

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-30-82

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1982

— ● —

# ENROLLED

Com. Sub. for  
HOUSE BILL No. 1254

(By Mr. Martin, 30th Dist., & Mr. Harman, 32nd Dist.)

— ● —

Passed March 13, 1982

In Effect Ninety Days From Passage

**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**H. B. 1254**

(By MR. MARTIN, 30th Dist., and MR. HARMAN, 32nd Dist.)

[Passed March 13, 1982; in effect ninety days from passage.]

AN ACT to amend article four, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-l, relating to the issuance of permits for the drilling, redrilling, deepening, fracturing, stimulating, pressuring, converting, combining or physically changing of oil and gas wells; prohibiting the issuance of such permits where royalties are based upon annual flat well royalty systems or any similar provisions for compensation which are less than one eighth of the value or volume of the production of the oil and gas of such wells; legislative findings and declarations with respect thereto; requiring the payment of one eighth royalty upon the production of such oil and gas; requiring that all leases or other contractual agreements, by which the right to extract, produce or market oil or gas is claimed, be filed with all permit applications, or in the alternative, requiring certain filings to identify the parties and property involved and describe the royalty agreements and place of recordation; providing for the filing of certain affidavits when leases provide for less than one eighth royalty; granting a cause of action to enforce provisions of this section; and providing for exceptions to and the enforcement of the provisions of said section.

*Be it enacted by the Legislature of West Virginia:*

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

**ARTICLE 4. OIL AND GAS WELLS.**

**§22-4-11. Permits not to be issued on flat well royalty leases; legislative findings and declarations; permit requirements.**

1 (a) The Legislature hereby finds and declares:

2 (1) That a significant portion of the oil and gas  
3 underlying this state is subject to development pursuant  
4 to leases or other continuing contractual agreements where-  
5 in the owners of such oil and gas are paid upon a royalty  
6 or rental basis known in the industry as the annual flat  
7 well royalty basis, in which the royalty is based solely  
8 on the existence of a producing well, and thus is not  
9 inherently related to the volume of the oil and gas produced  
10 or marketed;

11 (2) That continued exploitation of the natural re-  
12 sources of this state in exchange for such wholly in-  
13 adequate compensation is unfair, oppressive, works an  
14 unjust hardship on the owners of the oil and gas in  
15 place, and unreasonably deprives the economy of the  
16 state of West Virginia of the just benefit of the natural  
17 wealth of this state;

18 (3) That a great portion, if not all, of such  
19 leases or other continuing contracts based upon or call-  
20 ing for an annual flat well royalty, have been in exist-  
21 ence for a great many years and were entered into at  
22 a time when the techniques by which oil and gas are  
23 currently extracted, produced or marketed, were not  
24 known or contemplated by the parties, nor was it con-  
25 templated by the parties that oil and gas would be re-  
26 covered or extracted or produced or marketed from the  
27 depths and horizons currently being developed by the well  
28 operators;

29 (4) That while being fully cognizant that the pro-  
30 visions of section ten, article I of the United States  
31 constitution and of section four, article III of the con-  
32 stitution of West Virginia, proscribe the enactment of any  
33 law impairing the obligation of a contract, the Legis-  
34 lature further finds that it is a valid exercise of the  
35 police powers of this state and in the interest of the  
36 state of West Virginia and in furtherance of the welfare  
37 of its citizens, to discourage as far as constitutionally  
38 possible the production and marketing of oil and gas  
39 located in this state under the type of leases or other con-  
40 tinuing contracts described above.

41 (b) In the light of the foregoing findings, the Legislature  
42 hereby declares that it is the policy of this state, to the extent  
43 possible, to prevent the extraction, production or marketing  
44 of oil or gas under a lease or leases or other continuing  
45 contract or contracts providing a flat well royalty or any  
46 similar provisions for compensation to the owner of the oil  
47 and gas in place, which is not inherently related to the volume  
48 of oil or gas produced or marketed, and toward these ends,  
49 the Legislature further declares that it is the obligation of  
50 this state to prohibit the issuance of any permit required by  
51 it for the development of oil or gas where the right to develop,  
52 extract, produce or market the same is based upon such  
53 leases or other continuing contractual agreements.

