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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1992

— ● —

# ENROLLED

*Com. Sub. For*

HOUSE BILL No. *4476*

(By ~~Delegate~~ *Mr. Speaker, Mr. Chambers*  
*and Delegate Lane*

— ● —

Passed *March 4,* 1992

In Effect *Ninety Days From* Passage

# ENROLLED

## COMMITTEE SUBSTITUTE

### FOR

# H. B. 4476

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE LANE)

[Passed March 4, 1992; in effect ninety days from passage.]

AN ACT to amend chapter twenty-two-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article five, relating generally to abandoned wells; providing that the article may be cited as "The West Virginia Abandoned Well Act"; setting forth legislative findings and a declaration of policy and purpose; defining certain terms; requiring financial responsibility for all wells; establishing a priority system for plugging abandoned wells; defining the amount of financial responsibility for all wells; authorizing interested persons to plug an abandoned well; providing for arbitration; authorizing civil penalties; authorizing the promulgation of legislative rules; setting forth a hearing procedure; preserving existing rights and remedies; and providing for conflicting provisions.

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

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

**ARTICLE 5. THE WEST VIRGINIA ABANDONED WELL ACT.**

**§22B-5-1. Short title.**

1 This article may be cited as "The West Virginia  
2 Abandoned Well Act."

**§22B-5-2. Legislative findings; legislative statement of  
policy and purpose.**

1 (a) The Legislature finds and declares that:

2 (1) Oil and gas have been continuously produced in  
3 West Virginia for over one hundred years, during which  
4 time operators of wells have been required by the laws  
5 of this state to plug wells upon cessation of use;

6 (2) The plugging requirements for certain older oil  
7 and gas and other wells may not have been sufficient  
8 to protect underground water supplies, to prevent the  
9 movement of fluids between geologic horizons, to allow  
10 coal operators to mine through such wells safely, nor to  
11 allow for enhanced recovery of oil, gas or other mineral  
12 resources of this state;

13 (3) Many wells may exist in West Virginia which are  
14 abandoned and either not plugged or not properly  
15 plugged in a manner to protect underground water  
16 supplies, to prevent the movement of fluids between  
17 geologic horizons, to allow coal operators to mine  
18 through such wells safely, to allow for enhanced  
19 recovery of oil, gas and other mineral resources, and  
20 generally to protect the environment and mineral  
21 resources of this state, as aforesaid;

22 (4) Requirements for financial responsibility to assure  
23 plugging of abandoned wells have not been required in  
24 this state for older wells, and adequate financial  
25 responsibility should be established with respect to all  
26 wells;

27 (5) Programs and policies should be implemented to  
28 foster, encourage and promote through the fullest  
29 practical means the proper plugging of abandoned wells  
30 to protect the environment and mineral resources of this  
31 state;

32 (6) Criteria should be established with respect to  
33 priorities for the expenditure of moneys available for

34 plugging abandoned wells and identifying those aban-  
35 doned wells which, as a matter of public policy, should  
36 be plugged first; and

37 (7) The plugging of many abandoned wells may be  
38 accomplished through the establishment of rights and  
39 procedures allowing interested persons to apply for a  
40 permit to plug an abandoned well.

41 (b) The Legislature hereby declares that it is in the  
42 public interest and it is the public policy of this state,  
43 to foster, encourage and promote the proper plugging  
44 of all wells at the time of their abandonment to protect  
45 the environment and mineral resources of this state.

**§22B-5-3. Definitions.**

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

3 (a) "Abandoned well" means any well which is  
4 required to be plugged under the provisions of section  
5 nineteen, article one of this chapter and regulations  
6 promulgated pursuant thereto.

7 (b) "Director" means for the purpose of this article, the  
8 director of the division of environmental protection as  
9 established in section two, article one, chapter twenty-  
10 two of this code or such other person as the director may  
11 delegate his duties pursuant to section seven, article one,  
12 chapter twenty-two of this code.

