

770: 619

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1986



ENROLLED

*Committee Substitute for*  
SENATE BILL NO. 619

(By Senators *Rogers and Shaw*)



PASSED *March 7,* 1986

In Effect *90 days from* Passage



**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 619**

(SENATORS ROGERS AND SHAW, *original sponsors*)

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[Passed March 7, 1986; in effect ninety days from passage.]

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AN ACT to amend and reenact sections two and three, article seven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections two and three, article eight of said chapter; and to amend and reenact section one, article one, chapter twenty-two-b of said code, all relating to oil and gas wells generally; the definitions of "deep wells" and "shallow wells"; and permitting shallow well operators to drill into the upper portion of the uppermost Onondaga Group for certain purposes.

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

That sections two and three, article seven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that sections two and three, article eight of said chapter be amended and reenacted; and that section one, article one, chapter twenty-two-b of said code be amended and reenacted, all to read as follows:

**CHAPTER 22. ENERGY.**

**ARTICLE 7. SHALLOW GAS WELL REVIEW BOARD.**

**§22-7-2. Definitions.**

- 1 Unless the context in which used clearly requires a
- 2 different 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  
6 Virginia shallow gas well review board provided for in  
7 section four of this article;
- 8 (3) "Coal operator" means any person who proposes to  
9 or does operate a coal mine;
- 10 (4) "Coal seam" and "workable coal bed" are  
11 interchangeable terms and mean any seam of coal twenty  
12 inches or more in thickness, unless a seam of less thickness  
13 is being commercially worked, or can in the judgment of the  
14 department foreseeably be commercially worked and will  
15 require protection if wells are drilled through it;
- 16 (5) "Commission" means the oil and gas conservation  
17 commission provided for in section four, article eight of this  
18 chapter;
- 19 (6) "Commissioner" means the oil and gas conservation  
20 commissioner provided for in section four, article eight of  
21 this chapter;
- 22 (7) "Correlative rights" means the reasonable  
23 opportunity of each person entitled thereto to recover and  
24 receive without waste the gas in and under a tract or tracts,  
25 or the equivalent thereof;
- 26 (8) "Deep well" means any well other than a shallow  
27 well, drilled and completed in a formation at or below the  
28 top of the uppermost member of the "Onondaga Group";
- 29 (9) "Department" means the state department of energy  
30 provided for in chapter twenty-two of this code;
- 31 (10) "Director" means the director for the division of oil  
32 and gas provided for in section eleven, article one, chapter  
33 twenty-two of this code;
- 34 (11) "Drilling unit" means the acreage on which the  
35 board decides one well may be drilled under section ten of  
36 this article;
- 37 (12) "Gas" means all natural gas and all other fluid  
38 hydrocarbons not defined as oil in subdivision (15) of this  
39 section;
- 40 (13) "Gas operator" means any person who owns or has  
41 the right to develop, operate and produce gas from a pool  
42 and to appropriate the gas produced therefrom either for  
43 himself or for himself and others. In the event that there is  
44 no gas lease in existence with respect to the tract in

45 question, the person who owns or has the gas rights therein  
46 shall be considered a "gas operator" to the extent of seven  
47 eighths of the gas in that portion of the pool underlying the  
48 tract owned by such person, and a "royalty owner" to the  
49 extent of one eighth of such gas;

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

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

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

62 (17) "Person" means any natural person, corporation,  
63 firm, partnership, partnership association, venture,  
64 receiver, trustee, executor, administrator, guardian,  
65 fiduciary or other representative of any kind, and includes  
66 any government or any political subdivision or any agency  
67 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  
71 in a single and separate natural reservoir (ordinarily a  
72 porous sandstone or limestone). It is characterized by a  
73 single natural-pressure system so that production of gas  
74 from one part of the pool tends to or does affect the reservoir  
75 pressure throughout its extent. A pool is bounded by  
76 geologic barriers in all directions, such as geologic  
77 structural conditions, impermeable strata, and water in the  
78 formation, so that it is effectively separated from any other  
79 pools which may be present in the same district or in the  
80 same geologic structure;

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

84 (21) "Shallow well" means any gas well drilled and  
85 completed in a formation above the top of the uppermost  
86 member of the "Onondaga Group": *Provided*, That in

87 drilling a shallow well the well operator may penetrate into  
88 the "Onondaga Group" to a reasonable depth, not in excess  
89 of twenty feet, in order to allow for logging and completion  
90 operations, but in no event may the "Onondaga Group"  
91 formation be otherwise produced, perforated or stimulated  
92 in any manner;

