

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1972

ENROLLED

SENATE BILL NO. 72

(By Mr. Neeley And Mr. Bowers)

PASSED March 9 1972

In Effect From Passage



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OFFICE OF STATE
SECRETARY OF
STATE OF WEST VIRGINIA

FILED IN THE OFFICE
JOHN D. ROCKEFELLER, IV
SECRETARY OF STATE

THIS DATE 3-29-72

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Senate Bill No. 72

(By MR. NEELEY and MR. BOWERS)

[Passed March 9, 1972; in effect from passage.]

AN ACT to amend chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article four-a, relating generally to the conservation of oil and gas; setting forth a declaration of public policy in this regard; making certain legislative findings with respect to deep oil or gas wells; providing certain definitions of terms; specifying the lands to which said article shall be applicable; providing certain exclusions; creating the West Virginia oil and gas conservation commission and providing for its authority and responsibility; authorizing the appointment of the oil and gas conservation commissioner and providing for his qualifications, compensation and expenses; relating to the membership of such commission, the qualifications and terms of its members, vacancies in such membership, meetings of the commission, the compensation and expenses of its members and general powers and duties of the commissioner; authorizing the commissioner to issue subpoenas and subpoenas duces tecum; authorizing the promulgation by the commissioner of reasonable rules and regulations; specifying certain notice requirements; making applicable certain provisions of the West Virginia rules of civil procedure for trial courts of record; prohibiting the waste of oil or gas; requiring the establishment of drilling units and the pooling of interests in drilling units in connection with deep oil or gas wells; relating to the rights and duties of nonparticipating owners in the event of a pooled tract; relating to the recovery of oil and unit operations; validating unit agreements; establishing hearing procedures; authorizing the commissioner to hold hearings; providing a time and place for such hearings; expressly providing that the provisions of chapter twenty-nine-a of the code shall govern such hear-

ings and otherwise be applicable; providing for judicial review of decisions of the commissioner entered following such hearings; providing for appeals to the supreme court of appeals; providing for legal counsel for the commissioner; providing for injunctive relief; authorizing injunctive relief without bond or other undertaking; providing for a special oil and gas conservation tax; establishing criminal penalties; providing for construction of article; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article four-a, to read as follows:

ARTICLE 4A. OIL AND GAS CONSERVATION.

§22-4A-1. Declaration of public policy; legislative findings.

1 (a) It is hereby declared to be the public policy of this
2 state and in the public interest to:

3 (1) Foster, encourage and promote exploration for and
4 development, production, utilization and conservation of
5 oil and gas resources;

6 (2) Prohibit waste of oil and gas resources and un-
7 necessary surface loss of oil and gas and their constituents;

8 (3) Encourage the maximum recovery of oil and gas;
9 and

10 (4) Safeguard, protect and enforce the correlative
11 rights of operators and royalty owners in a pool of oil or
12 gas to the end that each such operator and royalty owner
13 may obtain his just and equitable share of production
14 from such pool of oil or gas.

15 (b) The Legislature hereby determines and finds that
16 oil and natural gas found in West Virginia in shallow
17 sands or strata have been produced continuously for
18 more than one hundred years; that oil and gas deposits
19 in such shallow sands or strata have geological and other
20 characteristics different than those found in deeper for-
21 mations; and that in order to encourage the maximum
22 recovery of oil and gas from all productive formations in

23 this state, it is not in the public interest, with the excep-
24 tion of shallow wells utilized in a secondary recovery
25 program, to enact new statutory provisions relating to
26 the exploration for or production from oil and gas from
27 shallow wells, as defined in section two of this article,
28 but that it is in the public interest to enact new statutory
29 provisions establishing regulatory procedures and prin-
30 ciples to be applied to the exploration for or production
31 of oil and gas from deep wells, as defined in said section
32 two.

§22-4A-2. Definitions.

1 (a) Unless the context in which used clearly requires
2 a different meaning, as used in this article:

3 (1) "Commission" means the oil and gas conservation
4 commission and "commissioner" means the oil and gas
5 conservation commissioner as provided for in section four
6 of this article;

7 (2) "Director" means the director of the department of
8 mines as defined in section one, article one of this chapter;

9 (3) "Deputy Director for Oil and Gas" means the dep-
10 uty director for oil and gas provided for in section one-a,
11 article four of this chapter;

12 (4) "Person" means any natural person, corporation,
13 partnership, receiver, trustee, executor, administrator,
14 guardian, fiduciary or other representative of any kind,
15 and includes any government or any political subdivision
16 or any agency thereof;

17 (5) "Operator" means any owner of the right to de-
18 velop, operate and produce oil and gas from a pool and
19 to appropriate the oil and gas produced therefrom, either
20 for himself or for himself and others; in the event that
21 there is no oil and gas lease in existence with respect
22 to the tract in question, the owner of the oil and gas
23 rights therein shall be considered as "operator" to the
24 extent of seven eighths of the oil and gas in that portion
25 of the pool underlying the tract owned by such owner,
26 and as "royalty owner" as to one eighth interest in such
27 oil and gas; and in the event the oil is owned separately
28 from the gas, the owner of the substance being produced

29 or sought to be produced from the pool shall be considered
30 as "operator" as to such pool;

31 (6) "Royalty owner" means any owner of oil and gas
32 in place, or oil and gas rights, to the extent that such
33 owner is not an operator as defined in subdivision (5) of
34 this section;

35 (7) "Independent Producer" means a person who is
36 actively engaged in the production of oil and gas in West
37 Virginia, but whose gross revenue from such production
38 in West Virginia does not exceed five hundred thousand
39 dollars per year.

