

SB 613

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WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 613

(SENATOR KESSLER, original sponsor)

[Passed April 11, 2009; in effect ninety days from passage.]

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AN ACT to amend and reenact §22-21-6, §22-21-15, §22-21-16 and §22-21-17 of the Code of West Virginia, 1931, as amended, all relating to clarifying notice requirements for a hearing on a permit application related to coalbed methane wells; requiring a notice of hearing to be published; and making technical clarifications.

Be it enacted by the Legislature of West Virginia:

That §22-21-6, §22-21-15, §22-21-16 and §22-21-17 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 21. COALBED METHANE WELLS AND UNITS.

§22-21-6. Permit required for coalbed methane well; permit fee; application; soil erosion control plan; penalties.

1 (a) It is unlawful for any person to commence, operate,
2 deepen or stimulate any coalbed methane well, to conduct
3 any horizontal drilling of a well commenced from the
4 surface for the purpose of commercial production of
5 coalbed methane or to convert any existing well, vent hole
6 or other hole to a coalbed methane well, including in any
7 case site preparation work which involves any disturbance
8 of land, without first securing from the chief a permit
9 pursuant to this article.

10 (b) Every permit application filed under this section
11 shall be verified and shall contain the following:

12 (1) The names and addresses of: (i) The well operator;
13 (ii) the agent required to be designated under subsection
14 (e) of this section; and (iii) every person or entity whom the
15 applicant must notify under section nine of this article;

16 (2) The name and address of each coal operator of
17 record and each coal owner of record or providing a record
18 declaration of notice pursuant to section thirty-six, article
19 six of this chapter of any coal seam which is: (i) To be
20 penetrated by a proposed well; (ii) within seven hundred
21 fifty horizontal feet of any portion of the proposed well
22 bore; or (iii) within one hundred vertical feet of the
23 designated coal seams to be stimulated in the proposed
24 well, except that in the case of an application to convert a
25 ventilation hole to a gob well, the name and address only
26 of such owner or operator of the seams to be penetrated by
27 a proposed well shall be necessary;

28 (3) The well name or such other identification as the
29 chief may require;

30 (4) The approximate depth to which the well is to be
31 drilled, deepened or converted, the coal seams (stating the
32 depth and thickness of each seam) in which the well will
33 be completed for production and any other coal seams
34 (including the depth and thickness of each seam) which
35 will be penetrated by the well;

36 (5) A description of any means to be used to stimulate
37 the well;

38 (6) If the proposed well will require casing or tubing to
39 be set, the entire casing program for the well, including
40 the size of each string of pipe, the starting point and depth
41 to which each string is to be set and the extent to which
42 each such string is to be cemented;

43 (7) If the proposed operation is to convert an existing
44 well, as defined in section one, article six of this chapter,
45 or to convert a vertical ventilation hole to a coalbed
46 methane well, all information required by this section, all
47 formations from which production is anticipated and any
48 plans to plug any portion of the well;

49 (8) Except for a gob well or vent hole proposed to be
50 converted to a well, if the proposed coalbed methane well
51 will be completed in some but not all coal seams for
52 production, a plan and design for the well which will
53 protect all workable coal seams which will be penetrated
54 by the well;

55 (9) If the proposed operations will include horizontal
56 drilling of a well commenced on the surface, a description
57 of such operations, including both the vertical and hori-
58 zontal alignment and extent of the well from the surface
59 to total depth;

60 (10) Any other relevant information which the chief
61 may require by rule.

62 (c) Each application for a coalbed methane well permit
63 shall be accompanied by the following:

64 (1) The applicable bond prescribed by section eight of
65 this article;

66 (2) A permit application fee of \$650;

67 (3) The erosion and sediment control plan required
68 under subsection (d) of this section;

69 (4) The consent and agreement of the coal owner as
70 required by section seven of this article and, if applicable,
71 section twenty of this article;

72 (5) A plat prepared by a licensed land surveyor or
73 registered engineer showing the district and county in
74 which the drill site is located, the name of the surface
75 owner of the drill site tract, the acreage of the same, the
76 names of the surface owners of adjacent tracts, the names
77 of all coal owners underlying the drill site tract, the
78 proposed or actual location of the well determined by a
79 survey, the courses and distances of such location from
80 two permanent points or landmarks on said tract, the
81 location of any other existing or permitted coalbed
82 methane well or any oil or gas well located within two
83 thousand five hundred feet of the drill site, the number to
84 be given the coalbed methane well, the proposed date for
85 completion of drilling, the proposed date for any stimula-
86 tion of the well and, if horizontal drilling of a well com-
87 menced on the surface is proposed, the vertical and
88 horizontal alignment and extent of the well;

89 (6) A certificate by the applicant that the notice re-
90 quirements of section nine of this article have been
91 satisfied by the applicant. Such certification may be by
92 affidavit of personal service, or the return receipt card, or
93 other postal receipt, for certified mailing.