93 (22) "Tracts comprising a drilling unit" means that all  
94 separately owned tracts or portions thereof which are  
95 included within the boundary of a drilling unit;

96 (23) "Well" means any shaft or hole sunk, drilled, bored  
97 or dug into the earth or into underground strata for the  
98 extraction, injection or placement of any liquid or gas, or  
99 any shaft or hole sunk or used in conjunction with such  
100 extraction, injection or placement. The term "well" does  
101 not include any shaft or hole sunk, drilled, bored or dug into  
102 the earth for the sole purpose of core drilling or pumping or  
103 extracting therefrom potable, fresh or usable water for  
104 household, domestic, industrial, agricultural or public use;  
105 and

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

**§22-7-3. 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 of this article and section one, article one, chapter  
5 twenty-two-b of this code, is located, however owned,  
6 including any lands owned or administered by any  
7 government or any agency or subdivision thereof, over  
8 which the state has jurisdiction under its police power. The  
9 provisions of this article are in addition to and not in  
10 derogation of or substitution for the provisions of this  
11 chapter or chapter twenty-two-b of this code.

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

13 (1) Deep wells;

14 (2) Oil wells and enhanced oil recovery wells associated  
15 with oil wells;

16 (3) Any shallow well permitted under article four of this  
17 chapter prior to 12:01 a.m., the first day of August, one  
18 thousand nine hundred seventy-eight, unless such well is,  
19 after completion (whether such completion is prior or

20 subsequent to the ninth day of June, one thousand nine  
21 hundred seventy-eight), deepened subsequent to the ninth  
22 day of June, one thousand nine hundred seventy-eight,  
23 through another coal seam to another formation above the  
24 top of the uppermost member of the "Onondaga Group";

25 (4) Any shallow well as to which no objection is made  
26 under section seventeen, article one, chapter twenty-two-b  
27 of this code;

28 (5) Wells as defined in subdivision (4), section one,  
29 article four, chapter twenty-two-b of this code; or

30 (6) Free gas rights.

31 (c) The provisions of this article affecting applications  
32 for permits to drill shallow gas wells shall only apply to  
33 such applications filed after 12:01 a.m. the first day of  
34 August, one thousand nine hundred seventy-eight, and the  
35 provisions of article four of former chapter twenty-two  
36 affecting such applications which were in effect  
37 immediately prior to the ninth day of June, one thousand  
38 nine hundred seventy-eight, shall apply to all such  
39 applications filed prior to 12:01 a.m., the first day of  
40 August, one thousand nine hundred seventy-eight, with like  
41 effect as if this article had not been enacted.

#### **ARTICLE 8. OIL AND GAS CONSERVATION.**

##### **§22-8-2. Definitions.**

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

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

7 (2) "Director" means the director for the division of oil  
8 and gas provided for in section eleven, article one, chapter  
9 twenty-two of this code;

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

15 (4) "Operator" means any owner of the right to develop,  
16 operate and produce oil and gas from a pool and to  
17 appropriate the oil and gas produced therefrom, either for

18 himself or for himself and others; in the event that there is  
19 no oil and gas lease in existence with respect to the tract in  
20 question, the owner of the oil and gas rights therein shall be  
21 considered as "operator" to the extent of seven eighths of  
22 the oil and gas in that portion of the pool underlying the  
23 tract owned by such owner, and as "royalty owner" as to  
24 one eighth interest in such oil and gas; and in the event the  
25 oil is owned separately from the gas, the owner of the  
26 substance being produced or sought to be produced from  
27 the pool shall be considered as "operator" as to such pool;

28 (5) "Royalty owner" means any owner of oil and gas in  
29 place, or oil and gas rights, to the extent that such owner is  
30 not an operator as defined in subdivision (4) of this section;

31 (6) "Independent producer" means a person who is  
32 actively engaged in the production of oil and gas in West  
33 Virginia, but whose gross revenue from such production in  
34 West Virginia does not exceed five hundred thousand  
35 dollars per year;

36 (7) "Oil" means natural crude oil or petroleum and  
37 other hydrocarbons, regardless of gravity, which are  
38 produced at the well in liquid form by ordinary production  
39 methods and which are not the result of condensation of gas  
40 after it leaves the underground reservoir;

41 (8) "Gas" means all natural gas and all other fluid  
42 hydrocarbons not defined as oil in subdivision (7) of this  
43 section;