40 (8) "Oil" means natural crude oil or petroleum and
41 other hydrocarbons, regardless of gravity, which are pro-
42 duced at the well in liquid form by ordinary production
43 methods and which are not the result of condensation of
44 gas after it leaves the underground reservoir;

45 (9) "Gas" means all natural gas and all other fluid
46 hydrocarbons not defined as oil in subdivision (8) of this
47 section;

48 (10) "Pool" means an underground accumulation of
49 petroleum in a single and separate natural reservoir
50 (ordinarily a porous sandstone or limestone). It is char-
51 acterized by a single natural-pressure system so that
52 production of petroleum from one part of the pool affects
53 the reservoir pressure throughout its extent. A pool is
54 bounded by geologic barriers in all directions, such as
55 geologic structural conditions, impermeable strata, and
56 water in the formations, so that it is effectively separated
57 from any other pools that may be present in the same
58 district or on the same geologic structure;

59 (11) "Well" means any shaft or hole sunk, drilled,
60 bored or dug into the earth or underground strata for
61 the extraction of oil or gas;

62 (12) "Shallow well" means any well drilled and com-
63 pleted in a formation above the top of the uppermost
64 member of the "Onondaga Group" or at a depth less than
65 six thousand feet, whichever is shallower;

66 (13) "Deep well" means any well drilled and com-
67 pleted in a formation at or below the top of the upper-

68 most member of the "Onondaga Group" or at a depth of
69 or greater than six thousand feet, whichever is shallower;

70 (14) "Drilling unit" means the acreage on which one
71 well may be drilled;

72 (15) "Waste" means and includes: (a) Physical waste,
73 as that term is generally understood in the oil and gas
74 industry; (b) the locating, drilling, equipping, operating
75 or producing of any oil or gas well in a manner that
76 causes, or tends to cause, a reduction in the quantity of
77 oil or gas ultimately recoverable from a pool under pru-
78 dent and proper operations, or that causes or tends to
79 cause unnecessary or excessive surface loss of oil or gas;
80 or (c) the drilling of more deep wells than are reasonably
81 required to recover efficiently and economically the maxi-
82 mum amount of oil and gas from a pool;

83 (16) "Correlative rights" means the reasonable oppor-
84 tunity of each person entitled thereto to recover and re-
85 ceive without waste the oil and gas in and under his tract
86 or tracts, or the equivalent thereof; and

87 (17) "Just and equitable share of production" means,
88 as to each person, an amount of oil or gas or both sub-
89 stantially equal to the amount of recoverable oil and gas
90 in that part of a pool underlying his tract or tracts.

91 (b) Unless the context clearly indicates otherwise, the
92 use of the word "and" and the word "or" shall be inter-
93 changeable, as, for example, "oil and gas" shall mean oil
94 or gas or both.

§22-4A-3. Application of article; exclusions.

1 (a) Except as provided in subsection (b) of this sec-
2 tion, the provisions of this article shall apply to all lands
3 located in this state, however owned, including any lands
4 owned or administered by any government or any
5 agency or subdivision thereof, over which the state has
6 jurisdiction under its police power. The provisions of
7 this article are in addition to and not in derogation of or
8 substitution for the provisions of article four of this
9 chapter.

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

11 (1) Shallow wells other than those utilized in secondary

12 recovery program as set forth in section eight of this
13 article.

14 (2) Any well commenced or completed prior to the
15 effective date of this article, unless such well is, after
16 completion (whether such completion is prior or subse-
17 quent to the effective date of this article), (i) deepened
18 subsequent to the effective date of this article to a forma-
19 tion at or below the top of the uppermost member of the
20 "Onondaga Group" or at a depth of or greater than
21 six thousand feet, whichever is shallower or (ii) in-
22 volved in secondary recovery operations for oil under
23 an order of the commissioner entered pursuant to section
24 eight of this article;

25 (3) Gas storage operations or any well employed to
26 inject gas into or withdraw gas from a gas storage reser-
27 voir or any well employed for storage observation; or

28 (4) Free gas rights.

29 (c) The provisions of this article shall not be con-
30 strued to grant to the commissioner authority or power to:

31 (1) Limit production or output, or prorate production
32 of any oil or gas well, except as provided in subdivision

33 (6), subsection (a), section seven of this article; or

34 (2) Fix prices of oil or gas.