94 (d) An erosion and sediment control plan shall accom-
95 pany each application for a permit. Such plan shall
96 contain methods of stabilization and drainage, including
97 a map of the project area indicating the amount of acreage
98 disturbed. The erosion and sediment control plan shall
99 meet the minimum requirements of the West Virginia
100 erosion and sediment control manual as adopted and, from
101 time to time, amended by the Office of Oil and Gas in
102 consultation with the several soil conservation districts
103 pursuant to the control program established in this state
104 through Section 208 of the federal Water Pollution Control
105 Act Amendments of 1972, 33 U. S. C. §1288. The erosion
106 and sediment control plan shall become part of the terms
107 and conditions of a permit and the provisions of the plan
108 shall be carried out where applicable in operations under
109 the permit. The erosion and sediment control plan shall
110 set out the proposed method of reclamation which shall
111 comply with the requirements of section thirty, article six
112 of this chapter.

113 (e) The well operator named in such application shall
114 designate the name and address of an agent for such
115 operator who shall be the attorney-in-fact for the operator
116 and who shall be a resident of the State of West Virginia,
117 upon whom notices, orders or other communications
118 issued pursuant to this article may be served, and upon
119 whom process may be served. Every well operator re-
120 quired to designate an agent under this section shall
121 within five days after the termination of such designation
122 notify the office of such termination and designate a new
123 agent.

124 (f) The well owner or operator shall install the permit
125 number as issued by the chief in a legible and permanent
126 manner to the well upon completion of any permitted
127 work. The dimensions, specifications and manner of
128 installation shall be in accordance with the rules of the
129 chief.

130 (g) The chief shall deny the issuance of a permit if he or
131 she determines that the applicant has committed a sub-
132 stantial violation of a previously issued permit, including
133 the erosion and sediment control plan, or a substantial
134 violation of one or more of the rules promulgated hereun-
135 der, and has failed to abate or seek review of the violation.
136 In the event that the chief finds that a substantial viola-
137 tion has occurred with respect to existing operations and
138 that the operator has failed to abate or seek review of the
139 violation in the time prescribed, he or she may suspend the
140 permit on which said violation exists, after which suspen-
141 sion the operator shall forthwith cease all work being
142 conducted under the permit until the chief reinstates the
143 permit, at which time the work may be continued. The
144 chief shall make written findings of any such determina-
145 tion made by him or her and may enforce the same in the
146 circuit courts of this state and the operator may appeal
147 such suspension pursuant to section twenty-five of this
148 article. The chief shall make a written finding of any such
149 determination.

150 (h) Any person who violates this section shall be guilty
151 of a misdemeanor and, upon conviction thereof, shall be
152 fined not more than \$5,000 or be confined in jail not more
153 than one year, or both fined and confined.

§22-21-15. Drilling units and pooling of interests.

1 (a) In the absence of a voluntary agreement, an opera-
2 tor, owner or other party claiming an ownership interest
3 in the coalbed methane may file an application with the
4 chief to pool: (i) Separately owned interests in a single
5 tract; (ii) separately owned tracts; (iii) separately owned
6 interests in any tract; and (iv) any combination of (i), (ii)
7 and (iii) to form a drilling unit for the production of
8 coalbed methane from one or more coalbed methane wells.

9 (b) The application for a drilling unit may accompany
10 the application for a permit for a coalbed methane well or

11 be filed as a supplement to the permit application. Such
12 application shall be verified by the applicant and contain
13 the following information for the proposed unit:

14 (1) The identity of each well and operator as set out in
15 the well permit application;

16 (2) Each well number, if one has been assigned;

17 (3) The acreage of the proposed unit, the identity and
18 acreage of each separate tract to be included in the
19 proposed unit and, where parts of tracts are included, the
20 acreage of such parts;

21 (4) The district and county in which the unit is located;

22 (5) The names and addresses of all persons to whom
23 notice must be provided under subsection (a), section
24 sixteen of this article known to the applicant. When any
25 coal seam is separately owned, the list of names shall
26 identify such separate ownership giving the names of the
27 separately owned seams;

28 (6) A statement describing the actions taken by the
29 applicant to obtain a voluntary agreement from each
30 interest owner or claimant named in the application to
31 whom notice must be provided under subsection (a),
32 section sixteen of this article or any other owner or
33 claimant who has notified the applicant of a claim from
34 which agreement has not been obtained;

35 (7) Other pertinent and relevant information as the
36 chief may prescribe by rules.