13 (c) "Interested Party" means, for the purpose of this  
14 article, any owner, operator or lessee of the surface, oil,  
15 gas, water, coal or other mineral resource under, on,  
16 adjacent or in close proximity to any lands upon which  
17 an abandoned well exists, and whose lands, rights or  
18 interests are or might be affected by such abandoned  
19 well.

**§22B-5-4. Financial responsibility — Applicability.**

1 (a) Operators of all wells, not otherwise required to  
2 demonstrate financial responsibility through bonding or  
3 otherwise in accordance with the provisions of article  
4 one of this chapter, shall, no later than the first day of  
5 July, one thousand nine hundred ninety-three, demon-

6 strate financial responsibility in accordance with the  
7 methods and in the amounts prescribed by this article.

8 (b) If the operator demonstrates to the satisfaction of  
9 the director that an unjust hardship to an operator will  
10 occur as a result of the financial responsibility require-  
11 ments of this article:

12 (1) The director may suspend such financial respon-  
13 sibility requirements to a date no later than the first day  
14 of July, one thousand nine hundred ninety-five; or

15 (2) The director may authorize an operator to demon-  
16 strate such financial responsibility by supplying twenty  
17 percent of any required amount by no later than the  
18 first day of July, one thousand nine hundred ninety-four;  
19 forty percent no later than the first day of July, one  
20 thousand nine hundred ninety-five; sixty percent no  
21 later than the first day of July, one thousand nine  
22 hundred ninety-six; eighty percent by the first day of  
23 July, one thousand nine hundred ninety-seven; and one  
24 hundred percent by the first day of July, one thousand  
25 nine hundred ninety-eight.

26 (c) The operator making a demonstration of financial  
27 responsibility pursuant to this section shall provide the  
28 director with information sufficient to establish the  
29 location and identification of the well, any well comple-  
30 tion, recompletion and reworking records which may  
31 exist and such other information as the director may  
32 reasonably require.

**§22B-5-5. Financial responsibility — Amount.**

1 The financial responsibility requirements applicable  
2 to all wells shall be as set forth in section twenty-six,  
3 article one of this chapter, except that the amount of the  
4 financial responsibility through bonding or otherwise, as  
5 provided for in said section, for an individual well shall  
6 be the sum of five thousand dollars. In lieu of separate,  
7 single well bonds, an operator may either furnish a  
8 blanket bond in the sum of fifty thousand dollars in  
9 accordance with the provisions of subsection (c), section  
10 twenty-six, article one of this chapter, or if the operator  
11 has previously provided a blanket bond in the sum of

12 fifty thousand dollars which remains in effect, the  
 13 operator may cover wells subject to this article by *such*  
 14 existing blanket bond.

**§22B-5-6. Establishment of priorities for plugging expenditures.**

1 (a) Within one year of the effective date of this article,  
 2 the director shall promulgate legislative rules establish-  
 3 ing a priority system by which available funds from the  
 4 oil and gas reclamation fund, established pursuant to  
 5 section twenty-nine, article one of this chapter, will be  
 6 expended to plug abandoned wells. The rules shall, at  
 7 a minimum, establish three primary classifications to be  
 8 as follows:

9 (1) Wells which are an immediate threat to the  
 10 environment or which may hinder or impede the  
 11 development of mineral resources of this state so as to  
 12 require immediate plugging;

13 (2) Wells which are not an immediate threat to the  
 14 environment or which do not hinder or impede the  
 15 development of mineral resources of this state but which  
 16 should be plugged consistent with available resources;  
 17 and

18 (3) Wells which are not a threat to the environment  
 19 and which do not hinder or impede the development of  
 20 mineral resources of this state and for which plugging  
 21 may be deferred for an indefinite period.