**§22-4A-4. Oil and gas conservation commissioner and commis-
sion; commission membership; qualifications of
members; terms of members; vacancies on com-
mission; meetings; compensation and expenses;
commissioner's qualifications; general powers and
duties.**

1 (a) There is hereby created the "West Virginia Oil and
2 Gas Conservation Commission" which shall be composed
3 of five members. The director of the department of natural
4 resources and the deputy director for oil and gas shall
5 be members of the commission ex officio. The remaining
6 three members of the commission shall be appointed by
7 the governor, by and with the advice and consent of the
8 Senate. Of the three members appointed by the governor,
9 one shall be an independent producer and at least one
10 shall be a public member not engaged in full-time em-

11 ployment in an activity under the jurisdiction of the
12 public service commission or the federal power commis-
13 sion. As soon as practical after appointment of the mem-
14 bers of the commission, the governor shall call a meeting
15 of the commission to be convened at the state capitol for
16 the purpose of organizing and electing a chairman.

17 (b) The members of the commission appointed by
18 the governor shall be appointed for overlapping terms of
19 six years each, except that the original appointments shall
20 be for terms of two, four and six years, respectively. Each
21 member appointed by the governor shall serve until his
22 successor has been appointed and qualified. Members may
23 be appointed by the governor to serve any number of
24 terms. The members of the commission appointed by the
25 governor, before performing any duty hereunder, shall
26 take and subscribe to the oath required by section five,
27 article four of the constitution of West Virginia. Vacancies
28 in the membership appointed by the governor shall be
29 filled by appointment by him for the unexpired term of
30 the member whose office shall be vacant and such ap-
31 pointment shall be made by the governor within sixty
32 days of the occurrence of such vacancy. Any member
33 appointed by the governor may be removed by the gov-
34 ernor in case of incompetency, neglect of duty, gross im-
35 morality or malfeasance in office.

36 (c) The commission shall meet at such times and places
37 as shall be designated by the chairman. The chairman
38 may call a meeting of the commission at any time, and he
39 shall call a meeting of the commission upon the written
40 request of two members or upon the written request of
41 the oil and gas conservation commissioner. Notification of
42 each meeting shall be given in writing to each member by
43 the chairman at least five days in advance of the meeting.
44 Any three members, one of which may be the chairman,
45 shall constitute a quorum for the transaction of any
46 business as herein provided for. A majority of the com-
47 mission shall be required to determine any issue brought
48 before it.

49 (d) Each member of the commission appointed by the
50 governor shall receive thirty-five dollars per diem not

51 to exceed one hundred days per calendar year while
52 actually engaged in the performance of his duties as a
53 member of the commission. Each member of the com-
54 mission shall also be reimbursed for all reasonable and
55 necessary expenses actually incurred in the performance
56 of his duties as a member of the commission.

57 (e) The commission shall appoint the oil and gas
58 conservation commissioner, fix his salary within avail-
59 able funds, and advise him regarding his duties and
60 authority under this article and consult with him prior
61 to his reaching any final decisions and entering orders
62 hereunder. However, the commissioner has full and final
63 authority under this article with the commission serving
64 in an advisory capacity to him. The commissioner shall
65 possess a degree from an accredited college or university
66 in petroleum engineering or geology and must be a
67 registered professional engineer with particular knowl-
68 edge and experience in the oil and gas industry.

69 (f) The oil and gas commissioner is hereby empowered
70 and it shall be his duty to execute and carry out, ad-
71 minister and enforce the provisions of this article in the
72 the manner provided herein. Subject to the provisions
73 of section three of this article, the commissioner shall
74 have jurisdiction and authority over all persons and
75 property necessary therefor. The commissioner is autho-
76 rized to make such investigation of records and facilities
77 as he deems proper. In the event of a conflict between
78 the duty to prevent waste and the duty to protect cor-
79 relative rights, the commissioner's duty to prevent waste
80 shall be paramount. He shall serve as secretary of the
81 oil and gas conservation commission.

82 (g) Without limiting his general authority, the com-
83 missioner shall have specific authority to:

84 (1) Regulate the spacing of deep wells;

85 (2) Make and enforce reasonable rules and regulations
86 and orders reasonably necessary to prevent waste, pro-
87 tect correlative rights, govern the practice and procedure
88 before the commissioner and otherwise administer the
89 provisions of this article;

90 (3) Issue subpoenas for the attendance of witnesses
91 and subpoenas duces tecum for the production of any
92 books, records, maps, charts, diagrams and other pertinent
93 documents, and administer oaths and affirmations to such
94 witnesses, whenever, in the judgment of the commissioner,
95 it is necessary to do so for the effective discharge of his
96 duties under the provisions of this article; and

97 (4) Serve as technical advisor regarding oil and gas
98 to the Legislature, its members and committees, to the
99 deputy director for oil and gas, to the department of
100 natural resources and to any other agency of state govern-
101 ment having responsibility related to the oil and gas
102 industry.

§22-4A-5. Rules and regulations; notice requirements.

1 (a) The commissioner may promulgate such reasonable
2 rules and regulations as he may deem necessary or desir-
3 able to implement and make effective the provisions of
4 this article and the powers and authority conferred and
5 the duties imposed upon him under the provisions of this
6 article and for securing uniformity of procedure in the
7 administration of the provisions of article three, chapter
8 twenty-nine-a of this code.

