

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1978

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ENROLLED

Committee Substitute for
HOUSE BILL No. 1670

(By Mr. Speaker, Mr. Kopp, + Mr. Latta)

— ● —

PASSED March 11, 1978

In Effect ninety days from Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1670

(By MR. SPEAKER, MR. KOPP, and MR. SATTES)

[Passed March 11, 1978; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, one-k, two, two-a, two-b, three, four, five, nine, ten and eleven, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article four by adding thereto two new sections, designated sections three-b and three-c; and to amend said chapter twenty-two by adding thereto a new article, designated article four-b, all relating to oil and gas wells generally; providing definitions; relating to contents of applications; providing for notice to coal seam owners and operators of the filing of certain applications; providing for filing of objections by coal seam owners and operators to proposed deep gas well and oil well drilling sites; specifying procedures to be followed if any such objections are filed; requiring preparation by the department of mines of a record of such proceedings relating thereto; providing for filing of objections by coal seam owners and operators to proposed shallow gas well drilling sites; specifying procedures to be followed if any such objections are filed; requiring preparation by the department of mines of a record of such proceedings relating thereto; specifying by reference to date filed the applications for permits to drill shallow gas wells with respect to which certain amendments made to said article four by this act shall apply; providing for

judicial review of orders of issuance or refusal of permits to drill or fracture and procedures with respect thereto; relating to protective devices to be used by well operators when a well penetrates a workable coal bed; specifying methods of plugging wells; requiring the testing of such wells prior to mining; establishing a shallow gas well review board; setting forth declarations of public policy and legislative findings; providing definitions; relating to application of article four-b; specifying by reference to date filed the applications for permits to drill shallow gas wells with respect to which certain provisions of article four-b shall apply; relating to board membership, appointment, vacancies, compensation and expenses; relating to the staff for such board; relating to meetings and the general powers and duties of such board, including the power to issue subpoenas; authorizing such board to promulgate reasonable rules and regulations under certain procedures; providing for conferences and meetings of the board to consider objections to proposed drilling; authorizing the board to issue written orders; establishing specific criteria for consideration by the board in establishing shallow gas well drilling locations; establishing mandatory distance limitations for shallow gas wells; authorizing such board to accept applications to establish drilling units and specifying the contents of such applications; authorizing the board to establish drilling units and providing for procedures with respect thereto; placing certain limitations on such board in granting applications to establish drilling units; authorizing such board to pool interest in a drilling unit and establishing procedures to be followed with respect thereto; placing certain limitations on when drilling may be initiated or completed; relating to the effect of an order establishing a drilling unit or pooling of interests and providing for recordation thereof; providing for judicial review of orders of such board; relating to the effect of operation on drilling units; relating to the validity of unit agreements; authorizing the board to obtain injunctive relief against persons violating the provisions of said article four-b; and providing criminal offenses and penalties for violations.

Be it enacted by the Legislature of West Virginia:

That sections one, one-k, two, two-a, two-b, three, four, five,

nine, ten and eleven, article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article four be further amended by adding thereto two new sections, designated sections three-b and three-c; and that said chapter twenty-two be amended by adding thereto a new article, designated article four-b, all to read as follows:

ARTICLE FOUR. OIL AND GAS WELLS.

§22-4-1. Definitions.

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

3 (a) "Casing" means a string or strings of pipe commonly
4 placed in wells drilled for natural gas or petroleum or both;

5 (b) "Cement" means hydraulic cement properly mixed with
6 water;

7 (c) "Chairman" means the chairman of the West Virginia
8 shallow gas well review board as provided for in section four,
9 article four-b of this chapter;

10 (d) "Chief" means chief of the division of water resources
11 of the department of natural resources;

12 (e) "Coal operator" means any person or persons, firm,
13 partnership, partnership association or corporation that pro-
14 poses to or does operate a coal mine;

15 (f) "Coal seam" and "workable coal bed" are interchange-
16 able terms and mean any seam of coal twenty inches or more
17 in thickness, unless a seam of less thickness is being com-
18 *OK* ~~mercially~~ worked, or can in the judgment of the department
19 foreseeably be commercially worked and will require protec-
20 tion if wells are drilled through it;

21 (g) "Deep well" means any well drilled and completed in
22 a formation at or below the top of the uppermost member of
23 the "Onondaga Group" or at a depth of or greater than six
24 thousand feet, whichever is shallower;

25 (h) "Department" or "department of mines" means the
26 duly constituted authorities under the laws of this state having
27 jurisdiction over coal mining operations;

28 (i) "Deputy director" means the deputy director for oil
29 and gas of the department of mines;

30 (j) "Expanding cement" means any cement approved by
31 the department which expands during the hardening process,
32 including but not limited to regular oil field cements with
33 the proper additives;

34 (k) "Facility" means any facility utilized in the oil and
35 gas industry in this state and specifically named or referred
36 to in this article or in articles five or seven of this chapter,
37 other than a well or well site;

38 (l) "Gas" means all natural gas and all other fluid hydro-
39 carbons not defined as oil in subdivision (m) of this section;

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

45 (n) "Owner" when used with reference to any well, shall
46 include any person or persons, firm, partnership, partnership
47 association or corporation that owns, manages, operates,
48 controls or possesses such well as principals, or as lessee
49 or contractor, employee or agent of such principal;

50 (o) "Owner" when used with reference to any coal seam,
51 shall include any person or persons who own, lease or operate
52 such coal seam;

53 (p) "Person" means any natural person, corporation, firm,
54 partnership, partnership association, venture, receiver, trustee,
55 executor, administrator, guardian, fiduciary or other repre-
56 sentative of any kind, and includes any government or any
57 political subdivision or any agency thereof;

58 (q) "Plat" means a map, drawing or print showing the
59 location of a well or wells as herein defined;

60 (r) "Review board" means the West Virginia shallow gas
61 well review board as provided for in section four, article
62 four-b of this chapter;

63 (s) "Safe mining through of a well" means the mining of
64 coal in a workable coal bed up to a well which penetrates
65 such workable coal bed and through such well so that the
66 casing or plug in the well bore where the well penetrates the
67 workable coal bed is severed;

68 (t) "Shallow well" means any gas well drilled and com-
69 pleted in a formation above the top of the uppermost member
70 of the "Onondaga Group" or at a depth less than six thousand
71 feet, whichever is shallower;

72 (u) "Stimulate" means any action taken by well operator
73 to increase the inherent productivity of an oil or gas well,
74 including but not limited to fracturing, shooting or acidizing,
75 but excluding cleaning out, bailing or workover operations;

76 (v) "Well" means any shaft or hole sunk, drilled, bored
77 or dug into the earth or into underground strata for the
78 extraction or injection or placement of any liquid or gas, or
79 any shaft or hole sunk or used in conjunction with such
80 extraction or injection or placement. The term "well" does
81 not include any shaft or hole sunk, drilled, bored or dug
82 into the earth for the sole purpose of core drilling or pumping
83 or extracting therefrom potable, fresh or usable water for
84 household, domestic, industrial, agricultural or public use;
85 and

86 (w) "Well operator" or "operator" means any person or
87 persons, firm, partnership, partnership association or cor-
88 poration that proposes to or does locate, drill, operate or
89 abandon any well as herein defined.

**§22-4-1k. Permits required; application for permit; information;
responsible agent; drilling permit number; when per-
mits not to be issued; penalty.**

1 It shall be unlawful for any well to be drilled, redrilled,
2 deepened, fractured, stimulated, plugged, pressured, converted,
3 combined or physically changed to allow the migration of fluid
4 from one formation to another unless a permit therefor has
5 been issued by the department. An application for any such
6 permit shall be filed with the deputy director and shall contain
7 the following:

- 8 (a) The name and address of the well operator;
- 9 (b) The name and address of the owner of the surface
10 lands upon which the well is or may be located;
- 11 (c) The name and address of every coal operator operating
12 coal seams under the tract of land on which the well is or may
13 be located, and the coal seam owner of record and lessee of
14 record required to be given notice by section two, if any, if said
15 owner or lessee is not yet operating said coal seams;
- 16 (d) The name and address of the agent of the well opera-
17 tor, if any such agent is required to be designated under the
18 provisions of this section;
- 19 (e) The approximate depth to which the well is to be
20 drilled;
- 21 (f) The proposed casing program of such well including
22 the sizes of all such casing, the depth to which all casing is to
23 be run and the extent to which such casing is to be cemented;
- 24 (g) The proposed method of reclamation which shall com-
25 ply with the requirements of section twelve-b of this article;
26 and
- 27 (h) Any other information which the deputy director by
28 rule or regulation may require.

29 If the well operator named in such application is a corpora-
30 tion, partnership or a nonresident of the state of West Vir-
31 ginia, then there shall be designated the name and address of
32 an agent for such operator who shall be the attorney-in-fact
33 for the operator and who shall be a resident of the state of
34 West Virginia upon whom notices, orders or other communi-
35 cations issued pursuant to this article or article five-a, chapter
36 twenty, may be served, and upon whom process may be served.
37 Every well operator required to designate an agent under this
38 section shall within five days after the termination of such
39 designation notify the department of such termination and
40 designate a new agent.

41 The well owner or operator shall install the permit number
42 as issued by the deputy director in a legible and permanent
43 manner to the well upon completion of any permitted work.

44 The dimensions, specifications and manner of installation
45 shall be in accordance with the administrative rules and reg^gulations of the department. *or*
46 *MSB*

47 For the purpose of ascertaining whether or not issuance of
48 any permit to drill, redrill, deepen, case, fracture, stimulate,
49 pressure, operate, plug, abandon, convert or combine any
50 well, or physically change any well or allow the migration of
51 fluid from one formation to another, will contribute to an
52 existing pollution problem, the deputy director shall have the
53 right and it shall be his duty to consult with the director
54 of the department of natural resources. In the event the
55 issuance of any such permit may reasonably be expected to
56 contribute to any such existing pollution then the deputy
57 director will not issue such permit.

58 Any person who violates any provision of this section shall
59 be guilty of a misdemeanor, and, upon conviction thereof,
60 shall be punished by a fine not exceeding two thousand dol-
61 lars, or imprisonment in jail for not exceeding twelve months,
62 or both such fine and imprisonment.

**§22-4-2. Plats prerequisite to drilling or fracturing wells; prepara-
tion and contents; notice and information furnished to
coal operators, owners or lessees; issuance of permits;
performance bonds or securities in lieu thereof; bond
forfeiture.**

1 Before drilling for oil or gas, or before fracturing or
2 stimulating a well on any tract of land, the well operator
3 shall have a plat prepared by a licensed land surveyor or
4 registered engineer showing the district and county in which
5 the tract of land is located, the name and acreage of the
6 same, the names of the owners of adjacent tracts, the pro-
7 posed or actual location of the well determined by survey,
8 the courses and distances of such location from two permanent
9 points or landmarks on said tract and the number to be given
10 the well and the date of drilling completion of a well when
11 it is proposed that such well be fractured and shall forward by
12 registered or certified mail a copy of the plat to the depart-
13 ment of mines. In the event the tract of land on which the said
14 well proposed to be drilled or fractured is located is known to
15 be underlain with one or more coal seams, copies of the plat

16 shall be forwarded by registered or certified mail to each and
17 every coal operator operating said coal seams beneath said
18 tract of land, who has mapped the same and filed his maps
19 with the department in accordance with article two of this
20 chapter, and the coal seam owner of record and lessee of
21 record, if any, if said owner or lessee has recorded the de-
22 clarations provided in section twenty of this article, and if said
23 owner or lessee is not yet operating said coal seams beneath
24 said tract of land. With each of such plats there shall be en-
25 closed a notice (form for which shall be furnished on re-
26 quest by the department of mines) addressed to the de-
27 partment of mines and to each such coal operator, owner and
28 lessee, if any, at their respective addresses, informing them
29 that such plat and notice are being mailed to them respec-
30 tively by registered or certified mail, pursuant to the require-
31 ments of this article. If no objections are made, or are
32 found by the department, to such proposed location or pro-
33 posed fracturing within fifteen days from receipt of such plat
34 and notice by the department of mines, the same shall be
35 filed and become a permanent record of such location or
36 fracturing subject to inspection at any time by any interested
37 person, and the department may forthwith issue to the well
38 operator a permit reciting the filing of such plat, that no
39 objections have been made by the coal operators, owners
40 and lessees, if any, or found thereto by the department, and
41 authorizing the well operator to drill at such location, or to
42 fracture the well. Unless the department has objections to
43 such proposed location or proposed fracturing or stimulating,
44 such permit may be issued prior to the expiration of such
45 fifteen-day period upon the obtaining by the well operator
46 of the consent in writing of the coal operator or operators,
47 owners and lessees, if any, to whom copies of the plat and
48 notice shall have been mailed as herein required, and upon
49 presentation of such written consent to the department. The
50 notice above provided for may be given to the coal operator
51 by delivering or mailing it by registered or certified mail
52 as above to any agent or superintendent in actual charge of
53 mines.