37 (c) The application for a drilling unit shall be accompa-
38 nied with the following:

39 (1) A plat prepared by a licensed land surveyor or
40 registered professional engineer showing the location of
41 the coalbed methane well or wells, or proposed well or
42 wells, the boundary and acreage of the proposed drilling

43 unit, the boundary and acreage of each tract contained in
44 the unit and, where parts of tracts are included, the
45 boundary and acreage of such parts, a name identification
46 of each tract and the district and county in which the unit
47 is located. All boundaries must be shown with courses and
48 distances;

49 (2) A permit application fee of \$250;

50 (3) A certificate by the applicant that the notice re-
51 quirements of section sixteen of this article were satisfied
52 by the applicant. Such certification may be by affidavit of
53 personal service, or the return receipt card, or other postal
54 receipt, for certified mailing;

55 (4) An estimate of the cost, or the actual cost if known,
56 of drilling, completing and equipping, operating, plugging
57 and abandoning any well or wells in the proposed unit.

§22-21-16. Notice to owners.

1 (a) At least thirty days prior to the date set for hearing
2 under section seventeen of this article, the applicant shall
3 deliver by personal service or by certified mail, return
4 receipt requested, notice to the following:

5 (1) Each coal owner of record and coal operator of
6 record of any coal seam underlying any tract or portion
7 thereof which is proposed to be included in the unit;

8 (2) Each owner and lessee of record and each operator
9 of natural gas surrounding the well bore and existing in
10 formations above the top of the uppermost member of the
11 "Onondaga Group" or at a depth less than six thousand
12 feet, whichever is shallower. Notices to gas operators shall
13 be sufficient if served upon the agent of record with the
14 Office of Oil and Gas; and

15 (3) Any coalbed methane owner to the extent not
16 otherwise named which interest arises from a deed, lease,

17 contract, will, inheritance or other instrument of record
18 wherein a person or entity identified in subdivision (1) or
19 (2), subsection (a) of this section or the predecessor in title
20 to such person or entity, expressly granted, leased, re-
21 served or conveyed coalbed methane.

22 (b) At least thirty days prior to the date set for the
23 hearing under section seventeen of this article, the appli-
24 cant shall publish a notice by a Class II legal advertise-
25 ment in the county or counties in which the well unit is to
26 be located. The legal advertisement shall contain the
27 information required by subsection (c) and any other
28 information as the chief shall prescribe by rule.

29 (c) The notice required by this section shall specify a
30 time and place for a conference and a hearing on this
31 application, shall advise the persons notified that the
32 applicant has filed an application for a drilling unit for the
33 production of coalbed methane, that they may be present
34 and object or offer comments to the formation of the
35 proposed unit and shall be accompanied with copies of: (i)
36 The permit application for the coalbed methane well; (ii)
37 the permit application for the drilling unit; and (iii) the
38 plat of the drilling unit. However, in the case of the notice
39 required by subsection (b) of this section, only the address
40 of where an interested party can obtain such copies is
41 required to be published.

42 (d) Notice by the applicant to all persons to whom
43 notice must be provided under subsection (a) of this
44 section and notice by publication as provided by subsec-
45 tion (b) of this section shall be deemed to include, and
46 shall be deemed to be sufficient notice to, all potential
47 claimants to ownership of the coalbed methane.

**§22-21-17. Review of application; hearing; pooling order;
spacing; operator; elections; working interests,
royalty interests, carried interests, escrow ac-
count for conflicting claims, division order.**

1 (a) Prior to the time fixed for a hearing under subsec-
2 tion (b) of this section, the board shall also set a time and
3 place for a conference between the proposed applicant to
4 operate a coalbed methane drilling unit and all persons to
5 whom notice has been given under subsection (a), section
6 sixteen of this article who have not entered into a volun-
7 tary agreement. At such conference the applicant and
8 such other persons present or represented having an
9 interest in the proposed unit shall be given an opportunity
10 to enter into voluntary agreements for the development of
11 the unit upon reasonable terms and conditions.