22 (b) Such classifications shall, among other things, take  
 23 into consideration the following factors, as appropriate:

24 (1) The age of the well;

25 (2) The length of time the well has been abandoned;

26 (3) The casing remaining in the well;

27 (4) The presence of any leaks either at the surface or  
 28 underground;

29 (5) The possibility or existence of groundwater  
 30 contamination;

31 (6) Whether the well is located in an area to be

32 developed for enhanced recovery;

33 (7) Whether the well hinders or impedes mineral  
34 development; and

35 (8) Whether the well is located in close proximity to  
36 population.

**§22B-5-7. Right of interested person to plug, replug and  
reclaim abandoned wells.**

1 (a) Upon twenty days' advance written notice, it shall  
2 be lawful for any interested person, the operator or the  
3 director to enter upon the premises where any aban-  
4 doned well is situated and properly plug or replug such  
5 abandoned well, and to reclaim any area disturbed by  
6 such plugging or replugging in the manner required by  
7 article one of this chapter. Such notice shall be served  
8 by certified mail, returned receipt requested, or such  
9 other manner as is sufficient for service of process in  
10 a civil action, upon any owner of the surface of the land  
11 upon which such abandoned well exists upon any oil and  
12 gas lessee of record with the director and upon any  
13 owner or operator of such abandoned well of record with  
14 the director, or in the event there is no such lessee,  
15 owner or operator of record with the director, by posting  
16 such notice in a conspicuous place at or near such  
17 abandoned well. The notice given the surface owner  
18 shall include a statement advising the surface owner of  
19 the right to repairs or damages as provided in this  
20 section and the potential right to take any casing,  
21 equipment or other salvage. Such notice shall be on  
22 forms approved by the director.

23 (b) Any interested person who plugs a well pursuant  
24 to the provisions of this section, shall, to the extent  
25 damage or disturbance results from such plugging,  
26 either repair the damage or disturbance or compensate  
27 the surface owner for (i) the reasonable cost of repairing  
28 or replacing any water well, (ii) the reasonable value of  
29 any crops destroyed, damaged or prevented from  
30 reaching market, (iii) the reasonable cost of repair to  
31 personal property up to the value of the replacement  
32 value of personal property of like age, wear and quality,  
33 (iv) lost income or expense incurred, and (v) reasonable

34 costs to reclaim or repair real property including roads.

35 (c) The interested person who is plugging the well  
36 pursuant to the provisions of this section, may elect to  
37 take any casing, equipment or other salvage which may  
38 result from the plugging of such abandoned well by  
39 including notice of such election in the written notice  
40 mandated by subsection (a) of this section. Should such  
41 interested person who is plugging the well not give such  
42 notice of election, the surface owner may elect to take  
43 any casing, equipment or other salvage which may  
44 result from the plugging of such abandoned well by  
45 giving written notice of such election to the interested  
46 person who is plugging the well at least ten days in  
47 advance of such plugging. In the event such notice is  
48 given, such interested person who is plugging the well  
49 may leave such casing, equipment or salvage at a  
50 location which will not adversely affect any reclamation  
51 of a disturbed area. In the event the surface owner does  
52 not give notice of an election to take such casing,  
53 equipment or salvage as provided herein, such inter-  
54 ested person who plugs the well shall properly dispose  
55 thereof. Nothing in this subsection shall be construed to  
56 require or create a duty upon such interested person  
57 who plugs the well to protect or pull casing or otherwise  
58 take any action or incur any expense to retrieve or  
59 protect any casing, equipment or salvageable material:  
60 *Provided*, That nothing contained in this section may be  
61 construed to relieve the interested person from the  
62 responsibility to perform in accordance with the  
63 requirements of this article, article one of this chapter,  
64 or any condition of the permit.

65 (d) Prior to releasing any bond which is obtained in  
66 connection with plugging or replugging an abandoned  
67 well under the provisions of this section, the director  
68 shall obtain from the interested person who has obtained  
69 the bond a copy of a letter that such interested person  
70 has sent to the surface owner advising that reclamation  
71 has been completed.