54 A permit to drill, or to fracture or stimulate an oil or gas
55 well, shall not be issued unless the application therefor is

56 accompanied by a bond of the operator in the sum of two
57 thousand five hundred dollars, payable to the state of West
58 Virginia, with a corporate bonding or surety company author-
59 ized to do business in this state as surety thereon, conditioned
60 on full compliance with all laws, rules and regulations relating
61 to the drilling, redrilling, deepening, casing, plugging, aban-
62 donment and reclamation of wells and for furnishing such
63 reports and information as may be required by the department:
64 *Provided*, That when such operator makes or has made ap-
65 plication for permits to drill a number of wells or fracture or
66 stimulate a well or wells the operator may in lieu of furnishing
67 a separate bond furnish a blanket bond in the sum of fifteen
68 thousand dollars, payable to the state of West Virginia, with
69 a corporate bonding or surety company authorized to do
70 business in this state as surety thereon, and conditioned as
71 aforesaid: *Provided, however*, That in lieu of corporate surety
72 on a separate or blanket bond, as the case may be, the
73 operator may elect to deposit with the deputy director for
74 oil and gas cash or the following collateral securities or any
75 combination thereof: (1) Bonds of the United States or
76 agency thereof, or those guaranteed by, or for which the
77 credit of the United States or agency therefor is pledged for
78 the payment of the principal and interest thereof; (2) direct
79 general obligation bonds of this state, or any other state,
80 or territory of the United States, or the District of Columbia,
81 unconditionally guaranteed as to the principal and interest
82 by such other state or territory of the United States, or the
83 District of Columbia if such other state, territory, or the
84 District of Columbia has the power to levy taxes for the
85 payment of the principal and interest of such securities, and
86 if at the time of the deposit such other state, territory, or the
87 District of Columbia is not in default in the payment of any
88 part of the principal or interest owing by it upon any part
89 of its funded indebtedness; (3) direct general obligation
90 bonds of any county, district, city, town, village, school
91 district or other political subdivision of this state issued
92 pursuant to law and payable from ad valorem taxes levied
93 on all the taxable property located herein, that the total
94 indebtedness after deducting sinking funds and all debts
95 incurred for self-sustaining public works does not exceed five

96 percent of the assessed value of all taxable property therein
97 at the time of the last assessment made before the date of
98 such deposit, and that the issuer has not, within five years
99 prior to the making thereof, been in default for more than
100 ninety days in the payment of any part of the principal or
101 interest on any debt, evidenced by its bonds; (4) revenue
102 bonds issued by this state or any agency of this state when
103 such bonds are payable from revenues or earnings specifically
104 pledged for the payment of principal and interest, and a
105 lawful sinking fund or reserve fund has been established
106 and is being maintained for the payment of such bonds; (5)
107 revenue bonds issued by a municipality in this state for the
108 acquisition, construction, improvement or extension of a
109 waterworks system, or a sewerage system, or a combined
110 waterworks and sewerage system, when such bonds are pay-
111 able from revenue or earnings specifically pledged for the
112 payment of principal and interest, and a lawful sinking fund
113 or reserve fund has been established and is being maintained
114 for the payment of such bonds; (6) revenue bonds issued
115 by a public service board of a public service district in this
116 state for the acquisition, construction, improvement or exten-
117 sion of any public service properties, or for the reimbursement
118 or payment of the costs and expenses of creating the district,
119 when such bonds are payable from revenue or earnings
120 specifically pledged for the payment of principal and interest,
121 and a lawful sinking fund or reserve fund has been established
122 and is being maintained for the payment of such bonds; (7)
123 revenue bonds issued by a board of trustees of a sanitary
124 district in this state for the corporate purposes of such district,
125 when such bonds are payable from revenue or earnings
126 specifically pledged for the payment of principal and interest,
127 and a lawful sinking fund or reserve fund has been estab-
128 lished and is being maintained for the payment of such bonds;
129 and (8) bonds issued by a federal land bank or home owners'
130 loan corporation. The cash deposit or market value, or
131 both, of the collateral securities shall be equal to or greater
132 than the penalty of the separate or blanket bond, as the
133 case may be. Upon receipt of any such deposit or cash or
134 collateral securities, the deputy director for oil and gas
135 shall immediately deliver the same to the treasurer of the

136 state of West Virginia. The treasurer shall determine whether
137 any such securities satisfy the requirements of this section.
138 If the securities are approved they shall be accepted by the
139 treasurer. If the securities are not approved, they shall be
140 rejected and returned to the operator and no permit shall
141 be issued until a corporate surety bond is filed or cash or
142 proper collateral securities are filed in lieu of such surety.
143 The treasurer shall hold any cash or securities in the name
144 of the state in trust for the purposes for which the deposit
145 was made. The operator shall be entitled to all interest and
146 income earned on the collateral securities filed by such oper-
147 ator so long as the operator is in full compliance with all laws,
148 rules and regulations relating to the drilling, redrilling,
149 deepening, casing, plugging, abandonment and reclamation
150 of wells and for furnishing such reports and information as
151 may be required by the department. The operator making the
152 deposit shall be entitled from time to time to receive from
153 the treasurer, upon the written order of the deputy director
154 for oil and gas, the whole or any portion of such securities
155 upon depositing with the treasurer in lieu thereof cash equal
156 to or greater than the penalty of the bond, in other approved
157 securities of the classes herein specified having a market
158 value equal to or greater than the penalty of the bond, or
159 a corporate surety bond.

160 When an operator has furnished a separate bond from a
161 corporate bonding or surety company to drill, fracture or
162 stimulate an oil or gas well and the well produces oil or
163 gas, or both, its operator may deposit with the deputy director
164 for oil and gas cash from the sale of the oil or gas, or both,
165 until the total deposited is two thousand five hundred dollars.
166 When the sum of the cash deposited is two thousand five
167 hundred dollars, the separate bond for the well shall be
168 released by the department. Upon receipt of such cash, the
169 deputy director for oil and gas shall immediately deliver the
170 same to the treasurer of the state of West Virginia. The
171 treasurer shall hold such cash in the name of the state in
172 trust for the purpose for which the bond was furnished and
173 the deposit was made. The operator shall be entitled to all
174 interest and income which may be earned on the cash de-
175 posited so long as the operator is in full compliance with all

176 laws, rules and regulations relating to the drilling, redrilling,
177 deepening, casing, plugging, abandonment and reclamation of
178 the well for which the cash was deposited and so long as he
179 has furnished all reports and information as may be required
180 by the department. If the cash realized from the sale of oil
181 or gas, or both, from the well is not sufficient for the operator
182 to deposit with the deputy director for oil and gas the sum
183 of two thousand five hundred dollars within one year of the
184 day the well started producing, the corporate or surety com-
185 pany which issued the bond on the well may notify the
186 operator and the department of its intent to terminate its
187 liability under its bond. The operator then shall have thirty
188 days to furnish a new bond from a corporate bonding or
189 surety company or collateral securities, as provided in the
190 next preceding paragraph of this section, with the department.
191 If a new bond or collateral securities are furnished by the
192 operator, the liability of the corporate bonding or surety
193 company under the original bond shall terminate as to any
194 acts and operations of the operator occurring after the effec-
195 tive date of the new bond or the date the collateral securities
196 are accepted by the treasurer of the state of West Virginia.
197 If the operator does not furnish a new bond or collateral
198 securities, as provided in the next preceding paragraph of
199 this section, with the department, he shall immediately plug,
200 fill and reclaim the well in accordance with all of the pro-
201 visions of law, rules and regulations applicable thereto. In
202 such case, the corporate or surety company which issued the
203 original bond shall be liable for any plugging, filling or
204 reclamation not performed in accordance with such laws,
205 rules and regulations.

206 Any such bond shall remain in force until released by the
207 department and the department shall release the same when
208 it is satisfied the conditions thereof have been fully performed.
209 Upon the release of any such bond, any cash or collateral
210 securities deposited shall be returned by the deputy director
211 for oil and gas to the operator who deposited same.

212 If any of the requirements of this article or rules and
213 regulations promulgated pursuant thereto or the orders of
214 the deputy director for oil and gas have not been complied

215 with within the time limit set by the violation notice as
216 defined in sections one-g, one-h and one-i, article four, chapter
217 twenty-two of this code the performance bond shall then
218 be forfeited.

219 When any bond is forfeited pursuant to the provisions of
220 this article or rules and regulations promulgated pursuant
221 thereto the deputy director shall give notice to the attorney
222 general who shall collect the forfeiture without delay.

223 All forfeitures shall be deposited in the treasury of the
224 state of West Virginia in the special reclamation fund as
225 defined in section twelve-a, article four, chapter twenty-two
226 of this code.

§22-4-2a. Notice to coal operators, owners or lessees and department of mines of intention to fracture certain other wells; contents of such notice; permit required.

1 Before fracturing any well the well operator shall, by regis-
2 tered or certified mail, forward a notice of intention to frac-
3 ture such well to the department of mines and to each and
4 every coal operator operating coal seams beneath said tract
5 of land, who has mapped the same and filed his maps with the
6 department in accordance with article two of this chapter,
7 and the coal seam owner and lessee, if any, if said owner of
8 record or lessee of record has recorded the declaration pro-
9 vided in section twenty of this article, and if said owner or
10 lessee is not yet operating said coal seams beneath said tract
11 of land.

12 The notice shall be addressed to the department of mines
13 and to each such coal operator at their respective addresses,
14 shall contain the number of the drilling permit for such
15 well and such other information as may be required by the
16 department to enable the department and the coal operators
17 to locate and identify such well and shall inform them that
18 such notice is being mailed to them, respectively, by registered
19 or certified mail, pursuant to the requirements of this article.
20 (The form for such notice of intention shall be furnished on re-
21 quest by the department of mines.) If no objections are made,
22 or are found by the department, to such proposed fracturing
23 within fifteen days from receipt of such notice by the depart-

24 ment of mines, the same shall be filed and become a permanent
25 record of such fracturing, subject to inspection at any time
26 by any interested person, and the department shall forthwith
27 issue to the well operator a permit reciting the filing of such
28 notice, that no objections have been made by the coal opera-
29 tors, or found thereto by the department, and authorizing
30 the well operator to fracture such well. Unless the depart-
31 ment has objections to such proposed fracturing, such permit
32 shall be issued prior to the expiration of such fifteen-day period
33 upon the obtaining by the well operator of the consent in
34 writing of the coal operator or operators, owners or lessees,
35 if any, to whom notice of intention to fracture shall have been
36 mailed as herein required, and upon presentation of such
37 written consent to the department. The notice above provided
38 for may be given to the coal operator by delivering or mailing
39 it by registered or certified mail as above to any agent or
40 superintendent in actual charge of mines.

§22-4-2b. Plats prerequisite to introducing liquids or waste into wells; preparation and contents; notice and information furnished to coal operators, owners or lessees and chief of water resources; issuance of permits; performance bonds or security in lieu thereof.

1 Before drilling a well for the introduction of liquids for the
2 purposes provided for in section ten-a of this article or for the
3 introduction of liquids for the disposal of sewage, industrial
4 waste or other waste or the effluent therefrom on any tract
5 of land, or before converting an existing well for such purposes,
6 the well operator shall have a plat prepared by a registered
7 engineer or licensed land surveyor showing the district and
8 county in which the tract of land is located, the name and
9 acreage of the same, the names of the owners of all adjacent
10 tracts, the proposed or actual location of the well or wells
11 determined by a survey, the courses and distances of such
12 location from two permanent points of land marked on said
13 tract and the number to be given to the well, and shall for-
14 ward by registered or certified mail the original and one copy
15 of the plat to the department of mines. In addition, the well
16 operator shall provide the following information on the plat or
17 by way of attachment thereto to the department in the manner

18 and form prescribed by the department's rules and regulations:
19 (a) The location of all wells, abandoned or otherwise located
20 within the area to be affected; (b) where available, the casing
21 records of all such wells; (c) where available, the drilling log
22 of all such wells; (d) the maximum pressure to be introduced;
23 (e) the geological formation into which such liquid or pressure
24 is to be introduced; (f) a general description of the liquids to
25 be introduced; (g) the location of all water-bearing horizons
26 above and below the geological formation into which such
27 pressure, liquid or waste is to be introduced; and (h) such
28 other information as the deputy director by rule and regula-
29 tion may require.