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

55 (10) "Well" means any shaft or hole sunk, drilled, bored  
56 or dug into the earth or underground strata for the  
57 extraction of oil or gas;

58 (11) "Shallow well" means any well drilled and  
59 completed in a formation above the top of the uppermost

60 member of the "Onondaga Group": *Provided*, That in  
61 drilling a shallow well the operator may penetrate into the  
62 "Onondaga Group" to a reasonable depth, not in excess of  
63 twenty feet, in order to allow for logging and completion  
64 operations, but in no event may the "Onondaga Group"  
65 formation be otherwise produced, perforated or stimulated  
66 in any manner;

67 (12) "Deep well" means any well, other than a shallow  
68 well, drilled and completed in a formation at or below the  
69 top of the uppermost member of the "Onondaga Group";

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

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

83 (15) "Correlative rights" means the reasonable  
84 opportunity of each person entitled thereto to recover and  
85 receive without waste the oil and gas in and under his tract  
86 or tracts, or the equivalent thereof; and

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

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

**§22-8-3. 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, however owned, including any lands owned or  
4 administered by any government or any agency or  
5 subdivision thereof, over which the state has jurisdiction

6 under its police power. The provisions of this article are in  
7 addition to and not in derogation of or substitution for the  
8 provisions of article one, chapter twenty-two-b of this code.

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

10 (1) Shallow wells other than those utilized in secondary  
11 recovery programs as set forth in section eight of this  
12 article;

13 (2) Any well commenced or completed prior to the ninth  
14 day of March, one thousand nine hundred seventy-two,  
15 unless such well is, after completion (whether such  
16 completion is prior or subsequent to that date), (i) deepened  
17 subsequent to that date to a formation at or below the top of  
18 the uppermost member of the "Onondaga Group" or (ii)  
19 involved in secondary recovery operations for oil under an  
20 order of the commissioner entered pursuant to section eight  
21 of this article;

22 (3) Gas storage operations or any well employed to  
23 inject gas into or withdraw gas from a gas storage reservoir  
24 or any well employed for storage observation; or

25 (4) Free gas rights.

26 (c) The provisions of this article shall not be construed  
27 to grant to the commissioner authority or power to:

28 (1) Limit production or output, or prorate production of  
29 any oil or gas well, except as provided in subdivision (6),  
30 subsection (a), section seven of this article; or

31 (2) Fix prices of oil or gas.

## **CHAPTER 22B. OIL AND GAS.**

### **ARTICLE 1. DIVISION OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.**

#### **§22B-1-1. Definitions.**

1 Unless the context in which used clearly requires a  
2 different 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  
6 with water;

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

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

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

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

21 (g) "Commissioner" means commissioner of the  
22 department of energy;

23 (h) "Deep well" means any well other than a shallow  
24 well, drilled and completed in a formation at or below the  
25 top of the uppermost member of the "Onondaga Group";

26 (i) "Division" means, for purposes of this article and  
27 articles three and four of this chapter, the division of oil and  
28 gas of the department of energy;

29 (j) "Director" means, for the purposes of this article and  
30 articles two, three and four of this chapter, the director of  
31 the division of oil and gas of the department of energy;

32 (k) "Expanding cement" means any cement approved  
33 by the division of oil and gas which expands during the  
34 hardening process, including, but not limited to, regular oil  
35 field cements with the proper additives;

36 (l) "Facility" means any facility utilized in the oil and  
37 gas industry in this state and specifically named or referred  
38 to in this article or in article three or four of this chapter,  
39 other than a well or well site;

40 (m) "Gas" means all natural gas and all other fluid  
41 hydrocarbons not defined as oil in subdivision (n) of this  
42 section;

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

48 (o) "Owners" when used with reference to any well,  
49 shall include any person or persons, firm, partnership,  
50 partnership association or corporation that owns, manages,

51 operates, controls or possesses such well as principal, or as  
52 lessee or contractor, employee or agent of such principal;

53 (p) "Owner" when used with reference to any coal seam,  
54 shall include any person or persons who own, lease or  
55 operate such coal seam;

56 (q) "Person" means any natural person, corporation,  
57 firm, partnership, partnership association, venture,  
58 receiver, trustee, executor, administrator, guardian,  
59 fiduciary or other representative of any kind, and includes  
60 any government or any political subdivision or any agency  
61 thereof;

62 (r) "Plat" means a map, drawing or print showing the  
63 location of a well or wells as herein defined;

64 (s) "Review board" means the West Virginia shallow gas  
65 well review board as provided for in section four, article  
66 seven, chapter twenty-two of this code;