9 (b) Notwithstanding the provisions of section two, ar-
10 ticle seven, chapter twenty-nine-a of this code, any notice
11 required under the provisions of this article shall be given
12 at the direction of the commissioner by (1) personal or
13 substituted service and if such cannot be had then by (2)
14 certified United States mail, addressed, postage prepaid,
15 to the last known mailing address, if any, of the person
16 being served, with the direction that the same be de-
17 livered to addressee only, return receipt requested, and
18 if there be no known mailing address or if the notice is
19 not so delivered then by (3) publication of such notice as
20 a Class II legal advertisement in compliance with the pro-
21 visions of article three, chapter fifty-nine of this code,
22 and the publication area for such publication shall be the
23 county or counties wherein any land which may be
24 affected by such order is situate. In addition, the com-
25 missioner shall mail a copy of such notice all other per-
26 sons who have specified to the commissioner an address to

27 which all such notices may be mailed. The notice shall
28 issue in the name of the state, shall be signed by the com-
29 missioner, shall specify the style and number of the pro-
30 ceeding, the time and place of any hearing, and shall
31 briefly state the purpose of the proceeding. Personal or
32 substituted service and proof thereof may be made by an
33 officer authorized to serve process or by an agent of the
34 commissioner in the same manner as is now provided by
35 the "West Virginia Rules of Civil Procedure for Trial
36 Courts of Record" for service of process in civil actions
37 in the various courts of this state. A certified copy of any
38 pooling order entered under the provisions of this article
39 shall be presented by the commissioner to the clerk of the
40 county court of each county wherein all or any portion of
41 the pooled tract is located, for recordation in the record
42 book of such county in which oil and gas leases are nor-
43 mally recorded. Such recording of such order from the
44 time noted thereon by such clerk shall be notice of the
45 order to all persons.

§22-4A-6. Waste of oil or gas prohibited.

1 Waste of oil or gas is hereby prohibited.

**§22-4A-7. Drilling units and the pooling of interests in drill-
ing units in connection with deep oil or gas wells.**

1 (a) *Drilling units.*

2 (1) After one deep well has been drilled establishing
3 a pool, an application to establish drilling units may be
4 filed with the commissioner by the operator of such dis-
5 covery deep well or by the operator of any lands directly
6 and immediately affected by the drilling of such discovery
7 deep well, or subsequent deep wells in said pool, and the
8 commissioner shall promptly schedule a hearing on said
9 application. Each application shall contain such informa-
10 tion as the commissioner may prescribe by reasonable
11 rules and regulations promulgated by him in accordance
12 with the provisions of section five of this article.

13 (2) Upon the filing of an application to establish
14 drilling units, notice of the hearing shall be given by the
15 commissioner. Each notice shall specify the date, time and
16 place of hearing, describe the area for which a spacing

17 order is to be entered, and contain such other informa-
18 tion as is essential to the giving of proper notice.

19 (3) On the date specified in such notice, the commis-
20 sioner shall hold a public hearing to determine the area to
21 be included in his spacing order and the acreage to be
22 contained by each drilling unit, the shape thereof, and
23 the minimum distance from the outside boundary of the
24 unit at which a deep well may be drilled thereon. At
25 such hearing the commissioner shall consider:

26 (i) The surface topography and property lines of
27 the lands underlaid by the pool to be included in such
28 order;

29 (ii) The plan of deep well spacing then being em-
30 ployed or proposed in such pool for such lands;

31 (iii) The depth at which production from said pool
32 has been found;

33 (iv) The nature and character of the producing
34 formation or formations, and whether the substance pro-
35 duced or sought to be produced is gas or oil;

36 (v) The maximum area which may be drained
37 efficiently and economically by one deep well; and

38 (vi) Any other available geological or scientific data
39 pertaining to said pool which may be of probative value
40 to the commissioner in determining the proper deep well
41 drilling units therefor.

42 To carry out the purposes of this article, the commissioner
43 shall, upon proper application, notice and hearing as
44 herein provided, and if satisfied after such hearing that
45 drilling units should be established, enter an order estab-
46 lishing drilling units of a specified and approximately
47 uniform size and shape for each pool subject to the pro-
48 visions of this section.

49 (4) When it is determined that an oil or gas pool
50 underlies an area for which a spacing order is to be
51 entered, the commissioner shall include in his order all
52 lands determined or believed to be underlaid by such
53 pool and exclude all other lands.

54 (5) No drilling unit established by the commissioner
55 shall be smaller than the maximum area which can be
56 drained efficiently and economically by one deep well:

57 *Provided*, That if at the time of a hearing to establish
58 drilling units, there is not sufficient evidence from which
59 to determine the area which can be drained efficiently
60 and economically by one deep well, the commissioner may
61 enter an order establishing temporary drilling units for
62 the orderly development of the pool pending the obtain-
63 ing of information necessary to determine the ultimate
64 spacing for such pool.