30 In the event the tract of land on which said well proposed
31 to be drilled or converted for the purposes provided for in this
32 section is located is known to be underlaid with coal seams,
33 copies of the plat and all information required by this section
34 shall be forwarded by the operator by registered or certified
35 mail to each and every coal operator operating coal seams be-
36 neath said tract of land, who has mapped the same and filed
37 his maps with the department in accordance with article two
38 of this chapter, and the coal seam owner of record and lessee
39 of record, if any, if said owner or lessee has recorded the de-
40 claration provided in section twenty of this article, and if said
41 owner or lessee is not yet operating said seams beneath said
42 tract of land. With each of such plats, there shall be enclosed a
43 notice (form for which shall be furnished on request by the
44 department of mines) addressed to the department of mines
45 and to each such coal operator, owner or lessee, if any, at
46 their respective addresses, informing them that such plat and
47 notice are being mailed to them, respectively, by registered or
48 certified mail, pursuant to the requirements of this section. The
49 deputy director shall forward a copy of the plat, notice and all
50 other information required by this section to the chief of the
51 division of water resources of the department of natural re-
52 sources.

53 If no objections are made by any such coal operator, owner,
54 lessee or such chief, or are found by the department to such
55 proposed drilling or converting of the well or wells for the
56 purposes provided for in this section within thirty days from

57 the receipt of such plat and notice by the department of mines,
58 the same shall be filed and become a permanent record of such
59 location or well, subject to inspection at any time by any
60 interested person, and the department shall forthwith issue to
61 the well operator a permit reciting the filing of such plat and
62 notice, that no objections have been made by the coal opera-
63 tors, owners and lessees, if any, or found thereto by the de-
64 partment of mines or by the chief, and authorizing the well
65 operator to drill at such location or convert such existing well
66 or wells for the purposes provided for in this section. Such
67 permit shall be issued prior to the expiration of such thirty-
68 day period upon the obtaining by the well operator, of the
69 consent in writing of the coal operator, owners and lessees,
70 if any, to whom copies of the plat and notice must have been
71 mailed as herein required and upon obtaining the consent in
72 writing of the chief, and upon presentation of such written
73 consent in writing of the chief, and upon presentation of such
74 written consent to the department. The notice above provided
75 for may be given to the coal operator by delivering or mailing
76 it by registered or certified mail as above to any agent or sup-
77 ^{ok} ^{ms} ¹⁰ ~~erintendent~~ in actual charge of the mines.

78 A permit to drill a well or wells or convert an existing well or
79 wells for the purposes provided for in this section shall not be
80 issued until all of the bonding provisions required by the pro-
81 visions of section two of this article have been fully complied
82 with and all such bonding provisions shall apply to all wells
83 drilled or converted for the purposes provided for in this section
84 as if such wells had been drilled for the purposes provided for
85 in section two of this article, except that such bonds shall be
86 conditioned upon full compliance with all laws, rules, and
87 regulations relating to the drilling of a well or the converting
88 of an existing well for the purposes provided for in said section
89 ten-a, or introducing of liquids for the disposal of sewage, in-
90 dustrial waste or other waste or the effluent therefrom includ-
91 ing the redrilling, deepening, casing, plugging or abandonment
92 of all such wells.

§22-4-3. Objections to proposed drilling of deep wells and oil wells; objections to fracturing; notices and hearings; agreed location or conditions; indication of changes on plats, etc.; issuance of permits.

1 When a proposed deep well drilling site or oil well drilling
2 site or any fracturing site is above a seam or seams of coal,
3 then the coal operator operating said coal seams beneath the
4 tract of land, or the coal seam owner or lessee, if any, if said
5 owner or lessee is not yet operating said coal seams, may
6 within fifteen days from the receipt by the department of the
7 plat and notice required by section two of this article, or with-
8 in fifteen days from the receipt by the department of notice
9 required by section two-a of this article, file objections in
10 writing (forms for which will be furnished by the department
11 on request) to such proposed drilling or fracturing with the
12 department, setting out therein as definitely as is reasonably
13 possible the ground or grounds on which such objections are
14 based.

15 If any objection is filed, or if any objection is made by the
16 department, the department shall notify the well operator of
17 the character of the objections and by whom made and fix a
18 time and place, not less than fifteen days from the end of said
19 fifteen-day period, at which such objections will be considered
20 of which time and place the well operator and all objecting
21 coal operators, owners or lessees, if any, shall be given at
22 least ten days' written notice by the department, by registered
23 or certified mail, and summoned to appear. At the time and
24 place so fixed the well operator and the objecting coal opera-
25 tors, owners or lessees, if any, or such of them as are present
26 or represented, shall proceed to consider the objections. In the
27 case of proposed drilling, such parties present or represented
28 may agree upon either the location as made or so moved as to
29 satisfy all objections and meet the approval of the department,
30 and any change in the original location so agreed upon and
31 approved by the department shall be indicated on said plat on
32 file with the department, and the distance and direction of
33 the new location from the original location shall be shown,
34 and as so altered, the plat shall be filed and become a perma-
35 nent record, and in the case of proposed fracturing, such par-

36 ties present or represented may agree upon conditions under
37 which the well is to be fractured which will protect life and
38 property and which will satisfy all objections and meet the
39 approval of the department, at which time the plat and notice
40 required by section two or the notice required by section two-a
41 as the case may be, shall be filed and become a permanent
42 record. Whereupon the department shall forthwith issue to
43 the well operator a drilling or fracturing permit, as the case
44 may be, reciting the filing of the plat and notice required by
45 said section two, or the notice required by said section two-a,
46 as the case may be, that at a hearing duly held a location as
47 shown on the plat or the conditions under which the fractur-
48 ing is to take place for the protection of life and property were
49 agreed upon and approved, and that the well operator is
50 authorized to drill at such location or to fracture at the site
51 shown on such plat, or to fracture the well identified in the
52 notice required by section two-a, as the case may be.

53 (a) In the event the well operator and the objecting coal
54 operators, owners or lessees, if any, or such as are present or
55 represented at such hearing are unable to agree upon a drill-
56 ing location, or upon a drilling location that meets the approv-
57 al of the department of mines, then the department shall pro-
58 ceed to hear the evidence and testimony in accordance with
59 sections one and two, article five, chapter twenty-nine-a of
60 this code, except where such provisions are inconsistent with
61 this article. The department shall take into consideration in
62 arriving at its decision:

63 (1) Whether the drilling location is above or in close
64 proximity to any mine opening or shaft, entry, travelway, air-
65 way, haulageway, drainageway or passageway, or to any pro-
66 posed extension thereof, in any operated or abandoned or
67 operating coal mine, or coal mines already surveyed and
68 platted, but not yet being operated;

69 (2) Whether the proposed drilling can reasonably be done
70 through an existing or planned pillar of coal, or in close prox-
71 imity to an existing well or such pillar of coal, taking into
72 consideration the surface topography;

73 (3) Whether a well can be drilled safely, taking into consid-

74 eration the dangers from creeps, squeezes or other distur-
75 bances due to the extraction of coal; and

76 (4) The extent to which the proposed drilling location
77 unreasonably interferes with the safe recovery of coal, oil and
78 gas.

79 At the close of the hearing or within ten days thereafter the
80 department shall issue an order stating:

81 (1) That it refuses to issue a permit;

82 (2) That it will issue a permit for the proposed drilling lo-
83 cation;

84 (3) That it will issue a permit for a drilling location differ-
85 ent than that requested by the well operator.

86 The order shall state with particularity the reasons for the
87 department's order and shall be mailed by registered or certi-
88 fied mail to the parties present or represented at such hearing.
89 If the department has ruled that it will issue a permit, it shall
90 issue a permit effective ten days after it has mailed such
91 order, except that for good cause shown, the department may
92 stay the issuance of a permit for a period not to exceed thirty
93 days.

94 If a permit is issued, the department shall indicate the new
95 drilling location on the plat on file and shall number and keep
96 an index of and docket each plat and notice mailed to it as
97 provided in section two of this article, and each notice mailed
98 to it as provided in section two-a of this article, entering in
99 such docket the name of the well operator, and the names and
100 addresses of all persons notified, the dates of hearings and all
101 actions taken by the department. The department shall also
102 prepare a record of the proceedings, which record shall include
103 all applications, plats and other documents filed with the de-
104 partment, all notices given and proof of service thereof, all
105 orders issued, all permits issued and a transcript of the hear-
106 ing. The record prepared by the department shall be open
107 to inspection by the public.

108 (b) In the event the well operator and the objecting coal
109 operators, owners or lessees, if any, or such as are present or

110 represented at such hearing, are unable to agree upon the
111 conditions under which the well is to be fractured as to protect
112 life and property, or upon conditions of fracturing that meet
113 with the approval of the department, then the department shall
114 proceed to hear the evidence and testimony in accordance with
115 sections one and two, article five, chapter twenty-nine-a of this
116 code, except where such provisions are inconsistent with this
117 article.

118 The department shall take into consideration upon its de-
119 cision whether the well can be fractured safely, taking into
120 consideration the dangers from creeps, squeezes or other
121 disturbances.

122 At the close of the hearing, or within ten days thereafter, the
123 department shall issue an order stating the conditions under
124 which the well is to be fractured, provided the well can be
125 fractured safely, taking into consideration the dangers from
126 creeps, squeezes or other disturbances. If such fracturing can-
127 not be done safely, the department shall issue an order stating
128 with particularity the reasons for refusing to issue a permit.

129 The order shall state with particularity the reasons for the
130 department's order and shall be mailed by registered or certi-
131 fied mail to the parties present or represented at such hearing.
132 If the department has ruled that it will issue a permit, it shall
133 issue a permit effective ten days after it has mailed such
134 order, except that for good cause shown, the department may
135 stay the issuance of a permit for a period not to exceed thirty
136 days.

137 If a permit is issued, the department shall indicate the well
138 to be fractured on the plat on file and shall number and keep
139 an index of and docket each plat and notice mailed to it as
140 provided in section two of this article, and each notice mailed
141 to it as provided in section two-a of this article, entering in
142 such docket the name of the well operator, the names and
143 addresses of all persons notified, the dates of hearings and all
144 actions taken by the department. The department shall also
145 prepare a record of the proceedings, which record shall in-
146 clude all applications, plats and other documents filed with
147 the department, all notices given and proof of service thereof,

148 all orders issued, all permits issued and a transcript of the
149 hearing. The record prepared by the department shall be open
150 to inspection by the public.

**§22-4-3b. Objections to proposed drilling of shallow gas wells;
notice to chairman of review board; indication of
changes on plats; issuance of permits.**

1 When a proposed shallow well drilling site is above a seam
2 or seams of coal, then the owner of any such coal seam may,
3 within fifteen days from the receipt by the department of
4 the plat and notice required by section two of this article,
5 file objections in writing (forms for which will be furnished
6 by the department on request) to such proposed drilling
7 with the department, setting out therein as definitely as is
8 reasonably possible the ground or grounds on which such
9 objections are based.

10 If any such objection is filed, or if any objection is made
11 by the department, the deputy director shall forthwith mail,
12 by registered or certified mail, to the chairman of the review
13 board, a notice that an objection to the proposed drilling
14 or deepening of a shallow well has been filed with the
15 department, and shall enclose in such notice a copy of all
16 objections filed with or made by the department and a copy
17 of the application and plat filed with the department in ac-
18 cordance with the provisions of section two of this article.

19 Thereafter, no further action shall be taken on such appli-
20 cation by the department until the department receives an
21 order from the review board directing the department to:

22 (1) Refuse a drilling permit; or

23 (2) Issue a drilling permit for the proposed drilling loca-
24 tion; or

25 (3) Issue a drilling permit for an alternate drilling loca-
26 tion different than that requested by the well operator; or

27 (4) Issue a drilling permit either for the proposed drilling
28 location or for an alternate drilling location different than
29 that requested by the well operator, but not allow the drilling

30 of the well for a period of not more than one year from the
31 date of issuance of such permit.

32 Upon receipt of such order, the department shall promptly
33 undertake the action directed by the review board, except that
34 the department shall not issue a drilling permit unless all
35 other provisions of this article (except section three) pertaining
36 to the application for and approval of a drilling permit have
37 been complied with. All permits issued by the department
38 pursuant to this section shall be effective ten days after
39 issuance unless the review board orders the department to
40 stay the effectiveness of a permit for a period not to exceed
41 thirty days from the date of issuance.