72 (e) Where an interested person who intends to plug an  
73 abandoned well pursuant to this section is unable to  
74 obtain a bond in the full amount required by section



75 twenty-six, article one of this chapter, the director may  
76 authorize a bond in a lesser amount; which lesser  
77 amount shall be equal or greater than the estimated cost  
78 of reclaiming the surface areas disturbed by the  
79 plugging operation: *Provided*, That an owner or opera-  
80 tor of a well shall comply with the financial responsi-  
81 bility provisions of section five of this section and section  
82 twenty-six, article one of this chapter.

83 (f) In the event the owner or operator of a well fails  
84 or has failed to plug a well in accordance with laws and  
85 regulations in effect at the time the well is or was first  
86 subject to plugging requirements, any interested person  
87 who plugs or replugs such well pursuant to the provi-  
88 sions of this section may recover from the owner or  
89 operator of such well all reasonable costs incidental to  
90 such plugging or replugging, including any compensa-  
91 tion provided for in this section. In the event funds from  
92 the oil and gas reclamation fund established pursuant  
93 to section twenty-nine, article one of this chapter are  
94 used to plug or replug such well, the director shall be  
95 entitled to recover from the owner or operator of such  
96 well any amounts so expended from the fund. Any  
97 amounts so recovered by the director shall be deposited  
98 in said fund.

**§22B-5-8. Arbitration; fees and costs.**

1 (a) If the interested person who plugs a well and the  
2 surface owner are unable to agree as to the adequacy  
3 of the repairs performed or the amount of compensation  
4 to which the surface owner may be entitled, either party  
5 upon written notice to the other may elect to have such  
6 issue finally determined by binding arbitration pursu-  
7 ant to article ten, chapter fifty-five of this code.

8 (b) The adequacy of the repairs or compensation to  
9 which the surface owner may be entitled shall, if such  
10 election is made, be determined by a panel of three  
11 disinterested arbitrators. The first arbitrator shall be  
12 chosen by the party electing to arbitrate in his notice  
13 of election; the second arbitrator shall be chosen by the  
14 other party within ten days after receipt of the notice  
15 of election; and the third arbitrator shall be chosen

16 jointly by the first two arbitrators within twenty days  
17 thereafter. If they are unable to agree upon the third  
18 arbitrator within twenty days, then the two arbitrators  
19 are hereby empowered to and shall forthwith submit the  
20 matter to the court under the provisions of section one,  
21 article ten, chapter fifty-five of this code, so that, among  
22 other things, the third arbitrator can be chosen by the  
23 judge of the circuit court of the county wherein the  
24 surface estate lies.

25 (c) The following persons shall be deemed interested  
26 and not be appointed as arbitrators: Any person who is  
27 personally interested in the land on which the plugging  
28 is being performed or has been performed, or in any  
29 interest or right therein, or in the compensation and any  
30 damages to be awarded therefor, or who is related by  
31 blood or marriage to any person having such personal  
32 interest, or who stands in the relation of guardian and  
33 ward, master and servant, principal and agent, or  
34 partner, real estate broker, or surety to any person  
35 having such personal interest, or who has enmity  
36 against or bias in favor of any person who has such  
37 personal interest or who is the owner of, or interested  
38 in, such land or the oil and gas development thereof. No  
39 person shall be deemed interested or incompetent to act  
40 as arbitrator by reason of his being an inhabitant of the  
41 county, district or municipal corporation wherein the  
42 land is located, or holding an interest in any other land  
43 therein.

44 (d) The panel of arbitrators shall hold hearings and  
45 take such testimony and receive such exhibits as shall  
46 be necessary to determine the required repairs or the  
47 amount of compensation to be paid to the surface owner.  
48 However, no award requiring repairs or compensation  
49 shall be made to the surface owner unless the panel of  
50 arbitrators has first viewed the surface estate in  
51 question. A transcript of the evidence may be made but  
52 shall not be required.

53 (e) Each party shall pay the compensation of his own  
54 arbitrator and one half of the compensation of the third  
55 arbitrator, and his own costs.