65 (6) An order establishing drilling units shall specify
66 the minimum distance from the nearest outside boundary
67 of the drilling unit at which a deep well may be drilled.
68 The minimum distance provided shall be the same in all
69 drilling units established under said order with necessary
70 exceptions for deep wells drilled or being drilled at the
71 time of the filing of the application. If the commissioner
72 finds that a deep well to be drilled at or more than the
73 specified minimum distance from the boundary of a
74 drilling unit would not be likely to produce in paying
75 quantities or will encounter surface conditions which
76 would substantially add to the burden or hazard of
77 drilling such deep well, or that a location within the area
78 permitted by the order is prohibited by the lawful order
79 of any state agency or court, the commissioner is author-
80 ized after notice and hearing to make an order permitting
81 the deep well to be drilled at a location within the mini-
82 mum distance prescribed by the spacing order. In grant-
83 ing exceptions to the spacing order, the commissioner may
84 restrict the production from any such deep well so that
85 each person entitled thereto in such drilling unit shall not
86 produce or receive more than his just and equitable share
87 of the production.

88 (7) An order establishing drilling units for a pool
89 shall cover all lands determined or believed to be under-
90 laid by such pool, and may be modified by the commis-
91 sioner, from time to time, to include additional lands de-
92 termined to be underlaid by such pool or to exclude
93 lands determined not to be underlaid by such pool. An
94 order establishing drilling units may be modified by the
95 commissioner to permit the drilling of additional deep
96 wells on a reasonably uniform pattern at a uniform mini-
97 mum distance from the nearest unit boundary as provided

98 above. Any order modifying a prior order shall be made
99 only after application by an interested operator and notice
100 and hearing as prescribed herein for the original order.
101 However, drilling units established by order shall not ex-
102 ceed one hundred sixty acres for an oil well or six hun-
103 dred forty acres for a gas well.

104 (8) After the date of the notice of hearing called to
105 establish drilling units, no additional deep well shall be
106 commenced for production from the pool until the order
107 establishing drilling units has been made, unless the
108 commencement of the deep well is authorized by order
109 of the commissioner.

110 (9) The commissioner shall, within forty-five days after
111 the filing of an application to establish drilling units for
112 a pool subject to the provisions of this section, either enter
113 an order establishing such drilling units or dismiss the
114 application.

115 (10) As part of the order establishing a drilling unit,
116 the commissioner shall prescribe just and reasonable
117 terms and conditions upon which the royalty interests in
118 the unit shall, in the absence of voluntary agreement, be
119 deemed to be integrated without the necessity of a sub-
120 sequent order integrating the royalty interests.

121 (b) *Pooling of interests in drilling units.*

122 (1) When two or more separately owned tracts are
123 embraced within a drilling unit, or when there are
124 separately owned interests in all or a part of a drilling
125 unit, the interested persons may pool their tracts or
126 interests for the development and operation of the drilling
127 unit. In the absence of voluntary pooling and upon
128 application of any operator having an interest in the
129 drilling unit, and after notice and hearing, the commis-
130 sioner shall enter an order pooling all tracts or interests
131 in the drilling unit for the development and operation
132 thereof and for sharing production therefrom. Each such
133 pooling order shall be upon terms and conditions which
134 are just and reasonable. In no event shall drilling be
135 initiated on the tract of an unleased royalty owner with-
136 out his written consent.

137 (2) All operations, including, but not limited to, the

138 commencement, drilling or operation of a deep well, upon
139 any portion of a drilling unit for which a pooling order
140 has been entered, shall be deemed for all purposes the
141 conduct of such operations upon each separately owned
142 tract in the drilling unit by the several owners thereof.
143 That portion of the production allocated to a separately
144 owned tract included in a drilling unit shall, when pro-
145 duced, be deemed for all purposes to have been actually
146 produced from such tract by a deep well drilled thereon.

147 (3) Any pooling order under the provisions of this
148 subsection (b) shall authorize the drilling and operation
149 of a deep well for the production of oil or gas from the
150 pooled acreage; shall designate the operator to drill and
151 operate such deep well; shall prescribe the time and
152 manner in which all owners of operating interests in the
153 pooled tracts or portions of tracts may elect to participate
154 therein; shall provide that all reasonable costs and ex-
155 penses of drilling, completing, equipping, operating,
156 plugging and abandoning such deep well shall be borne,
157 and all production therefrom shared, by all owners of
158 operating interests in proportion to the net oil or gas
159 acreage in the pooled tracts owned or under lease to
160 each owner; and shall make provisions for payment of all
161 reasonable costs thereof, including a reasonable charge
162 for supervision and for interest on past-due accounts, by
163 all those who elect to participate therein.

164 (4) No drilling or operation of a deep well for the
165 production of oil or gas shall be permitted upon or with-
166 in any tract of land unless the operator shall have first
167 obtained the written consent and easement therefor, duly
168 acknowledged and placed of record in the office of the
169 county clerk, for valuable consideration of all owners of
170 the surface of such tract of land, which consent shall
171 describe with reasonable certainty, the location upon such
172 tract, of the location of such proposed deep well, a certified
173 copy of which consent and easement shall be submitted
174 by the operator to the commission.