42 If a permit is issued, the department shall indicate the
43 approved drilling location on the plat filed with the department
44 in accordance with the provisions of section two of this article
45 and shall number and keep an index of and docket each
46 plat and notice mailed to it as provided in section two of
47 this article, and each notice mailed to it as provided in
48 section two-a of this article, entering in such docket the
49 name of the well operator, and the names and addresses of all
50 persons notified, the dates of conferences, hearings and all
51 other actions taken by the department and the review board.
52 The department shall also prepare a record of the proceed-
53 ings, which record shall include all applications, plats and
54 other documents filed with the department, all notices given
55 and proof of service thereof, all orders issued, all permits
56 issued and a transcript of the hearing. The record prepared
57 by the department shall be open to inspection by the public.

§22-4-3c. Applicability.

1 The provisions of this act affecting applications for per-
2 mits to drill shallow gas wells shall only apply to such applica-
3 tions filed after 12:01 a.m., August first, one thousand nine
4 hundred seventy-eight, and the provisions of this article
5 affecting such applications which were in effect immediately
6 prior to the effective date of this act shall apply to all such
7 applications filed prior to 12:01 a.m., August first, one
8 thousand nine hundred seventy-eight, with like effect as if
9 this act had not been enacted.

§22-4-4. Appeal from order of issuance or refusal of permit to drill or fracture; procedure.

1 Any party to proceedings under section three or section
2 three-b of this article or section seven, article four-b of this
3 chapter, adversely affected by the issuance of a drilling permit,
4 or to the issuance of a fracturing permit or the refusal of the
5 department to grant a drilling permit or fracturing permit,
6 is entitled to judicial review thereof. All of the pertinent
7 provisions of section four, article five, chapter twenty-nine-a
8 of this code shall apply to and govern such judicial review
9 with like effect as if the provisions of said section four were
10 set forth in extenso in this section.

11 The judgment of the circuit court shall be final unless
12 reversed, vacated or modified on appeal to the supreme court
13 of appeals in accordance with the provisions of section one,
14 article six, chapter twenty-nine-a of this code.

§22-4-5. Protective devices—When well penetrates workable coal bed.

1 When a well penetrates one or more workable coal beds,
2 the well operator shall run and cement a string of casing in
3 the hole through the workable coal bed or beds in such a
4 manner as will exclude all oil, gas or gas pressure from the
5 coal bed or beds, except such oil, gas or gas pressure as may
6 be found in such coal bed or beds. Such string of casing shall
7 be run to a point at least thirty feet below the lowest workable
8 coal bed which the well penetrates and shall be circulated
9 and cemented from such point to the surface in such a
10 manner as provided for in reasonable rules and regulations
11 promulgated by the director of the department in accordance
12 with the provisions of chapter twenty-nine-a. After any such
13 string of casing has been so run and cemented to the surface,
14 drilling may proceed to the permitted depth.

§22-4-9. Plugging, abandonment and reclamation of well; notice of intention; performance bonds or securities in lieu thereof; affidavit showing time and manner.

1 All dry or abandoned wells or wells presumed to be
2 abandoned under the provisions of section seven of this article

3 shall be plugged and reclaimed in accordance with this section
4 and the other provisions of this article and in accordance with
5 the rules and regulations promulgated by the deputy director.

6 Prior to the commencement of plugging operations and the
7 abandonment of any well, the well operator shall either (a)
8 notify, by registered or certified mail, the department of
9 mines and the coal operator operating coal seams, the coal
10 seam owner of record or lessee of record, if any, to whom
11 notices are required to be given by section two of this article,
12 and the coal operators to whom notices are required to be
13 given by section two-a of this article, of its intention to plug
14 and abandon any such well (using such form of notice as the
15 department may provide), giving the number of the well and
16 its location and fixing the time at which the work of plugging
17 and filling will be commenced, which time shall be not less
18 than five days after the day on which such notice so mailed
19 is received or in due course should be received by the depart-
20 ment of mines, in order that a representative or representatives
21 of the department and such coal operator, owner or lessee,
22 if any, may be present at the plugging and filling of the well:
23 *Provided*, That whether such representatives appear or do
24 not appear, the well operator may proceed at the time fixed
25 to plug and fill the well in the manner hereinafter described,
26 or (b) first obtain the written approval of the department of
27 mines and such coal operator, owner or lessee, if any, or
28 (c) in the event the well to be plugged and abandoned is
29 one on which drilling or reworking operations have been
30 continuously progressing pursuant to authorization granted
31 by the department, first obtain the verbal permission of the
32 deputy director for oil and gas or his designated representative
33 to plug and abandon such well, except that the well operator
34 shall, within a reasonable period not to exceed five days
35 after the commencement of such plugging operations, give the
36 written notices required by subdivision (a) above.

37 No well shall be plugged or abandoned unless prior to the
38 commencement of plugging operations and the abandonment
39 of any well the department is furnished a bond of the operator
40 in the sum of two thousand five hundred dollars, payable to
41 the state of West Virginia, with a corporate bonding or

42 surety company authorized to do business in this state as
43 surety thereon, conditioned on full compliance with all laws,
44 rules and regulations relating to the casing, plugging, abandon-
45 ment and reclamation of wells and for furnishing such reports
46 and information as may be required by the department. When
47 a number of wells are involved, the operator may in lieu of
48 furnishing a separate bond furnish a blanket bond in the
49 sum of fifteen thousand dollars, payable to the state of
50 West Virginia, with a corporate bonding or surety company
51 authorized to do business in this state as surety thereon, and
52 conditioned as aforesaid. In lieu of corporate surety on a
53 separate or blanket bond, as the case may be, the operator
54 may elect to deposit with the deputy director for oil and
55 gas cash or collateral securities as specified in section two
56 of this article. All of the provisions of section two dealing
57 with cash or collateral securities in lieu of corporate surety
58 shall be fully applicable hereto except for the condition of
59 the bond with respect to which the operator must be in full
60 compliance in order to be entitled to the interest and income
61 earned on such securities. The operator shall be entitled to
62 such interest and income under this section so long as the
63 operator is in full compliance with all laws, rules and regula-
64 tions relating to the casing, plugging, abandonment and
65 reclamation of wells and for furnishing such reports and
66 information as may be required by the department. Any
67 such bond shall remain in force until released by the depart-
68 ment and the department shall release the same when it is
69 satisfied the conditions thereof have been fully performed.
70 Notwithstanding the foregoing provisions, any operator who,
71 in accordance with section two of this article, has furnished
72 a separate bond, which has not been released by the de-
73 partment, for the drilling, converting or drilling for the
74 introduction of liquids, for the disposal of sewage, industrial
75 waste or other waste or the effluent therefrom, or introducing
76 pressure, whether liquid or gas, or introducing liquid for the
77 purposes provided for in section ten-a of this article or
78 fracturing of the well it is now proposed be plugged and
79 abandoned, or who, in accordance with the provisions of said
80 section two of this article, has furnished a blanket bond which
81 has not been released by the department shall not be required

82 by this section to furnish any other bond. When the plugging,
83 filling and reclamation of a well have been completed, an
84 affidavit, in triplicate, shall be made (on a form to be fur-
85 nished by the department) by two experienced men who
86 participated in the work, the deputy director for oil and gas
87 or his designated representative, in which affidavit shall be
88 set forth the time and manner in which the well was plugged
89 and filled and the land reclaimed. One copy of this affidavit
90 shall be retained by the well operator, another (or true copies
91 of same) shall be mailed to the coal operator or operators,
92 if any, and the third to the department of mines.

§22-4-10. Methods of plugging well.

1 Upon the abandonment or cessation of the operation of any
2 well drilled for natural gas or petroleum, or drilled or con-
3 verted for the introduction of pressure, whether liquid or gas,
4 or for the introduction of liquid for the purposes provided for
5 in section ten-a of this article or for the disposal of sewage,
6 industrial waste or other waste or the effluent therefrom the
7 well operator, at the time of such abandonment or cessation,
8 shall fill and plug the well in the following manner:

9 (a) Where the well does not penetrate workable coal beds,
10 it shall either be filled with mud, clay or other nonporous ma-
11 terial from the bottom of the well to a point twenty feet above
12 the top of its lowest oil, gas or water-bearing stratum; or a
13 permanent bridge shall be anchored thirty feet below its lowest
14 oil, gas or water-bearing stratum, and from such bridge it
15 shall be filled with mud, clay or other nonporous material to
16 a point twenty feet above such stratum; at this point there
17 shall be placed a plug of cement or other suitable material
18 which will completely seal the hole. Between this sealing plug
19 and a point twenty feet above the next higher oil, gas or
20 water-bearing stratum, the hole shall be filled, in the man-
21 ner just described; and at such point there shall be placed
22 another plug of cement or other suitable material which
23 will completely seal the hole. In like manner the hole
24 shall be filled and plugged, with reference to each of its
25 oil, gas or water-bearing strata. However, whenever such
26 strata are not widely separated and are free from water,
27 they may be grouped and treated as a single sand, gas or

28 petroleum horizon, and the aforesaid filling and plugging
29 be performed as though there were but one horizon. After
30 the plugging of all oil, gas or water-bearing strata, as afore-
31 said, a final cement plug shall be placed approximately
32 ten feet below the bottom of the largest casing in the well;
33 from this point to the surface the well shall be filled with
34 mud, clay or other nonporous material. In case any of the oil
35 or gas-bearing strata in a well shall have been shot, thereby
36 creating cavities which cannot readily be filled in the manner
37 above described, the well operator shall follow either of the
38 following methods:

39 (1) Should the stratum which has been shot be the lowest
40 one in the well, there shall be placed, at the nearest suitable
41 point, but not less than twenty feet above the stratum, a plug
42 of cement or other suitable material which will completely
43 seal the hole. In the event, however, that the shooting has
44 been done above one or more oil or gas-bearing strata in the
45 well, plugging in the manner specified shall be done at the
46 nearest suitable point, but not less than twenty feet below and
47 above the stratum shot, or (2), when such cavity shall be in
48 the lowest oil or gas-bearing stratum in the well, a liner shall
49 be placed which shall extend from below the stratum to a
50 suitable point, but not less than twenty feet above the stratum
51 in which shooting has been done. In the event, however, that
52 the shooting has been done above one or more oil or gas-bear-
53 ing strata in the well, the liner shall be so placed that it will
54 extend not less than twenty feet above, nor less than twenty
55 feet below, the stratum in which shooting has been done. Fol-
56 lowing the placing of the liner in the manner here specified it
57 shall be compactly filled with cement, mud, clay or other
58 nonporous sealing material;

59 (b) Where the well penetrates one or more workable coal
60 beds and a coal protection string of casing has been circulated
61 and cemented in to the surface, the well shall be filled and
62 securely plugged in the manner provided in subsection (a) of
63 this section, except that expanding cement shall be used in-
64 stead of regular hydraulic cement, to a point approximately
65 one hundred feet below the bottom of the coal protection
66 string of casing. A one hundred foot plug of expanding cement

67 shall then be placed in the well so that the top of such plug is
68 located at a point just below the coal protection string of cas-
69 ing. After such plug has been securely placed in the well,
70 the coal protection string of casing shall be emptied of liquid
71 from the surface to a point one hundred feet below the lowest
72 workable coal bed or to the bottom of the coal protection
73 string of casing, whichever is shallower. A vent or other device
74 approved by the department shall then be installed on the top
75 of the coal protection string of casing in such a manner that
76 will prevent liquids and solids from entering the well but will
77 permit ready access to the full internal diameter of the coal
78 protection string of casing when required. The coal protection
79 string of casing and the vent or other device approved by the
80 department shall extend, when finally in place, a distance of no
81 less than thirty inches above ground level and shall be perma-
82 nently marked with the well number assigned by the depart-
83 ment.

84 (c) Where the well penetrates one or more workable coal
85 beds and a coal protection string of casing has not been cir-
86 culated and cemented in to the surface, the well shall be
87 filled and securely plugged in the manner provided in subsec-
88 tion (a) of this section to a point fifty feet below the lowest
89 workable coal bed. Thereafter, a plug of cement shall be
90 placed in the well at a point not less than forty feet below the
91 lowest workable coal bed. After the cement plug has been
92 securely placed in the well, the well shall be filled with cement
93 to a point twenty feet above the lowest workable coal bed.
94 From this point the well shall be filled with mud, clay or other
95 nonporous material to a point forty feet beneath the next
96 overlying workable coal bed, if such there be, and the well
97 shall then be filled with cement from this point to a point
98 twenty feet above such workable coal bed, and similarly, in
99 case there are more overlying workable coal beds. After the
100 filling and plugging of the well to a point above the highest
101 workable coal bed, filling and plugging of the well shall con-
102 tinue in the manner provided in subsection (a) of this section
103 to a point fifty feet below the surface, and a plug of cement
104 shall be installed from the point fifty feet below the surface to
105 the surface with a monument installed therein extending
106 thirty inches above ground level.