**§22B-5-9. Civil penalties.**

1 (a) Any person who fails to plug an abandoned well  
2 within thirty days, or upon a showing of good cause,  
3 within a longer period as determined by the director not  
4 to exceed one hundred eighty days, from the date such  
5 plugging is ordered by the director, shall be liable for  
6 a civil penalty of twenty-five thousand dollars which  
7 penalty shall be recovered in a civil action in the circuit  
8 court wherein the abandoned well is located.

9 (b) The net proceeds of all civil penalties collected  
10 pursuant to subsection (a) of this section shall be  
11 deposited into the oil and gas reclamation fund estab-  
12 lished pursuant to section twenty-nine, article one of this  
13 chapter.

**§22B-5-10. Rule making; procedure; judicial review.**

1 (a) The director shall have the power and authority  
2 to promulgate legislative rules, procedural rules and  
3 interpretive rules in accordance with the provisions of  
4 chapter twenty-nine-a of this code in order to carry out  
5 and implement the provisions of this article.

6 (b) Any hearings or proceedings before the director on  
7 any matter other than rule making shall be conducted  
8 and heard by the director or a representative designated  
9 by him and shall be in accordance with the provisions  
10 of article five, chapter twenty-nine-a of this code.

11 (c) Any person having an interest which is or may be  
12 adversely affected, who is aggrieved by an order of the  
13 director issued pursuant to this article, or by the  
14 issuance or denial of a permit pursuant to this article  
15 or by the permit's terms or conditions, is entitled to  
16 judicial review thereof. All of the pertinent provisions  
17 of section four, article five, chapter twenty-nine-a of this  
18 code shall apply to and govern such judicial review with  
19 like effect as if the provisions of said section four were  
20 set forth in extenso in this section.

21 (d) The judgment of the circuit court shall be final  
22 unless reversed, vacated or modified on appeal to the  
23 supreme court of appeals in accordance with the  
24 provisions of section one, article six, chapter twenty-

25     nine-a of this code.

**§22B-5-11. Existing rights and remedies preserved.**

1       (a) It is the purpose of this article to provide additional  
2     and cumulative remedies to address abandoned wells in  
3     this state and nothing herein contained shall abridge or  
4     alter rights of action or remedies now or hereafter  
5     existing, nor shall any provisions in this article, or any  
6     act done by virtue of this article, be construed as  
7     estopping the state, municipalities, public health officers  
8     or persons in the exercise of their rights to suppress  
9     nuisance or to abate any pollution now or hereafter  
10    existing, or to recover damages.

11    (b) An order of the director, the effect of which is to  
12    find that an abandoned well exists, or in ordering an  
13    abandoned well to be plugged, or any other order, or any  
14    violation of any of the provisions of this article shall give  
15    rise to no presumptions of law or findings of fact inuring  
16    to or for the benefit of persons other than the state of  
17    West Virginia.

18    (c) Nothing contained in this article shall be  
19    construed to place any duty or responsibility on the  
20    landowner, well owner or operator or lessee to plug a  
21    well in addition to those set forth in article one of this  
22    chapter.

**§22B-5-12. Conflicting provisions.**

1       The provisions of this article shall be in addition to  
2     and supplement all other provisions of article one of this  
3     chapter and rights with respect to plugging or replug-  
4     ging wells. Nothing in this article shall be construed to  
5     eliminate the permit requirement for plugging and  
6     replugging wells. In the event of any inconsistency or  
7     conflict between any provision of this article and any  
8     provision of this code, the provisions of this article shall  
9     control.

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

*Thomer Luck*  
Chairman Senate Committee

*Ernest C Moore*  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Nassell E. Atkins*  
Clerk of the Senate

*Donald H. Koop*  
Clerk of the House of Delegates

*Walter Burdette*  
President of the Senate

*B. B. C. C. C.*  
Speaker of the House of Delegates

The within is approved this the 18th  
day of March 1992.

*Yaston Caperton*  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/12/92

Time 4:47pm