The purpose of this bill is to ensure that the WVDEP Office of Oil and Gas has sufficient money to inspect the oil and gas wells of the State of West Virginia in an efficacious and diligent manner that protects the people and environment of the State from degradation related to violations of the West Virginia oil and gas production laws.

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