107 (d) (1) Where the well penetrates one or more workable
108 coal beds and a coal protection string of casing has not been
109 circulated and cemented in to the surface, a coal operator or
110 coal seam owner may request that the well be plugged in the
111 manner provided in subdivision (3) of this subsection rather
112 than by the method provided in subsection (c) of this section.
113 Such request (forms for which shall be provided by the de-
114 partment) must be filed in writing with the department prior
115 to the scheduled plugging of the well, and must include the
116 number of the well to be plugged and the name and address
117 of the well operator. At the time such request is filed with the
118 department, a copy of such request must also be mailed by
119 registered or certified mail to the well operator named in the
120 request.

121 (2) Upon receipt of such request, the department shall
122 issue an order staying the plugging of the well and shall prompt-
123 ly determine the cost of plugging the well in the manner pro-
124 vided in subdivision (3) of this subsection and the cost of
125 plugging the well in the manner provided in subsection (c) of
126 this section. In making such determination, the department
127 shall take into consideration any agreement previously made
128 between the well operator and the coal operator or coal seam
129 owner making the request. If the department determines that
130 the cost of plugging the well in the manner provided in sub-
131 section (c) of this section exceeds the cost of plugging the well
132 in the manner provided in subdivision (3) of this subsection,
133 the department shall grant the request of the coal operator
134 or owner and shall issue an order requiring the well operator to
135 plug the well in the manner provided in subdivision (3) of this
136 subsection. If the department determines that the cost of
137 plugging the well in the manner provided in subsection (c)
138 of this section is less than the cost of plugging the well in the
139 manner provided in subdivision (3) of this subsection, the
140 department shall request payment into escrow of the differ-
141 ence between the determined costs by the coal operator or
142 coal seam owner making the request. Upon receipt of satis-
143 factory notice of such payment, or upon receipt of notice that
144 the well operator has waived such payment, the department
145 shall grant the request of the coal operator or coal seam owner
146 and shall issue an order requiring the well operator to plug the

147 well in the manner provided in subdivision (3) of this sub-
148 section. If satisfactory notice of payment into escrow, or
149 notice that the well operator has waived such payment, is not
150 received by the department within fifteen days after the re-
151 quest for payment into escrow, the department shall issue an
152 order permitting the plugging of the well in the manner pro-
153 vided in subsection (c) of this section. Copies of all orders
154 issued by the department shall be sent by registered or certi-
155 fied mail to the coal operator or coal seam owner making the
156 request and to the well operator. When the escrow agent has
157 received certification from the department of the satisfactory
158 completion of the plugging work and the reimbursable extra
159 cost thereof (that is, the difference between the department's
160 determination of plugging cost in the manner provided in sub-
161 section (c) of this section and the well operator's actual
162 plugging cost in the manner provided in subsection (3) of this
163 subsection), he shall pay the reimbursable sum to the well
164 operator or his nominee from the payment into escrow to the
165 extent available. The amount by which the payment into
166 escrow exceeds the reimbursable sum plus the escrow agent's
167 fee, if any, shall be repaid to the coal owner. If the amount
168 paid to the well operator or his nominee is less than the actual
169 reimbursable sum, the escrow agent shall inform the coal
170 owner, who shall pay the deficiency to the well operator or
171 his nominee within thirty days. If the coal operator breaches
172 this duty to pay the deficiency, the well operator shall have a
173 right of action and be entitled to recover damages as if for
174 wrongful conversion of personality, and his reasonable attor-
175 ney fees.

176 (3) Where a request of a coal operator or coal seam owner
177 filed pursuant to subdivision (1) of this subsection has been
178 granted by the department, the well shall be plugged in the
179 manner provided in subsection (a) of this section, except that
180 expanding cement shall be used instead of regular hydraulic
181 cement, to a point approximately two hundred feet below the
182 lowest workable coal bed. A one hundred foot plug of ex-
183 panding cement shall then be placed in the well beginning at
184 the point approximately two hundred feet below the lowest
185 workable coal bed and extending to a point approximately
186 one hundred feet below the lowest workable coal bed. A string

187 of casing with an outside diameter no less than four and one
188 half inches shall then be run into the well to a point approxi-
189 mately one hundred feet below the lowest workable coal bed
190 and such string of casing shall be circulated and cemented in
191 to the surface. The casing shall then be emptied of liquid from
192 a point approximately one hundred feet below the lowest work-
193 able coal bed to the surface, and a vent or other device ap-
194 proved by the department shall be installed on the top of the
195 string of casing in such a manner that it will prevent liquids and
196 solids from entering the well but will permit ready access to
197 the full internal diameter of the coal protection string of cas-
198 ing when required. The string of casing and the vent or other
199 device approved by the department shall extend, when finally
200 in place, a distance of no less than thirty inches above ground
201 level and shall be permanently marked with the well number
202 assigned by the department. Notwithstanding the foregoing
203 provisions of this subdivision, if under particular circum-
204 stances a different method of plugging is required to obtain the
205 approval of another governmental agency for the safe mining
206 through of said well, the department may approve such dif-
207 ferent method of plugging if it finds the same to be as safe
208 for mining through and otherwise adequate to prevent gas or
209 other fluid migration from the oil and gas reservoirs as the
210 method above specified.

211 (e) Any person may apply to the department for an order to
212 clean out and replug a previously plugged well in a manner
213 which will permit the safe mining through of such well. Such
214 application shall be filed with the department and shall con-
215 tain the well number, a general description of the well loca-
216 tion, the name and address of the owner of the surface land
217 upon which the well is located, a copy of or record reference
218 to a deed, lease or other document which entitles the applicant
219 to enter upon the surface land, a description of the method by
220 which the well was previously plugged, and a description of
221 the method by which such applicant proposes to clean out
222 and replug the well. At the time an application is filed with
223 the department, a copy shall be mailed by registered or certi-
224 fied mail to the owner or owners of the land, and the oil and
225 gas lessee of record, if any, of the site land upon which the
226 well is located. If no objection to the replugging of the well is

227 filed by any such landowner or oil and gas lessee within thirty
228 days after the filing of the application, and if the department
229 determines that the method proposed for replugging the well
230 will permit the safe mining through of such well, the depart-
231 ment shall grant the application by an order authorizing the
232 replugging of the well. Such order shall specify the method by
233 which the well shall be replugged, and copies thereof shall be
234 mailed by certified or registered mail to the applicant and to
235 the owner or owners of the land, and the oil and gas lessee, if
236 any, of the site upon which such well is located. If any such
237 landowner or oil and gas lessee objects to the replugging of
238 the well, the department shall notify the applicant of such
239 objection. Thereafter, the department shall schedule a hearing
240 to consider the objection, which hearing shall be held after
241 notice by registered or certified mail to the objectors and the
242 applicant. After consideration of the evidence presented at the
243 hearing, the department shall issue an order authorizing the
244 replugging of the well if it determines that replugging of the
245 well will permit the safe mining through of such well. Such
246 order shall specify the manner in which the well shall be re-
247 plugged and copies thereof shall be sent by registered or certi-
248 fied mail to the applicant and objectors. The department shall
249 issue an order rejecting the application if it determines that
250 the proposed method for replugging the well will not permit the
251 safe mining through of such well.

252 (f) All persons adversely affected by a determination or
253 order of the department issued pursuant to the provisions of
254 this section shall be entitled to judicial review thereof in ac-
255 cordance with the provisions of articles five and six, chapter
256 twenty-nine-a of this code.

**§22-4-11. When coal operator to file maps and plans as pre-
requisite to extension of coal operations; petition for
leave to conduct operations within two hundred feet
of well or to mine through a well; proceedings
thereon.**

1 Hereafter, before removing any coal or other material, or
2 driving any entry or passageway within less than five hundred
3 feet of any well, and also before extending the workings in
4 any coal mine beneath any tract of land on which wells are

5 already drilled, or within five hundred feet of any well, or
6 under any tract of land in visible possession by a well opera-
7 tor for the purpose of drilling for oil or gas, the coal operator
8 shall forward, by registered mail, to, or file a copy of the
9 parts of its maps and plans which it is required by law to
10 prepare and file and bring to date, from time to time, showing
11 its mine workings and projected mine workings beneath such
12 tract of land and within five hundred feet of the outer bound-
13 aries thereof, simultaneously, with the well operator and the
14 department of mines, accompanying each of said copies with
15 a notice (form of which shall be furnished on request by
16 the department of mines), addressed to the well operator
17 and to the department of mines at their respective addresses,
18 informing them that such plans or maps and notice are being
19 mailed by registered mail to them, or are being filed and
20 served upon them, respectively, pursuant to the requirements
21 of this section. Following the filing of such parts of said
22 plans or maps as aforesaid, the coal operator may proceed with
23 its mining operations in the manner and as projected on such
24 plans or maps, but shall not remove any coal or other material
25 or cut any passageway nearer than two hundred feet of any
26 completed well, or well that is being drilled, or for the purpose
27 of drilling which a derrick is being constructed, without the
28 consent of the department of mines, and the coal operator
29 shall, at least every six months, bring such plans or maps so
30 filed with the department to date, or file new plans and maps
31 complete to date.

32 Application may be made at any time to the department
33 of mines by the coal operator for leave to mine or remove
34 coal or conduct its mining operations within two hundred
35 feet of any well or to mine through any well, by petition, duly
36 verified, showing the location of the well, the workings
37 adjacent to the well and any other material facts, and what
38 further mining operations within two hundred feet of the
39 well or through such well are contemplated, and praying the
40 approval of the same by the department, and naming the
41 well operator as a respondent. The coal operator shall file
42 such petition with, or mail the same by registered mail to,
43 the department and shall at the same time serve upon or
44 mail by registered mail a true copy to the well operator. The

45 department of mines shall, forthwith upon receipt of such
46 copy, notify the well operator that it may answer the petition
47 within five days, and that in default of an answer the depart-
48 ment may approve the proposed operations as requested,
49 if it be shown by the petitioner or otherwise to the satisfaction
50 of the department that such operations are in accordance
51 with law and with the provisions of this article. At the
52 expiration of such five-day period, the department, whether
53 an answer be filed or not filed, shall fix a time and place of
54 hearing within ten days, of which it shall give the coal oper-
55 ator and the well operator five days' written notice by regis-
56 tered mail, and after a full hearing, at which the well operator
57 and coal operator, as well as the department of mines, shall
58 be permitted to offer any competent and relevant evidence,
59 the department shall grant the request of the coal operator
60 or refuse to grant the same, or make such other decision
61 with respect to such proposed further operations in the vicinity
62 of any such well as in its judgment is just and reasonable under
63 all the circumstances and in accordance with law and the pro-
64 visions of this article: *Provided*, That a grant by the depart-
65 ment of a request to mine through a well shall require an
66 acceptable test to be conducted by the coal operator establish-
67 ing that such mining through can be done safely. The de-
68 partment of mines shall docket and keep a record of all
69 such proceedings substantially as required in the last para-
70 graph of section three of this article, and from any such final
71 decision or order of the department of mines, either the well
72 operator or coal operator, or both, may, within ten days,
73 appeal to the circuit court of the county in which the well
74 about which approval of such further operations is involved
75 is located. The procedure in the circuit court shall be sub-
76 stantially as provided in section four, the department being
77 named as a respondent. From any final order or decree of
78 the circuit court, an appeal may be taken to the supreme court
79 of appeals as heretofore provided.

ARTICLE 4B. SHALLOW GAS WELL REVIEW BOARD.

§22-4B-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) Insure the safe recovery of coal and gas;

4 (2) Foster, encourage and promote the fullest practical
5 exploration, development, production, recovery and utilization
6 of this state's coal and gas, where both are produced from
7 beneath the same surface lands, by establishing procedures,
8 including procedures for the establishment of drilling units,
9 for the location of shallow gas wells without substantially
10 affecting the right of the gas operator proposing to drill a
11 shallow gas well to explore for and produce gas; and

12 (3) Safeguard, protect and enforce the correlative rights
13 of gas operators and royalty owners in a pool of gas to the
14 end that each such gas operator and royalty owner may ob-
15 tain his just and equitable share of production from such
16 pool of gas.