67 (t) "Safe mining through of a well" means the mining of  
68 coal in a workable coal bed up to a well which penetrates  
69 such workable coal bed and through such well so that the  
70 casing or plug in the well bore where the well penetrates the  
71 workable coal bed is severed;

72 (u) "Shallow well" means any gas well drilled and  
73 completed in a formation above the top of the uppermost  
74 member of the "Onondaga Group": *Provided*, That in  
75 drilling a shallow well the operator may penetrate into the  
76 "Onondaga Group" to a reasonable depth, not in excess of  
77 twenty feet, in order to allow for logging and completion  
78 operations, but in no event may the "Onondaga Group"  
79 formation be otherwise produced, perforated or stimulated  
80 in any manner;

81 (v) "Stimulate" means any action taken by a well  
82 operator to increase the inherent productivity of an oil or  
83 gas well, including, but not limited to, fracturing, shooting  
84 or acidizing, but excluding cleaning out, bailing or  
85 workover operations;

86 (w) "Waste" means (i) physical waste, as the term is  
87 generally understood in the oil and gas industry; (ii) the  
88 locating, drilling, equipping, operating or producing or any  
89 oil or gas well in a manner that causes, or tends to cause a  
90 substantial reduction in the quantity of oil or gas ultimately  
91 recoverable from a pool under prudent and proper  
92 operations, or that causes or tends to cause a substantial or

93 unnecessary or excessive surface loss of oil or gas; or (iii) the  
94 drilling of more deep wells than are reasonably required to  
95 recover efficiently and economically the maximum amount  
96 of oil and gas from a pool; (iv) substantially inefficient,  
97 excessive or improper use, or the substantially unnecessary  
98 dissipation of, reservoir energy, it being understood that  
99 nothing in this chapter shall be construed to authorize any  
100 agency of the state to impose mandatory spacing of shallow  
101 wells except for provisions of section eight, article eight,  
102 chapter twenty-two of this code and the provisions of  
103 article seven, chapter twenty-two of this code; (v)  
104 inefficient storing of oil or gas: *Provided*, That storage in  
105 accordance with a certificate of public convenience issued  
106 by the federal energy regulatory commission shall be  
107 conclusively presumed to be efficient and (vi) other  
108 underground or surface waste in the production or storage  
109 of oil, gas or condensate, however caused;

110 (x) "Well" means any shaft or hole sunk, drilled, bored  
111 or dug into the earth or into underground strata for the  
112 extraction or injection or placement of any liquid or gas, or  
113 any shaft or hole sunk or used in conjunction with such  
114 extraction or injection or placement. The term "well" does  
115 not include any shaft or hole sunk, drilled, bored or dug into  
116 the earth for the sole purpose of core drilling or pumping or  
117 extracting therefrom potable, fresh or usable water for  
118 household, domestic, industrial, agricultural or public use;

119 (y) "Well work" means the drilling, re-drilling,  
120 deepening, stimulating, pressuring by injection of any fluid,  
121 converting from one type of well to another, combining or  
122 physically changing to allow the migration of fluid from one  
123 formation to another or plugging or replugging of any well;

124 (z) "Well operator" or "operator" means any person or  
125 persons, firm, partnership, partnership association or  
126 corporation that proposes to or does locate, drill, operate or  
127 abandon any well as herein defined;

128 (aa) "Pollutant" shall have the same meaning as  
129 provided in subsection (x); section two, article five-a,  
130 chapter twenty of this code; and

131 (bb) "Waters of this state" shall have the same meaning  
132 as the term "waters" as provided in subsection (e), section  
133 two, article five-a, chapter twenty of this code.

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

*Bruce O. Williams*  
.....  
Chairman Senate Committee

*Floyd Fuller*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Irvid C. Wells*  
.....  
Clerk of the Senate

*Donald L. Kopp*  
.....  
Clerk of the House of Delegates

*Sam Tompkins*  
.....  
President of the Senate

*Joseph P. Allright*  
.....  
Speaker House of Delegates

The within *approved* this the *26th*  
*March* day of ..... 1986.

*Arthur M. Humphreys*  
.....  
Governor



PRESENTED TO THE  
GOVERNOR

Date 3/20/86

Time 3:42 p.m.

RECEIVED

1966 MAR 29 PM 9 02

SECRETARIAT OF STATE

OFFICE OF THE SECRETARY OF STATE  
WEST VIRGINIA

THIS DATE 3/26/86