54 (c) In addition to any requirements contained in this  
55 article with respect to the issuance of any permit required  
56 for the drilling, redrilling, deepening, fracturing, stimulating,  
57 pressuring, converting, combining or physically changing to  
58 allow the migration of fluid from one formation to another,  
59 no such permit shall be hereafter issued unless the lease  
60 or leases or other continuing contract or contracts by which  
61 the right to extract, produce or market the oil or gas is  
62 filed with the application for such permit. In lieu of filing  
63 the lease or leases or other continuing contract or contracts,  
64 the applicant for a permit described herein may file the  
65 following:

66 (1) A brief description of the tract of land including the  
67 district and county wherein the tract is located;

68 (2) The identification of all parties to all leases or other  
69 continuing contractual agreements by which the right to ex-  
70 tract, produce or market the oil or gas is claimed;

71 (3) The book and page number wherein each such lease  
72 or contract by which the right to extract, produce or market  
73 the oil or gas is recorded; and

74 (4) A brief description of the royalty provisions of each  
75 such lease or contract.

76 (d) Unless the provisions of subsection (e) are met, no  
77 such permit shall be hereafter issued for the drilling of a  
78 new oil or gas well, or for the redrilling, deepening, fractur-  
79 ing, stimulating, pressuring, converting, combining, or physical-  
80 ly changing to allow the migration of fluid from one forma-  
81 tion to another, of an existing oil or gas production well,  
82 where or if the right to extract, produce or market the oil  
83 or gas is based upon a lease or leases or other continuing  
84 contract or contracts providing for flat well royalty or any  
85 similar provision for compensation to the owner of the oil or  
86 gas in place which is not inherently related to the volume of  
87 oil and gas so extracted, produced and marketed.

88 (e) To avoid the permit prohibition of subsection (d)  
89 hereof, the applicant may file with such application an  
90 affidavit which certifies that the affiant is authorized by the  
91 owner of the working interest in the well to state that it  
92 shall tender to the owner of the oil or gas in place not less  
93 than one eighth of the total amount paid to or received by  
94 or allowed to the owner of the working interest at the wellhead  
95 for the oil or gas so extracted, produced or marketed before  
96 deducting the amount to be paid to or set aside for the owner  
97 of the oil or gas in place, on all such oil or gas to be extracted,  
98 produced or marketed from the well. If such affidavit be  
99 filed with such application, then such application for permit  
100 shall be treated as if such lease or leases or other continuing  
101 contract or contracts comply with the provisions of this section.

102 (f) The owner of the oil or gas in place shall have a  
103 cause of action to enforce his rights established by this  
104 section.

105 (g) The provisions of this section shall not affect or apply  
106 to any lease or leases or other continuing contract or con-  
107 tracts for the underground storage of gas or any well utilized  
108 in connection therewith or otherwise subject to the provisions  
109 of article seven of this chapter.

110 (h) The administrator shall enforce this requirement ir-  
111 respective of whether such lease or other continuing con-  
112 tract was executed before or after the effective date of this  
113 section.

114 (i) The provisions of this section shall not adversely affect  
115 any rights to free gas.

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

*R. P. Byrbe*  
-----  
Chairman Senate Committee

*Tony E. Whitlow*  
-----  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Todd C. Wicks*  
-----  
Clerk of the Senate

*C. A. Blankenship*  
-----  
Clerk of the House of Delegates  
*Warren R. McNew*  
-----  
President of the Senate

*Chas. M. See Jr.*  
-----  
Speaker House of Delegates

The within is approved this the 30  
day of March, 1982.

*James R. Riley*  
-----  
Governor

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SECY. OF STATE