17 (b) The Legislature hereby determines and finds that gas
18 found in West Virginia in shallow sands or strata has been
19 produced continuously for more than one hundred years;
20 that the placing of shallow wells has heretofore been regulated
21 by the state for the purpose of insuring the safe recovery of
22 coal and gas, but that regulation should also be directed toward
23 encouraging the fullest practical recovery of both coal and gas
24 because modern extraction technologies indicate the desirability
25 of such change in existing regulation and because the energy
26 needs of this state and the United States require encouragement
27 of the fullest practical recovery of both coal and gas; that
28 in order to encourage and insure the fullest practical recovery
29 of coal and gas in this state and to further insure the safe
30 recovery of such natural resources, it is in the public interest
31 to enact new statutory provisions establishing a shallow gas
32 well review board which shall have the authority to regulate
33 and determine the appropriate placing of shallow wells when
34 gas well operators and owners of coal seams fail to agree
35 on the placing of such wells, and establishing specific con-
36 siderations, including minimum distances to be allowed be-
37 tween certain shallow gas wells, to be utilized by the shallow
38 gas well review board in regulating the placing of shallow
39 wells; that in order to encourage and insure the fullest prac-
40 tical recovery of coal and gas in this state and to protect and
41 enforce the correlative rights of gas operators and royalty

42 owners of gas resources, it is in the public interest to enact
43 new statutory provisions establishing a shallow gas well review
44 board which shall also have authority to establish drilling
45 units and order the pooling of interests therein to provide all
46 gas operators and royalty owners with an opportunity to re-
47 cover their just and equitable share of production.

§22-4B-2. Definitions.

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

3 (1) "Board" means the West Virginia shallow gas well
4 review board provided for in section four of this article;

5 (2) "Chairman" means the chairman of the West Virginia
6 shallow gas well review board provided for in section four of
7 this article;

8 (3) "Coal operator" means any person who proposes to or
9 does operate a coal mine;

10 (4) "Coal seam" and "workable coal bed" are inter-
11 changeable terms and mean any seam of coal twenty inches
12 or more in thickness, unless a seam of less thickness is being
13 commercially worked, or can in the judgment of the depart-
14 ment foreseeably be commercially worked and will require
15 protection if wells are drilled through it;

16 (5) "Commission" means the oil and gas conservation
17 commission provided for in section four, article four-a of this
18 chapter;

19 (6) "Commissioner" means the oil and gas conservation
20 commissioner provided for in section four, article four-a of this
21 chapter;

22 (7) "Correlative rights" means the reasonable opportunity
23 of each person entitled thereto to recover and receive without
24 waste the gas in and under a tract or tracts, or the equivalent
25 thereof;

26 (8) "Deep well" means any well drilled and completed
27 in a formation at or below the top of the uppermost member
28 of the "Onondaga Group" or at a depth of or greater than six
29 thousand feet, whichever is shallower;

30 (9) "Department" or "department of mines" means the
31 state department of mines provided for in section two, article
32 two of this chapter;

33 (10) "Deputy director" means the deputy director for oil
34 and gas provided for in section one-a, article four of this
35 chapter;

36 (11) "Drilling unit" means the acreage on which the board
37 decides one well may be drilled under section ten of this
38 article;

39 (12) "Gas" means all natural gas and all other fluid hydro-
40 carbons not defined as oil in subdivision (15) of this section;

41 (13) "Gas operator" means any person who owns or has the
42 right to develop, operate and produce gas from a pool and to
43 appropriate the gas produced therefrom either for himself
44 or for himself and others. In the event that there is no gas
45 lease in existence with respect to the tract in question, the
46 person who owns or has the gas rights therein shall be con-
47 sidered a "gas operator" to the extent of seven-eighths of the
48 gas in that portion of the pool underlying the tract owned by
49 such person, and a "royalty owner" to the extent of one-eighth
50 of such gas;

51 (14) "Just and equitable share of production" means, as
52 to each person, an amount of gas in the same proportion to the
53 total gas production from a well as that person's acreage
54 bears to the total acreage in the drilling unit;

55 (15) "Oil" means natural crude oil or petroleum and
56 other hydrocarbons, regardless of gravity, which are produced
57 at the well in liquid form by ordinary production methods and
58 which are not the result of condensation of gas after it leaves
59 the underground reservoir;

60 (16) "Owner" when used with reference to any coal seam,
61 shall include any person or persons who own, lease or operate
62 such coal seam.

63 (17) "Person" means any natural person, corporation,
64 firm, partnership, partnership association, venture, receiver,
65 trustee, executor, administrator, guardian, fiduciary or other

66 representative of any kind, and includes any government or
67 any political subdivision or any agency thereof;

68 (18) "Plat" means a map, drawing or print showing the
69 location of one or more wells or a drilling unit;

70 (19) "Pool" means an underground accumulation of gas in
71 a single and separate natural reservoir (ordinarily a porous
72 sandstone or limestone). It is characterized by a single natural-
73 pressure system so that production of gas from one part of the
74 pool tends to or does affect the reservoir pressure throughout
75 its extent. A pool is bounded by geologic barriers in all
76 directions, such as geologic structural conditions, impermeable
77 strata, and water in the formation, so that it is effectively
78 separated from any other pools which may be present in
79 the same district or in the same geologic structure;

80 (20) "Royalty owner" means any owner of gas in place, or
81 gas rights, to the extent that such owner is not a gas operator
82 as defined in subdivision (13) of this section;

83 (21) "Shallow well" means any gas well drilled and com-
84 pleted in a formation above the top of the uppermost member
85 of the "Onondaga Group" or at a depth less than six thou-
86 sand feet, whichever is shallower;

87 (22) "Tracts comprising a drilling unit" means all separate-
88 ly owned tracts or portions thereof which are included within
89 the boundary of a drilling unit;

90 (23) "Well" means any shaft or hole sunk, drilled, bored
91 or dug into the earth or into underground strata for the
92 extraction, injection or placement of any liquid or gas, or any
93 shaft or hole sunk or used in conjunction with such extrac-
94 tion, injection or placement. The term "well" does not
95 include any shaft or hole sunk, drilled, bored or dug into
96 the earth for the sole purpose of core drilling or pumping or
97 extracting therefrom potable, fresh or usable water for house-
98 hold, domestic, industrial, agricultural or public use; and

99 (24) "Well operator" means any person who proposes to
100 or does locate, drill, operate or abandon any well.

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

1 (a) Except as provided in subsection (b) of this section,
2 the provisions of this article shall apply to all lands located
3 in this state, under which a coal seam as defined in section
4 two, article four-b, chapter twenty-two and section one,
5 article four, chapter twenty-two of this code, one thousand
6 nine hundred thirty-one, is located, however owned, in-
7 cluding any lands owned or administered by any govern-
8 ment or any agency or subdivision thereof, over which the
9 state has jurisdiction under its police power. The provisions
10 of this article are in addition to and not in derogation of or
11 substitution for the provisions of articles four and four-a of
12 this chapter.

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

14 (1) Deep wells;

15 (2) Oil wells and enhanced oil recovery wells associated *or*
16 with oil wells; *mb*

17 (3) Any shallow well permitted under article four of this
18 chapter prior to 12:01 a.m., August first, one thousand nine
19 hundred seventy-eight, unless such well is, after completion
20 (whether such completion is prior or subsequent to the effec-
21 tive date of this article), deepened subsequent to the effective
22 date of this article through another coal seam to another
23 formation above the top of the uppermost member of the
24 "Onondaga Group" or to a depth of less than six thousand
25 feet, whichever is shallower;

26 (4) Any shallow well as to which no objection is made
27 under section three-b, article four of this chapter;

28 (5) Wells as defined in subdivision (4), section one, article
29 seven of this chapter; or

30 (6) Free gas rights.

31 (c) The provisions of this act affecting applications for
32 permits to drill shallow gas wells shall only apply to such
33 applications filed after 12:01 a.m., August first, one thousand
34 nine hundred seventy-eight, and the provisions of article four
35 of this chapter affecting such applications which were in

36 effect immediately prior to the effective date of this act shall
37 apply to all such applications filed prior to 12:01 a.m.,
38 August first, one thousand nine hundred seventy-eight, with
39 like effect as if this act had not been enacted.

§22-4B-4. West Virginia shallow gas well review board; membership; method of appointment; vacancies; compensation and expenses; staff.

1 (a) There is hereby created the "West Virginia Shallow
2 Gas Well Review Board" which shall be composed of three
3 members, two of whom shall be the commissioner and the
4 deputy director. The remaining member of the board shall
5 be a registered professional mining engineer with at least
6 ten years practical experience in the coal mining industry
7 and shall be appointed by the governor, by and with the
8 advice and consent of the Senate: *Provided*, That any person
9 so appointed while the Senate of this state is not in session
10 shall be permitted to serve in an acting capacity for one
11 year from his appointment or until the next session of the
12 Legislature, whichever is less. As soon as practical after
13 appointment and qualification of the member appointed by
14 the governor, the governor shall convene a meeting of the
15 board for the purpose of organizing and electing a chairman,
16 who shall serve as such until his successor is elected by the
17 board.

18 (b) The member of the board appointed by the governor
19 shall be appointed within three months of the effective date
20 of this article. A vacancy in the membership appointed by
21 the governor shall be filled by appointment by the governor
22 within sixty days after the occurrence of such vacancy. Before
23 performing any duty hereunder, each member of the board
24 shall take and subscribe to the oath required by section five,
25 article four of the constitution of West Virginia, and shall
26 serve thereafter until his successor has been appointed and
27 qualified.

28 (c) The member of the board appointed by the governor
29 shall receive not less than seventy-five dollars per diem while
30 actually engaged in the performance of his duties as a member
31 of the board. Each member of the board shall also be re-

32 imburshed for all reasonable and necessary expenses actually
33 incurred in the performance of his duties as a member of
34 the board.

35 (d) The department shall furnish office and clerical staff
36 and supplies and services, including reporters for hearings, as
37 required by the board.

§22-4B-5. Same—Meetings; notice; general powers and duties.

1 (a) The board shall meet and hold conferences and hear-
2 ings at such times and places as shall be designated by the
3 chairman. The chairman may call a meeting of the board
4 at any time. The chairman shall call a meeting of the board
5 (1) upon receipt of a notice from the deputy director that an
6 objection to the proposed drilling or deepening of a shallow
7 well has been filed by a coal seam owner pursuant to section
8 three-b, article four of this chapter or that an objection has
9 been made by the department, (2) upon receipt of an applica-
10 tion to establish a drilling unit filed with the board pursuant
11 to section nine of this article, or (3) within twenty days upon
12 the written request by another member of the board. Meet-
13 ings called pursuant to subdivisions (1) and (2) of this sub-
14 section shall be scheduled not less than ten days nor more
15 than twenty days from receipt by the chairman of the notice
16 of objection or the application to establish a drilling unit.
17 Notice of all meetings shall be given to each member of the
18 board by the chairman at least ten days in advance thereof,
19 unless otherwise agreed by the members.

20 (b) At least ten days prior to every meeting of the board
21 called pursuant to the provisions of subdivisions (1) and (2),
22 subsection (a) of this section, the chairman shall also notify
23 (1) in the case of a notice of objection, the well operator and
24 all objecting coal seam owners and (2) in the case of an
25 application to establish a drilling unit, the applicant, all
26 persons to whom copies of the application were required to
27 be mailed pursuant to the provisions of subsection (d), section
28 nine of this article and all persons who filed written protests
29 or objections with the board in accordance with the pro-
30 visions of subsection (c), section nine of this article.

31 (c) A majority of the members of the board shall con-

32 stitute a quorum for the transaction of any business. A
33 majority of the members of the board shall be required to
34 determine any issue brought before it.

35 (d) The board is hereby empowered and it shall be its
36 duty to execute and carry out, administer and enforce the
37 provisions of this article in the manner provided herein.
38 Subject to the provisions of section three of this article, the
39 board shall have jurisdiction and authority over all persons
40 and property necessary therefor: *Provided*, That the pro-
41 visions of this article shall not be construed to grant to
42 the board authority or power to (1) limit production or output
43 from or prorate production of any gas well, or (2) fix prices
44 of gas.

45 (e) The board shall have specific authority to:

46 (1) Take evidence and issue orders concerning applications
47 for drilling permits and drilling units in accordance with the
48 provisions of this article;

49 (2) Promulgate, pursuant to the provisions of chapter
50 twenty-nine-a of this code, and enforce reasonable rules and
51 regulations necessary to govern the practice and procedure
52 before the board;

53 (3) Make such relevant investigations of records and facili-
54 ties as it deems proper; and

55 (4) Issue subpoenas for the attendance of and sworn
56 testimony by witnesses and subpoenas duces tecum for the
57 production of any books, records, maps, charts, diagrams
58 and other pertinent documents, and administer oaths and
59 affirmations to such witnesses, whenever, in the judgment of
60 the board, it is necessary to do so for the effective discharge
61 of its duties under the provisions of this article.

§22-4B-6. Rules and regulations; notice requirements.

1 (a) The board may promulgate, pursuant to the provisions
2 of chapter twenty-nine-a of this code, such reasonable rules
3 and regulations as are deemed necessary or desirable to im-
4 plement and make effective the provisions of this article.

