WEST VIRGINIA CODE: §22C-9-4

§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.

NOTE: West Virginia Code §22C-9-4 was amended by two bills passed during the 2022 Regular Session of the Legislature. When two acts of the Legislature amend the same section of the Code without express recognition in the bill of the action of the other bill, the Legislative Manager makes no determination as to the appropriate, legal effect of the two acts. Therefore, BOTH versions of this section are set out below.

The later act, Senate Bill 694 (passed on March 9, 2022), amended West Virginia Code §22C-9-4 to read as follows:

(a) The "oil and gas conservation commission" is composed of seven members. The director of the Department of Environmental Protection, and the Chief of the Office of Oil and Gas are members of the commission ex officio. The remaining five members of the commission shall be appointed by the Governor, by and with the advice and consent of the Senate, and may not be employees of the Department of Environmental Protection. Of the five members appointed by the Governor, one shall be an independent producer and at least one shall be a public member not engaged in an activity under the jurisdiction of the Public Service Commission or the Federal Energy Regulatory Commission. The third appointee shall possess a degree from an accredited college or university in engineering or geology and must be a registered professional engineer with particular knowledge and experience in the oil and gas industry and shall serve as commissioner and as chair of the commission. The fourth appointee shall be an individual who has substantial experience in the agricultural industry, who is engaged in the business of farming in this state, and who is not and never has been, either himself or herself nor through a member of his or her immediate family, engaged in the business of oil and gas other than as a royalty recipient. When this member is to be appointed, the Governor shall request from the primary organization representing the agriculture industry in this state a list of three nominees for the member to be appointed. The fifth appointee shall be a resident owner of minerals in this state who is not and never has been affiliated with an operator of oil or gas wells. The term "affiliated", as used in the immediately preceding sentence, means someone who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with an operator of oil and gas wells by virtue of the power to direct or cause the direction of the management and policies of that operator, whether through the ownership of voting shares, by contract or otherwise.

(b) The members of the commission appointed by the Governor shall be appointed for overlapping terms of six years each, except that any initial appointments shall be for terms of two, four, or six years to achieve staggered ends of terms. Each member appointed by the Governor shall serve until the members successor has been appointed and qualified. Members may be appointed by the Governor to serve any number of terms. The members of

WV Legislature

the commission appointed by the Governor, before performing any duty hereunder, shall take and subscribe to the oath required by section 5, article IV of the Constitution of West Virginia. Vacancies in the membership appointed by the Governor shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and the appointment shall be made by the Governor within 60 days of the occurrence of such vacancy. Any member appointed by the Governor may be removed by the Governor in case of incompetency, neglect of duty, gross immorality, or malfeasance in office. A commission member's appointment is terminated as a matter of law if that member fails to attend three consecutive meetings. The Governor shall appoint a replacement within 30 days of the termination.

(c) The commission shall meet at such times and places as are designated by the chair. The chair may call a meeting of the commission at any time, and shall call a meeting of the commission upon the written request of two members or upon the written request of the oil and gas conservation commissioner or the Chief of the Office of Oil and Gas. Notification of each meeting shall be given in writing to each member by the chair at least 14 calendar days in advance of the meeting. Four members of the commission, at least two of whom are appointed members, constitute a quorum for the transaction of any business.

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

(e) The commission is hereby empowered and it is the commission's duty to execute and carry out, administer, and enforce the provisions of this article in the manner provided herein. Subject to the provisions of §22C-9-3 of this code, the commission has jurisdiction and authority over all persons and property necessary therefor. The commission is authorized to make such investigation of records and facilities as the commission considers proper. In the event of a conflict between the duty to prevent waste and the duty to protect correlative rights, the commission's duty to prevent waste is paramount.

(f) Without limiting the commission's general authority, the commission has specific authority to:

(1) Regulate the spacing of deep wells;

(2) Issue horizontal well unit orders;

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

(4) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the

WV Legislature

production of any books, records, maps, charts, diagrams, and other pertinent documents, and administer oaths and affirmations to the witnesses, whenever, in the judgment of the commission, it is necessary to do so for the effective discharge of the commission's duties under the provisions of this article; and

(5) Serve as technical advisor regarding oil and gas to the Legislature, its members and committees, to the Chief of Office of Oil and Gas, to the Department of Environmental Protection and to any other agency of state government having responsibility related to the oil and gas industry.

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

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

(2) No request for hearing has been received.

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

(1) Propose legislative rules;

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

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

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

(j) The commission is hereby empowered and it is the commission's duty to execute and carry out, administer, and enforce the relevant provisions of §37B-1-1 *et seq.* of this code concerning mineral development by cotenants for all wells at all depths and §22-11B-1 *et seq.* of this code concerning underground carbon dioxide sequestration storage facilities at all depths. The commission has jurisdiction and authority over all persons and property necessary therefor. The commission is authorized to make such investigation of records and facilities as the commission deems proper.

The earlier act, House Bill 4491 (passed on March 1, 2022) amended West Virginia Code §29C-9-4 to read as follows:

(a) The "oil and gas conservation commission" shall be composed of five members. The director of the Department of Environmental Protection and the chief of the office of oil and gas shall be members of the commission ex officio. The remaining three members of the commission shall be appointed by the Governor, by and with the advice and consent of the Senate, and may not be employees of the Department of Environmental Protection. Of the

WV Legislature

three members appointed by the Governor, one shall be an independent producer and at least one shall be a public member not engaged in an activity under the jurisdiction of the Public Service Commission or the federal energy regulatory commission. The third appointee shall possess a degree from an accredited college or university in petroleum engineering or geology and must be a registered professional engineer with particular knowledge and experience in the oil and gas industry and shall serve as commissioner and as chair of the commission.

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

(c) The commission shall meet at such times and places as shall be designated by the chair. The chair may call a meeting of the commission at any time, and shall call a meeting of the commission upon the written request of two members or upon the written request of the oil and gas conservation commissioner or the chief of the office of oil and gas. Notification of each meeting shall be given in writing to each member by the chair at least 14 calendar days in advance of the meeting. Three members of the commission, at least two of whom are appointed members, shall constitute a quorum for the transaction of any business.

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

(e) The commission is hereby empowered and it is the commission's duty to execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of §22C-9-3 of this code, the commission has jurisdiction and authority over all persons and property necessary therefor. The commission is authorized to make such investigation of records and facilities as the commission deems proper. In the event of a conflict between the duty to prevent waste and the duty to protect correlative rights, the commission's duty to prevent waste shall be paramount.

WV Legislature

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

(1) Regulate the spacing of deep wells;

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

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

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

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

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

(2) No request for hearing has been received.

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

(1) Propose legislative rules;

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

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

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

(j) The commission is hereby empowered and it is the commission's duty to execute and carry out, administer, and enforce the relevant provisions of §37B-1-1 *et seq.* of this code concerning mineral development by cotenants for all wells at all depths and §22-11B-1 *et seq.* of this code concerning underground carbon dioxide sequestration storage facilities at all depths. The commission has jurisdiction and authority over all persons and property necessary therefor. The commission is authorized to make such investigation of records and

WV Legislature

facilities as the commission deems proper.

WV Legislature