175 (5) Upon request, any such pooling order shall provide
176 just and equitable alternatives whereby an owner of an
177 operating interest who does not elect to participate in

178 the risk and cost of the drilling of a deep well may
179 elect:

180 (i) Option 1. To surrender his interest or a portion
181 thereof to the participating owners on a reasonable
182 basis and for a reasonable consideration, which, if not
183 agreed upon, shall be determined by the commissioner;
184 or

185 (ii) Option 2. To participate in the drilling of the
186 deep well on a limited or carried basis on terms and con-
187 ditions which, if not agreed upon, shall be determined by
188 the commissioner to be just and reasonable.

189 (6) In the event a nonparticipating owner elects
190 Option 2, and an owner of any operating interest in any
191 portion of the pooled tract shall drill and operate, or pay
192 the costs of drilling and operating, a deep well for the
193 benefit of such nonparticipating owner as provided in the
194 pooling order, then such operating owner shall be entitled
195 to the share of production from the tracts or portions
196 thereof pooled accruing to the interest of such nonpartici-
197 pating owner, exclusive of any royalty or overriding roy-
198 alty reserved in any leases, assignments thereof or agree-
199 ments relating thereto, of such tracts or portions thereof,
200 or exclusive of one eighth of the production attributable
201 to all unleased tracts or portions thereof, until the market
202 value of such nonparticipating owner's share of the pro-
203 duction, exclusive of such royalty, overriding royalty or
204 one eighth of production, equals double the share of such
205 costs payable by or charged to the interest of such non-
206 participating owner.

207 (7) If a dispute shall arise as to the costs of drilling
208 and operating a deep well, the commissioner shall deter-
209 mine and apportion the costs, within ninety days from
210 the date of written notification to the commissioner of the
211 existence of such dispute.

§22-4A-8. Secondary recovery of oil; unit operations.

1 Upon the application of any operator in a pool produc-
2 tive of oil and after notice and hearing, the commissioner
3 may enter an order requiring the unit operation of such
4 pool in connection with a program of secondary recovery

5 of oil, and providing for the unitization of separately
6 owned tracts and interests within such pool, but only after
7 finding that: (1) The order is reasonably necessary for the
8 prevention of waste and the drilling of unnecessary deep
9 wells; (2) the proposed plan of secondary recovery will
10 increase the ultimate recovery of oil from the pool to
11 such an extent that the proposed secondary recovery
12 operation will be economically feasible; (3) the produc-
13 tion of oil from the unitized pool can be allocated in such
14 a manner as to insure the recovery by all operators of
15 their just and equitable share of such production; and (4)
16 the operators of at least three fourths of the acreage (cal-
17 culating partial interests on a pro rata basis for operator
18 interests on any parcel owned in common) and the
19 royalty owners of at least three fourths of the acreage
20 (calculating partial interests on a pro rata basis for
21 royalty interests on any parcel owned in common) in
22 such pool have approved the plan and terms of unit opera-
23 tion to be specified by the commissioner in its order, such
24 approval to be evidenced by a written contract setting
25 forth the terms of the unit operation and executed by
26 said operators and said royalty owners, and filed with the
27 commissioner on or before the day set for hearing. The
28 order requiring such unit operation shall designate one
29 operator in the pool as unit operator and shall also make
30 provision for the proportionate allocation to all operators
31 of the costs and expenses of the unit operation, including
32 reasonable charges for supervision and interest on past-
33 due accounts, which allocation shall be in the same pro-
34 portion that the separately owned tracts share in the pro-
35 duction of oil from the unit. In the absence of an agree-
36 ment entered into by the operators and filed with the
37 commissioner providing for sharing the costs of capital
38 investment in wells and physical equipment, and in-
39 tangible drilling costs, the commissioner shall provide by
40 order for the sharing of such costs in the same proportion
41 as the costs and expenses of the unit operation: *Provided,*
42 That any operator who has not consented to the unitiza-
43 tion shall not be required to contribute to the costs or
44 expenses of the unit operation, or to the cost of capital
45 investment in wells and physical equipment, and intangi-

46 ble drilling costs, except out of the proceeds from the sale
47 of the production accruing to the interest of such opera-
48 tor: *Provided, however,* That no credit to the well costs
49 shall be adjusted on the basis of less than the average
50 well costs within the unitized area: *Provided further,*
51 That no order entered under the provisions of this sec-
52 tion requiring unit operation shall vary or alter any of
53 the terms of any contract entered into by operators and
54 royalty owners under the provisions of this section.

§22-4A-9. Validity of unit agreements.

1 No agreement between or among operators, lessees or
2 other owners of oil or gas rights in oil and gas properties,
3 entered into pursuant to the provisions of this article or
4 with a view to or for the purpose of bringing about the
5 unitized development or operation of such properties,
6 shall be held to violate the statutory or common law of
7 this state prohibiting monopolies or acts, arrangements,
8 contracts, combinations or conspiracies in restraint of
9 trade or commerce.

§22-4A-10. Hearing procedures.

1 (a) Upon receipt of an application for an order of the
2 commissioner for which a hearing is required by the pro-
3 visions of this article, the commissioner shall set a time
4 and place for such hearing not less than ten and not more
5 than thirty days thereafter. Any scheduled hearing may
6 be continued by the commissioner upon his own motion or
7 for good cause shown by any party to the hearing. All
8 interested parties shall be entitled to be heard at any
9 hearing conducted under the provisions of this article.