5 (b) Notwithstanding the provisions of section two, article

6 seven, chapter twenty-nine-a of this code, any notice required
7 under the provisions of this article shall be given at the direc-
8 tion of the chairman by (1) personal or substituted service and
9 if such cannot be had then by (2) certified United States mail,
10 addressed, postage and certification fee prepaid, to the last
11 known mailing address, if any, of the person being served,
12 with the direction that the same be delivered to addressee only,
13 return receipt requested, and if there be no known mailing
14 address or if the notice is not so delivered then by (3) publi-
15 cation of such notice as a Class II legal advertisement in compli-
16 ance with the provisions of article three, chapter fifty-nine
17 of this code, and the publication area for such publication shall
18 be the county or counties wherein any land which may be
19 affected by the order of the board is situate. The chairman
20 shall also mail a copy of such notice to all other persons who
21 have specified to the chairman an address to which all such
22 notices may be mailed. All notices shall issue in the name of
23 the state, shall be signed by the chairman, shall specify the
24 style and number of the proceeding, the date, time and place
25 of any meeting, conference or hearing, and shall briefly state
26 the purpose of the proceeding. Proof of service or publication
27 of such notice shall be made to the board promptly and in
28 any event within the time during which the person served
29 must respond to the notice. If service is made by a person
30 other than the sheriff or the chairman, he shall make proof
31 thereof by affidavit. Failure to make proof of service or pub-
32 lication within the time required shall not affect the validity of
33 the service of the notice.

**§22-4B-7. Objections to proposed drilling; conferences; agreed lo-
cations and changes on plats; hearings; orders.**

1 (a) At the time and place fixed by the chairman for the
2 meeting of the board and for consideration of the objections
3 to proposed drilling filed by coal seam owners pursuant to
4 section three-b, article four of this chapter, the well operator
5 and the objecting coal seam owners present or represented,
6 shall hold a conference with the board to consider the objec-
7 tions. Such persons present or represented at the conference
8 may agree upon either the drilling location as proposed by the
9 well operator or an alternate location. Any change in the

10 drilling location from the drilling location proposed by the
11 well operator shall be indicated on the plat enclosed with the
12 notice of objection filed with the chairman by the deputy di-
13 rector in accordance with the provisions of section three-b,
14 article four of this chapter, and the distance and direction to
15 the new drilling location from the proposed drilling location
16 shall also be shown on such plat. If agreement is reached at
17 the conference by the well operator and such objecting coal
18 seam owners present or represented at the conference, the
19 board shall issue a written order stating that an agreement has
20 been reached, stating the nature of such agreement, and di-
21 recting the department to grant the well operator a drilling
22 permit for the location agreed upon. The original of such
23 order shall be filed with the department within five days after
24 the conference of the board at which the drilling location was
25 agreed upon and copies thereof shall be mailed by registered
26 or certified mail to the well operator and the objecting coal
27 seam owners present or represented at such conference.

28 (b) If the well operator and the objecting coal seam own-
29 ers present or represented at the conference with the board are
30 unable to agree upon a drilling location, then, unless they
31 otherwise agree, the board shall, without recess for more than
32 one business day, hold a hearing to consider the application
33 for a drilling permit. All of the pertinent provisions of article
34 five, chapter twenty-nine-a of this code shall apply to and
35 govern such hearing. Within twenty days after the close of a
36 hearing, the board shall issue and file with the department a
37 written order directing it, subject to other matters requiring
38 approval of the department, to:

39 (1) Refuse a drilling permit; or

40 (2) Issue a drilling permit for the proposed drilling loca-
41 tion; or

42 (3) Issue a drilling permit for an alternate drilling location
43 different than that requested by the well operator; or

44 (4) Issue a drilling permit either for the proposed drilling
45 location or for an alternate drilling location different than that
46 requested by the well operator, but not allow the drilling of

47 the well for a period of not more than one year from the date
48 of issuance of such permit.

49 (c) The written order of the board shall contain findings of
50 fact and conclusions based thereon concerning the following
51 safety aspects, and no drilling permit shall be issued for any
52 drilling location where the board finds from the evidence that
53 such drilling location will be unsafe:

54 (1) Whether the drilling location is above or in close prox-
55 imity to any mine opening or shaft, entry, travelway, airway,
56 haulageway, drainageway or passageway, or to any proposed
57 extension thereof, in any operated or abandoned or operating
58 coal mine, or any coal mine already surveyed and platted but
59 not yet being operated;

60 (2) Whether the proposed drilling can reasonably be done
61 through an existing or planned pillar of coal, or in close
62 proximity to an existing well or such pillar of coal, taking into
63 consideration the surface topography;

64 (3) Whether the proposed well can be drilled safely, taking
65 into consideration the dangers from creeps, squeezes or other
66 disturbances due to the extraction of coal; and

67 (4) The extent to which the proposed drilling location un-
68 reasonably interferes with the safe recovery of coal and gas.
69 The written order of the board shall also contain findings
70 of fact and conclusions based thereon concerning the follow-
71 ing:

72 (5) The extent to which the proposed drilling location will
73 unreasonably interfere with present or future coal mining
74 operations on the surface, including but not limited to opera-
75 tions subject to the provisions of article six, chapter twenty
76 of this code;

77 (6) The feasibility of moving the proposed drilling location
78 to a mined out area, below the coal outcrop, or to some other
79 location;

80 (7) The feasibility of a drilling moratorium for not more
81 than one year in order to permit the completion of imminent
82 coal mining operations;

83 (8) The methods proposed for the recovery of coal and
84 gas;

85 (9) The distance limitations established in section eight of
86 this article;

87 (10) The practicality of locating the well on a uniform pat-
88 tern with other wells;

89 (11) The surface topography and use; and

90 (12) Whether the order of the board will substantially
91 affect the right of the gas operator to explore for and produce
92 gas.

93 ^{AP} Any member of the board may file a separate opinion. Copies
94 of all orders and opinions shall be mailed by the board, by
95 registered or certified mail, to the parties present or repre-
96 sented at the hearing.

§22-4B-8. Distance limitations.

1 (a) If the well operator and the objecting coal seam
2 owners present or represented at the time and place fixed by
3 the chairman for consideration of the objections to the pro-
4 posed drilling location are unable to agree upon a drilling
5 location, then the written order of the board shall direct the
6 department to refuse to issue a drilling permit unless the
7 following distance limitations are observed:

8 (1) For all shallow wells with a depth less than three thou-
9 sand feet, there shall be a minimum distance of one thou-
10 sand feet from the drilling location to the nearest existing
11 well as defined in subsection (b) of this section; and

12 (2) For all shallow wells with a depth of three thousand
13 feet or more, there shall be a minimum distance of one
14 thousand five hundred feet from the drilling location to the
15 nearest existing well as defined in subsection (b) of this sec-
16 tion, except that where the distance from the drilling location
17 to such nearest existing well is less than two thousand feet but
18 more than one thousand five hundred feet and a coal seam
19 owner has objected, the gas operator shall have the burden of
20 establishing the need for the drilling location less than two
21 thousand feet from such nearest existing well. Where the

22 distance from the drilling location proposed by the operator
23 or designated by the board to the nearest existing well as
24 defined in subsection (b) of this section is greater than two
25 thousand feet, distance criterion will not be a ground for
26 objection by a coal seam owner.

27 (b) The words "existing well" as used in this section shall
28 mean (i) any well not plugged within nine months after being
29 drilled to its total depth and either completed in the same
30 target formation or drilled for the purpose of producing from
31 the same target formation, and (ii) any unexpired, permitted
32 drilling location for a well to the same target formation.

33 (c) The minimum distance limitations established by this
34 section shall not apply if the proposed well will be drilled
35 through an existing or planned pillar of coal required for
36 protection of a pre-existing oil or gas well and the proposed
37 well will neither require enlargement of such pillar nor
38 otherwise have an adverse effect on existing or planned coal
39 mining operations.

40 (d) Nothing in this article shall be construed to empower
41 the board to order the department to issue a drilling permit to
42 any person other than the well operator filing the application
43 which is the subject of the proceedings.

§22-4B-9. Application to establish a drilling unit; contents; notice.

1 (a) Whenever the board has issued an order directing the
2 department to refuse a drilling permit, the gas operator may
3 apply to the board for the establishment of a drilling unit
4 encompassing a contiguous tract or tracts if such gas operator
5 believes that such a drilling unit will afford one well location
6 for the production of gas from under the tract on which the
7 drilling permit was sought, and will be agreeable to the coal
8 seam owners.

9 (b) An application to establish a drilling unit shall be
10 filed with the board and shall contain:

11 (1) The name and address of the applicant;

12 (2) A plat prepared by a licensed land surveyor or regis-
13 tered professional engineer showing the boundary of the

14 proposed drilling unit, the district and county in which such
15 unit is located, the acreage of the proposed drilling unit, the
16 boundary of the tracts which comprise the proposed drilling
17 unit, the names of the owners of record of each such tract,
18 the proposed well location on the proposed drilling unit,
19 and the proposed well location for which the department re-
20 fused to issue a drilling permit;

21 (3) The names and addresses of the royalty owners of the
22 gas underlying the tracts which comprise the proposed drilling
23 unit;

24 (4) The names and addresses of the gas operators of the
25 tracts which comprise the proposed drilling unit;

26 (5) The approximate depth and target formation to which
27 the well for the proposed drilling unit is to be drilled;

28 (6) A statement indicating whether a voluntary pooling
29 agreement has been reached among any or all of the royalty
30 owners of the gas underlying the tracts which comprise the
31 proposed drilling unit and the gas operators of such tracts;

32 (7) An affidavit of publication of the notice of intent to
33 file an application to establish a drilling unit as required in
34 subsection (c) of this section; and

35 (8) Such other pertinent and relevant information the
36 board may prescribe by reasonable rules and regulations
37 promulgated in accordance with the provisions of section six
38 of this article.

39 (c) Prior to the filing of an application to establish a
40 drilling unit, the applicant shall cause to be published, as a
41 Class II legal advertisement in accordance with the provisions
42 of article three, chapter fifty-nine of this code, a notice of
43 intent to file an application to establish a drilling unit. Such
44 notice shall contain the information required by subdivisions
45 (1), (4) and (5) of subsection (b) of this section, the name
46 of the royalty owner of the gas underlying the proposed well
47 location on the proposed drilling unit, plus an abbreviated
48 description, or at the applicant's option a plat of the drilling
49 unit, disclosing the county and district wherein the proposed
50 drilling unit is to be located, the post office closest to the

51 proposed drilling unit, a statement that the applicant will
52 deliver a copy of the plat required by subdivision (2) of this
53 subsection to any person desiring the same, the date upon which
54 applicant intends to file the application to establish a drilling
55 unit, and a statement that written protests and objections to
56 such application may be filed with the board until a specified
57 date, which date shall be at least ten days after the date upon
58 which applicant intends to file the application to establish a
59 drilling unit. The publication area of the notice required by
60 this subsection shall be the county or counties in which the
61 proposed drilling unit is to be located.

62 (d) At the time an application to establish a drilling unit is
63 filed, the applicant shall forward a copy thereof by registered
64 or certified mail to each and every person whose name and
65 address were included on the application in accordance with
66 the provisions of subdivisions (3) and (4), subsection (b)
67 of this section. With each such application there shall be
68 enclosed a notice (the form for which shall be furnished by
69 the board on request) addressed to each such person to whom
70 a copy of the application is required to be sent, informing him
71 that such application is being mailed to him respectively by
72 registered or certified mail, pursuant to the requirements of
73 this article: *Provided*, That the application and notice need
74 not be forwarded to those royalty owners or gas operators
75 within the boundary of the proposed drilling unit who have
76 previously agreed to voluntary pooling by separately stated
77 document or documents empowering the gas operator, by
78 assignment or otherwise, unilaterally to declare a unit.

§22-4B-10. Establishment of drilling units; hearings; orders.

1 (a) At the time and place fixed by the chairman for the
2 meeting of the board and for consideration of an application
3 to establish a drilling unit, the applicant shall present proof
4 that the drilling location on the proposed drilling unit has
5 been agreed to by all of the owners of the coal seams under-
6 lying such drilling location; and thereafter the applicant, the
7 royalty owners of the gas underlying the tracts comprising
8 the unit, and the gas operators of the tracts comprising the
9 unit, or such of them as are present or represented, shall hold
10 a conference with the board to consider the application.

11 Such persons present or represented at the conference may
12 agree upon the boundary of the drilling unit as proposed by
13 the applicant or as changed to satisfy all valid objections of
14 those persons present or represented. Any change in the
15 boundary of the drilling unit from the boundary proposed
16 by the applicant shall be shown on the plat filed with the
17 board as part of the application. If agreement is reached
18 at the conference upon the boundary of the drilling unit
19 among the applicants, the royalty owners of the gas under-
20 lying the tracts comprising the drilling unit and the gas
21 operators of the tracts comprising such unit, or such of them
22 as are present or represented, and if such agreement is ap-
23 proved by the board, the board shall issue a written order
24 establishing and specifying the boundary of the drilling unit.