12 No order may be issued by the board as to any unit
13 unless the applicant submits at the hearing a verified
14 statement setting forth the results of the conference. If
15 agreement is reached with all parties to the conference, the
16 board shall find the unit is a voluntary unit and issue an
17 order consistent with such finding.

18 (b) The review board shall, upon request of a proposed
19 applicant for a drilling unit or upon request of a coal
20 owner or operator, provide a convenient date and time for
21 a hearing on the application for a drilling unit, which
22 hearing date shall be no sooner than thirty-five days nor
23 more than sixty days of the date the request for hearing is
24 made. The review board shall review the application and
25 on the date specified for a hearing shall conduct a public
26 hearing. The review board shall take evidence, making a
27 record thereof and consider:

28 (1) The area which may be drained efficiently and
29 economically by the proposed coalbed methane well or
30 wells;

31 (2) The plan of development of the coal and the need
32 for proper ventilation of any mines or degasification of
33 any affected coal seams;

34 (3) The nature and character of any coal seam or seams
35 which will be affected by the coalbed methane well or
36 wells;

37 (4) The surface topography and property lines of the
38 lands underlaid by the coal seams to be included in the
39 unit;

40 (5) Evidence relevant to the proper boundary of the
41 drilling unit;

42 (6) The nature and extent of ownership of each coalbed
43 methane owner or claimant and whether conflicting
44 claims exist;

45 (7) Whether the applicant for the drilling unit proposes
46 to be the operator of the coalbed methane well or wells
47 within the unit; and if so, whether such applicant has a
48 lease or other agreement from the owners or claimants of
49 a majority interest in the proposed drilling unit;

50 (8) Whether a disagreement exists among the coalbed
51 methane owners or claimants over the designation of the
52 operator for any coalbed methane wells within the unit
53 and, if so, relevant evidence to determine which operator
54 can properly and efficiently develop the coalbed methane
55 within the unit for the benefit of the majority of the
56 coalbed methane owners;

57 (9) If more than one person is interested in operating
58 a well within the unit, the estimated cost submitted by
59 each such person for drilling, completing, operating and
60 marketing the coalbed methane from any proposed well or
61 wells; and

62 (10) Any other available geological or scientific data
63 pertaining to the pool which is proposed to be developed.

64 (c) The review board shall take into account the
65 evidence introduced, comments received and any objec-

66 tions at the hearing, and if satisfied that a drilling unit
67 should not be established, shall enter an order denying the
68 application. If the review board is satisfied that a drilling
69 unit should be established, it shall enter a pooling order
70 establishing a drilling unit. Such pooling order shall:

71 (1) Establish the boundary of the proposed unit,
72 making such adjustment in the boundary as is just;

73 (2) Authorize the drilling and operation of a coalbed
74 methane well or wells for production of coalbed methane
75 from the pooled acreage;

76 (3) Establish minimum distances for any wells in the
77 unit and for other wells which would drain the pooled
78 acreage;

79 (4) Designate the operator who will be authorized to
80 drill, complete and operate any well or wells in the unit;

81 (5) Establish a reasonable fee for the operator for
82 operating costs, which shall include routine maintenance
83 of the well and all accounting necessary to pay all ex-
84 penses, royalties and amounts due working interest
85 owners;

86 (6) Such other findings and provisions as are appropri-
87 ate for each order.

88 (d) The operator designated in such order shall be
89 responsible for drilling, completing, equipping, operating,
90 plugging and abandoning the well, shall market all
91 production therefrom, shall collect all proceeds therefor
92 and shall distribute such proceeds in accordance with the
93 division order issued by the review board.

94 (e) Upon issuance of the pooling order, the coalbed
95 methane owners or any lessee of any such owners or any
96 claimants thereto may make one of the following elections
97 within thirty days after issuance of the order:

98 (1) An election to sell or lease its interest to the opera-
99 tor on such terms as the parties may agree, or if unable to
100 agree, upon such terms as are set forth by the board in its
101 order;

102 (2) An election to become a working interest owner by
103 participating in the risk and cost of the well; or

104 (3) An election to participate in the operation of the
105 well as a carried interest owner.

106 Any entity which does not make an election within
107 said thirty days prescribed herein shall be deemed to have
108 elected to sell or lease under subdivision (1) of this subsec-
109 tion.