10 (b) All of the pertinent provisions of article five, chap-
11 ter twenty-nine-a of this code shall apply to and govern
12 the hearing and the administrative procedures in con-
13 nection with and following such hearing, with like effect
14 as if the provisions of said article five were set forth in
15 extenso in this subsection.

16 (c) Any such hearing shall be conducted by the com-
17 missioner. For the purpose of conducting any such hear-
18 ing, the commissioner shall have the power and author-
19 ity to issue subpoenas and subpoenas duces tecum which

20 shall be issued and served within the time, for the
21 fees and shall be enforced, as specified in section one,
22 article five of said chapter twenty-nine-a, and all of the
23 said section one provisions dealing with subpoenas and
24 subpoenas duces tecum shall apply to subpoenas and
25 subpoenas duces tecum issued for the purpose of a hear-
26 ing hereunder.

27 (d) At any such hearing any interested person may
28 represent himself or be represented by an attorney at
29 law admitted to practice before any circuit court of this
30 state. Upon request by the commissioner, he shall be rep-
31 resented at such hearing by the attorney general or his
32 assistants without additional compensation. The com-
33 missioner, with the written approval of the attorney gen-
34 eral, may employ special counsel to represent the com-
35 missioner at any such hearing.

36 (e) After any such hearing and consideration of all of
37 the testimony, evidence and record in the case, the com-
38 missioner shall render his decision in writing. The written
39 decision of the commissioner shall be accompanied by
40 findings of fact and conclusions of law as specified in sec-
41 tion three, article five, chapter twenty-nine-a of this code,
42 and a copy of such decision and accompanying findings
43 and conclusions shall be served by certified mail, return
44 receipt requested, upon all interested persons and their
45 attorney of record, if any.

46 (f) The decision of the commissioner shall be final un-
47 less reversed, vacated or modified upon judicial review
48 thereof in accordance with the provisions of section eleven
49 of this article.

**§22-4A-11. Judicial review; appeal to supreme court of ap-
peals; legal representation for commissioner.**

1 (a) Any person adversely affected by a decision of the
2 commissioner rendered after a hearing held in accordance
3 with the provisions of section ten of this article shall be
4 entitled to judicial review thereof. All of the pertinent
5 provisions of section four, article five, chapter twenty-
6 nine-a of this code shall apply to and govern such judicial
7 review with like effect as if the provisions of said section
8 four were set forth in extenso in this section.

9 (b) The judgment of the circuit court shall be final un-
10 less reversed, vacated or modified on appeal to the su-
11 preme court of appeals in accordance with the provisions
12 of section one, article six, chapter twenty-nine-a of this
13 code, except that notwithstanding the provisions of said
14 section one the petition seeking such review must be filed
15 with said supreme court of appeals within thirty days
16 from the date of entry of the judgment of the circuit
17 court.

18 (c) Legal counsel and services for the commissioner in
19 all appeal proceedings in any circuit court and the su-
20 preme court of appeals shall be provided by the attorney
21 general or his assistants and in any circuit court by the
22 prosecuting attorney of the county as well, all without
23 additional compensation. The commissioner, with the
24 written approval of the attorney general, may employ
25 special counsel to represent the commissioner at any such
26 appeal proceedings.

§22-4A-12. Injunctive relief.

1 (a) Whenever it appears to the commissioner that any
2 person has been or is violating or is about to violate any
3 provision of this article, any reasonable rule and regula-
4 tion promulgated by the commissioner hereunder or any
5 order or final decision of the commissioner, the commis-
6 sioner may apply in the name of the state to the circuit
7 court of the county in which the violations or any part
8 thereof has occurred, is occurring or is about to occur, or
9 the judge thereof in vacation, for an injunction against
10 such person and any other persons who have been, are or
11 are about to be, involved in any practices, acts or omis-
12 sions, so in violation, enjoining such person or persons
13 from any such violation or violations. Such application
14 may be made and prosecuted to conclusion whether or not
15 any such violation or violations have resulted or shall
16 result in prosecution or conviction under the provisions
17 of section fourteen of this article.

18 (b) Upon application by the commissioner, the circuit
19 courts of this state may by mandatory or prohibitory in-
20 junction compel compliance with the provisions of this
21 article, the reasonable rules and regulations promulgated

22 by the commissioner hereunder and all orders and final
23 decisions of the commissioner. The court may issue a
24 temporary injunction in any case pending a decision on
25 the merits of any application filed. Any other section of
26 this code to the contrary notwithstanding, the state shall
27 not be required to furnish bond or other undertaking as
28 a prerequisite to obtaining mandatory, prohibitory or
29 temporary injunctive relief under the provisions of this
30 article.

31 (c) The judgment of the circuit court upon any appli-
32 cation permitted by the provisions of this section shall
33 be final unless reversed, vacated or modified on appeal to
34 the supreme court of appeals. Any such appeal shall be
35 sought in the manner and within the time provided by
36 law for appeals from circuit courts in other civil actions.