25 (b) If the applicant, the royalty owners of the gas under-
26 lying the tracts comprising the drilling unit and the gas
27 operators of the tracts comprising such unit, or such of them
28 as are present or represented at the time and place fixed
29 by the chairman for consideration of the application, are
30 unable to agree upon the boundary of the drilling unit, then
31 the board shall hold a hearing without recess of more than
32 one business day to consider the application to establish a
33 drilling unit. All of the pertinent provisions of article five,
34 chapter twenty-nine-a of this code shall apply to and govern
35 such hearing. Within twenty days after the close of the
36 hearing, the board shall issue a written order either estab-
37 lishing a drilling unit or dismissing the application. If the
38 board determines to establish a drilling unit, the order shall
39 specify the boundary of such drilling unit. In determining
40 whether to grant or deny an application to establish a drilling
41 unit, the board shall consider:

42 (1) The surface topography and property lines of the lands
43 comprising the drilling unit;

44 (2) The correlative rights of all gas operators and royalty
45 owners therein;

46 (3) The just and equitable share of production of each
47 gas operator and royalty owner therein;

48 (4) Whether a gas operator or royalty owner objecting to
49 the drilling unit has proved by clear and convincing evidence
50 that the drilling unit is substantially smaller than the area
51 that will be produced by the proposed well; and

52 (5) Other evidence relevant to the establishment of the
53 boundary of a drilling unit.

54 (c) The board shall not grant an application to establish a
55 drilling unit, nor shall it approve any drilling unit, unless
56 the board finds that:

57 (1) The applicant has proved that the drilling location on
58 the drilling unit has been agreed to by all of the owners of
59 the coal seams underlying such drilling location;

60 (2) The department has previously refused to issue a drill-
61 ing permit on one of the tracts comprising the drilling unit
62 because of an order of the board;

63 (3) The drilling unit includes all acreage within the mini-
64 mum distance limitations provided by section eight of this
65 article, unless the gas operators and royalty owners of any
66 excluded acreage have agreed to such exclusion; and

67 (4) The drilling unit includes a portion of the acreage
68 from under which the well operator intended to produce gas
69 under the drilling permit which was refused.

70 (d) All orders issued by the board under this section shall
71 contain findings of fact and conclusions based thereon as
72 required by section three, article five, chapter twenty-nine-a
73 of this code and shall be filed with the department within
74 twenty days after the hearing. Any member of the board
75 may file a separate opinion. Copies of all orders and opinions
76 shall be mailed by the board, by registered or certified mail,
77 to the parties present or represented at the hearing.

§22-4B-11. Pooling of interests in a drilling unit; limitations.

1 (a) Whenever the board establishes a drilling unit pursuant
2 to the provisions of sections nine and ten of this article, the
3 order establishing such drilling unit shall include an order
4 pooling the separately owned interests in the gas to be pro-
5 duced from such drilling unit.

6 (b) If a voluntary pooling agreement has been reached be-
7 tween all persons owning separate operating interests in the
8 tracts comprising the drilling unit, the order of the board shall
9 approve such agreement.

10 (c) If no voluntary pooling agreement is reached prior to
11 or during the hearing held pursuant to subsection (b), section
12 ten of this article, then at such hearing the board shall also
13 determine the pooling of interests in the drilling unit.

14 (d) Any order of the board pooling the separately owned
15 interests in the gas to be produced from the drilling unit shall
16 be upon terms and conditions which are just and equitable and
17 shall authorize the production of gas from the drilling unit;
18 shall designate the applicant as the operator to drill and oper-
19 ate such gas well; shall prescribe the procedure by which all
20 owners of operating interests in the pooled tracts or portions
21 of tracts may elect to participate therein; shall provide that all
22 reasonable costs and expenses of drilling, completing, equip-
23 ping, operating, plugging, abandoning, and reclaiming such
24 well shall be borne, and all production therefrom shared, by
25 all owners of operating interests in proportion to the net gas
26 acreage in the pooled tracts owned or under lease to each
27 owner; and shall make provisions for payment of all reason-
28 able costs thereof, including all reasonable charges for super-
29 vision and for interest on past-due accounts, by all those who
30 elect to participate therein.

31 (e) Upon request, any such pooling order shall provide an
32 owner of an operating interest an election to be made within
33 ten days from the date of the pooling order, (i) to participate
34 in the risks and costs of the drilling of the well, or (ii) to par-
35 ticipate in the drilling of the well on a limited or carried basis
36 on terms and conditions which, if not agreed upon, shall be
37 determined by the board to be just and equitable. If the
38 election is not made within the ten-day period, such owner
39 shall be conclusively presumed to have elected the limited or
40 carried basis. Thereafter, if an owner of any operating interest
41 in any portion of the pooled tract shall drill and operate, or
42 pay the costs of drilling and operating, a well for the benefit
43 of such nonparticipating owner as provided in the order of the
44 board, then such operating owner shall be entitled to the share

45 of production from the tracts or portions thereof pooled ac-
46 cruing to the interest of such nonparticipating owner, ex-
47 clusive of any royalty or overriding royalty reserved with re-
48 spect to such tracts or portions thereof, or exclusive of one-
49 eighth of the production attributable to all unleased tracts or
50 portions thereof, until the market value of such nonpartici-
51 pating owner's share of the production, exclusive of such
52 royalty, overriding royalty or one-eighth of production, equals
53 double the share of such costs payable by or charged to the
54 interest of such nonparticipating owner.

55 (f) In no event shall drilling be initiated or completed on
56 any tract, where the gas underlying such tract has not been
57 severed from the surface thereof by deed, lease or other title
58 document, without the written consent of the person who owns
59 such tract.

60 (g) All disputes which may arise as to the costs of drilling
61 and operating a well under a pooling order issued pursuant to
62 this section shall be resolved by the board within ninety days
63 from the date of written notification to the board of the exis-
64 tence of such dispute.

**§22-4B-12. Effect of order establishing drilling unit or pooling of
interests; recordation.**

1 (a) An order issued by the board establishing a drilling unit
2 and ordering the pooling of interests therein shall not entitle
3 the gas operator designated in such order to drill a well on such
4 drilling unit until such gas operator shall have received a drill-
5 ing permit in accordance with the provisions applicable to al-
6 ternative drilling locations set out in section three-b of article
7 four of this chapter. All orders issued by the board establish-
8 ing a drilling unit shall be filed with the department and shall
9 also direct the department to issue a drilling permit for the
10 drilling location agreed to by all of the owners of the coal
11 seams underlying such drilling location.

12 (b) A certified copy of any order of the board establishing
13 a drilling unit or a pooling of interests shall be mailed by the
14 board to the clerk of the county commission of each county
15 wherein all or any portion of the drilling unit is located, for
16 recordation in the record book of such county in which oil and

17 gas leases are normally recorded. Such recordation from the
18 time noted thereon by such clerk shall be notice of the order
19 to all persons.

**§22-4B-13. Judicial review; appeal to supreme court of appeals;
legal representation for board.**

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

7 (b) The judgment of the circuit court shall be final unless
8 reversed, vacated or modified on appeal to the supreme court
9 of appeals in accordance with the provisions of section one,
10 article six, chapter twenty-nine-a of this code.

11 (c) Legal counsel and services for the board in all appeal
12 proceedings in any circuit court and the supreme court of
13 appeals shall be provided by the attorney general or his as-
14 sistants and in any circuit court by the prosecuting attorney of
15 the county as well, all without additional compensation. The
16 board, with the written approval of the attorney general, may
17 employ special counsel to represent the board at any such
18 appeal proceedings.

§22-4B-14. Operation on drilling units.

1 All operations, including, but not limited to, the commence-
2 ment, drilling or operation of a well upon a drilling unit for
3 which a pooling order has been entered, shall be deemed for
4 all purposes the conduct of such operations upon each sep-
5 arately owned tract in the drilling unit by the several owners
6 thereof. That portion of the production allocated to a separate-
7 ly owned tract included in a drilling unit shall, when produced,
8 be deemed for all purposes to have been actually produced
9 from such tract by a well drilled thereon.

§22-4B-15. Validity of unit agreements.

1 No agreement between or among gas operators, lessees
2 or other owners of gas rights in gas properties, entered into

3 pursuant to the provisions of this article or with a view to or
4 for the purpose of bringing about the unitized development or
5 operation of such properties, shall be held to violate the
6 statutory or common law of this state prohibiting monopolies
7 or acts, arrangements, contracts, combinations or conspiracies
8 in restraint of trade or commerce.

§22-4B-16. Injunctive relief.

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

17 (b) Upon application by the board, the circuit courts of
18 this state may by mandatory or prohibitory injunction compel
19 compliance with the provisions of this article, the rules and
20 regulations promulgated by the board hereunder and all
21 orders of the board. The court may issue a temporary in-
22 junction in any case pending a decision on the merits of
23 any application filed. Any other section of this code to the
24 contrary notwithstanding, the state shall not be required to
25 furnish bond or other undertaking as a prerequisite to ob-
26 taining mandatory, prohibitory or temporary injunctive relief
27 under the provisions of this article.

28 (c) The judgment of the circuit court upon any application
29 permitted by the provisions of this section shall be final unless
30 reversed, vacated or modified on appeal to the supreme court
31 of appeals. Any such appeal shall be sought in the manner

32 and within the time provided by law for appeals from circuit
33 courts in other civil actions.

34 (d) The board shall be represented in all such proceedings
35 by the attorney general or his assistants and in such pro-
36 ceedings in the circuit courts by the prosecuting attorneys of
37 the several counties as well, all without additional compensa-
38 tion. The board, with the written approval of the attorney
39 general, may employ special counsel to represent the board in
40 any such proceedings.

41 (e) If the board shall refuse or fail to apply for an in-
42 junction to enjoin a violation or threatened violation of any
43 provision of this article, any rule and regulation promulgated
44 by the board hereunder or any order or final decision of the
45 board, within ten days after receipt of a written request to
46 do so by any person who is or will be adversely affected by
47 such violation or threatened violation, the person making
48 such request may apply in his own behalf for an injunction
49 to enjoin such violation or threatened violation in any court
50 in which the board might have brought suit. The board shall
51 be made a party defendant in such application in addition to
52 the person or persons violating or threatening to violate any
53 provision of this article, any rule and regulation promulgated
54 by the board hereunder or any order of the board. The
55 application shall proceed and injunctive relief may be granted
56 without bond or other undertaking in the same manner as
57 if the application had been made by the chairman.

§22-4B-17. Penalties.

1 (a) Any person who violates any provision of this article,
2 any of the rules and regulations promulgated by the board
3 hereunder or any order of the board other than a violation
4 governed by the provisions of subsection (b) of this section,
5 shall be guilty of a misdemeanor, and, upon conviction there-
6 of, shall be fined not more than one thousand dollars.

7 (b) Any person who, with the intention of evading any
8 provision of this article, any of the rules and regulations prom-
9 ulgated by the board hereunder or any order of the board
10 shall make or cause to be made any false entry or statement
11 in any application or other document permitted or required

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12 to be filed under the provisions of this article, any of the
13 rules and regulations promulgated by the board hereunder
14 or any order of the board, shall be guilty of a misdemeanor,
15 and, upon conviction thereof, shall be fined not more than
16 five thousand dollars, or imprisoned in the county jail not
17 more than six months, or both fined and imprisoned.

18 (c) Any person who knowingly aids or abets any other
19 person in the violation of any provision of this article, any of
20 the rules and regulations promulgated by the board hereunder
21 or any order or final decision of the board, shall be subject to
22 the same penalty as that prescribed in this article for the
23 violation by such other person.

§22-4B-18. Construction.

1 This article shall be liberally construed so as to effectuate
2 the declaration of public policy set forth in section one of this
3 article.

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

James L. Davis

Chairman Senate Committee

Clarence C. Christensen Jr.

Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

J. C. Willson, Jr.

Clerk of the Senate

C. A. Blankenship

Clerk of the House of Delegates

W. T. Bralton Jr.

President of the Senate

Donald L. Kopp

Speaker House of Delegates

The within is approved this the 30
day of March, 1978.

John D. Roper

Governor

APPROVED AND SIGNED BY THE GOVERNOR

RECEIVED

MAR 23 4 08 PM '78

OFFICE OF THE GOVERNOR

Date Mar. 30, 1978

Time 5:20 pm

RECEIVED

78 MAR 31 P 9: 31

OFFICE
SECY. OF STATE