37 (d) The commissioner shall be represented in all such
38 proceedings by the attorney general or his assistants and
39 in such proceedings in the circuit courts by the prose-
40 cuting attorneys of the several counties as well, all
41 without additional compensation. The commissioner, with
42 the written approval of the attorney general, may employ
43 special counsel to represent the commissioner in any such
44 proceedings.

45 (e) If the commissioner shall refuse or fail to apply for
46 an injunction to enjoin a violation or threatened violation
47 of any provision of this article, any reasonable rule and
48 regulation promulgated by the commissioner hereunder or
49 any order or final decision of the commissioner, within ten
50 days after receipt of a written request to do so by any
51 person who is or will be adversely affected by such viola-
52 tion or threatened violation, the person making such re-
53 quest may apply in his own behalf for an injunction to
54 enjoin such violation or threatened violation in any court
55 in which the commissioner might have brought suit. The
56 commissioner shall be made a party defendant in such
57 application in addition to the person or persons viola-
58 ting or threatening to violate any provision of this article,
59 any reasonable rule and regulation promulgated by the
60 commissioner hereunder or any order or final decision of
61 the commissioner. The application shall proceed and in-

62 junctive relief may be granted without bond or other
63 undertaking in the same manner as if the application
64 had been made by the commissioner.

§22-4A-13. Special oil and gas conservation tax.

1 Owners of leases on oil or gas for the exploration, de-
2 velopment or production of oil or natural gas shall pay to
3 the commission a special oil and gas conservation tax of
4 three cents for each acre under lease, excluding from the
5 tax the first twenty-five thousand acres. The commission
6 shall deposit with the treasurer of the state of West Vir-
7 ginia, to the credit of the special oil and gas conservation
8 fund, all taxes collected hereunder. The special oil and
9 gas conservation fund shall be a special fund and shall
10 be administered by the commission for the sole purpose
11 of carrying out all costs necessary to carry out the pro-
12 visions of this article. This tax shall be paid as provided
13 herein annually on or before the first day of July, one
14 thousand nine hundred seventy-two, and on or before the
15 first day of July in each succeeding year.

§22-4A-14. Penalties.

1 (a) Any person who violates any provision of this ar-
2 ticle, any of the reasonable rules and regulations pro-
3 mulgated by the commissioner hereunder or any order or
4 any final decision of the commissioner, other than a viola-
5 tion covered by the provisions of subsection (b) of this
6 section, shall be guilty of a misdemeanor, and, upon con-
7 viction thereof, shall be fined not more than one thousand
8 dollars, and each day that a violation continues shall con-
9 stitute a new and separate violation.

10 (b) Any person who, for the purpose of evading any
11 provision of this article, any of the reasonable rules and
12 regulations promulgated by the commissioner hereunder
13 or any order or final decision of the commissioner, shall
14 make or cause to be made any false entry or statement in a
15 report required under the provisions of this article, any
16 of the reasonable rules and regulations promulgated by
17 the commissioner hereunder or any order or final decision
18 of the commissioner, or shall make or cause to be made
19 any false entry in any record, account or memorandum re-

20 quired under the provisions of this article, any of the
21 reasonable rules and regulations promulgated by the
22 commissioner hereunder or any order or any final decision
23 of the commissioner, or who shall omit, or cause to be
24 omitted, from any such record, account or memorandum,
25 full, true and correct entries, or shall remove from this
26 state or destroy, mutilate, alter or falsify any such record,
27 account or memorandum, shall be guilty of a misde-
28 meanor, and, upon conviction thereof, shall be fined not
29 more than five thousand dollars, or imprisoned in the
30 county jail not more than six months, or both fined and
31 imprisoned.

32 (c) Any person who knowingly aids or abets any other
33 persons in the violation of any provision of this article,
34 any of the reasonable rules and regulations promulgated
35 by the commissioner hereunder or any order of final deci-
36 sion of the commissioner, shall be subject to the same pen-
37 alty as that prescribed in this article for the violation by
38 such other person.

§22-4A-15. Construction and severability.

1 Except as provided in subsection (c), section three of
2 this article, this article shall be liberally construed so as
3 to effectuate the declaration of public policy set forth in
4 section one of this article.

5 If any section, subsection, subdivision, subparagraph,
6 sentence or clause of this article is adjudged to be un-
7 constitutional or invalid, such invalidation shall not affect
8 the validity of the remaining portions of this article, and,
9 to this end, the provisions of this article are hereby de-
10 clared to be severable.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Russell A. Bruce

Chairman Senate Committee

Phyllis J. Rutledge

Chairman House Committee

Originated in the Senate.

To take effect from passage.

Harold W. Mason

Clerk of the Senate

A. Blankenship

Clerk of the House of Delegates

John B. Bunt

President of the Senate

Levin D. McManis

Speaker House of Delegates

The within *approved* this the *27th*
March, 1972.
 day of _____

Arthur A. Shaare Jr.

Governor

PRESENTED TO THE
GOVERNOR

Date 3/17/72

Time 12:30 p.m.