110 (f) The working interest in the well shall include: (i)
111 The right to participate in decisions regarding expendi-
112 tures in excess of operating costs, taxes, any royalties in
113 excess of one-eighth, and other costs and expenses allowed
114 in the pooling order; and (ii) the obligation to pay for all
115 expenditures. The working interest shall exist in; (i) All
116 well operators and owners who participate in the risk and
117 cost of drilling and completing the well; and (ii) carried
118 interest owners after recoupment provided in subsection
119 (h) of this section. The working interest owners' net
120 revenue share shall be seven eighths of the proceeds of
121 sales of coalbed methane at the wellhead after deduction
122 of operating costs, taxes, any royalties in excess of one-
123 eighth and other costs and expenses allowed in a pooling
124 order. Unless the working interest owners otherwise
125 agree, the working interest owners shall share in all costs
126 and decisions in proportion to their ownership interest in
127 the unit. If any working interest owner deposits or
128 contributes amounts in the escrow account which exceed
129 actual costs, such owner shall be entitled to a refund; and
130 if amounts deposited or contributed are less than actual
131 costs, such owner shall make a deposit or contribution for
132 the deficiency.

133 (g) The royalty interest in a well shall include the right
134 to receive one eighth of the gross proceeds resulting from
135 the sale of methane at the wellhead and such interest shall
136 exist in the coalbed methane owners: *Provided*, That any
137 coalbed methane owner who in good faith has entered a
138 lease or other contract prior to receiving notice of an
139 application to form the drilling unit as provided herein
140 shall be entitled to such owner's fractional interest in the
141 royalty calculated at a rate provided for in such contract.
142 Each such owner shall be entitled to share in the royalty
143 in proportion to his or her fractional interest in the unit.

144 (h) Where a coalbed methane owner elects to become
145 a carried interest owner, such owner shall be entitled to
146 his or her proportionate share of the working interest after
147 the other working interest owners have recouped three
148 hundred percent of the reasonable capital costs of the well
149 or wells, including drilling, completing, equipping,
150 plugging and abandoning and any further costs of rework-
151 ing or other improvements of a capital nature.

152 (i) Each pooling order issued shall provide for the
153 establishment of an escrow account into which the pay-
154 ment of costs and proceeds attributable to any conflicting
155 interests shall be deposited and held for the interest of the
156 claimants as follows:

157 (1) Each participating working interest owner, except
158 for the operator, shall deposit in the escrow account its
159 proportionate share of the costs allocable to the ownership
160 interest claimed by such working interest owner.

161 (2) The operator shall deposit in the escrow account all
162 proceeds attributable to the conflicting interests of any
163 coalbed methane owners who lease, or are deemed to have
164 leased, their interest, plus all proceeds in excess of opera-
165 tional expenses, as allowed in the pooling order, attribut-
166 able to the conflicting working and carried interest
167 owners.

168 (j) After each coalbed methane owner has made, or has
169 been deemed to have made, an election under subsection
170 (e) of this section, the review board shall enter a division
171 order which shall set out the net revenue interest of each
172 working interest owner, including each carried interest
173 owner and the royalty interest of each coalbed methane
174 owner. Thereafter payments shall be made to working
175 interest owners, carried interest owners and royalty
176 interest owners in accordance with the division order,
177 except that payments attributable to conflicting claims
178 shall be deposited in the escrow account. The fractional
179 interest of each owner shall be expressed as a decimal
180 carried to the sixth place.

181 (k) Upon resolution of conflicting claims either by
182 voluntary agreement of the parties or a final judicial
183 determination, the review board shall enter a revised
184 division order in accordance with such agreement or
185 determination and all amounts in escrow shall be distrib-
186 uted as follows:

187 (1) Each legally entitled working interest owner shall
188 receive its proportionate share of the proceeds attributable
189 to the conflicting ownership interests;

190 (2) Each legally entitled carried interest owner shall
191 receive its proportionate share of the proceeds attributable
192 to the conflicting ownership interests, after recoupment of
193 amounts provided in subsection (h) of this section;

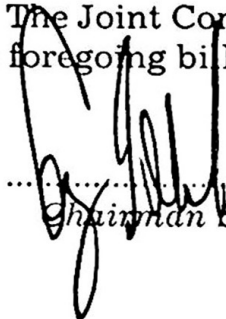
194 (3) Each legally entitled entity leasing, or deemed to
195 have leased, its coalbed methane shall receive a share of
196 the royalty proceeds attributable to the conflicting
197 interests; and

198 (4) The operator shall receive the costs contributed to
199 the escrow account by each legally entitled participating
200 working interest owner.

201 (l) The review board shall enact rules for the adminis-
202 tration and protection of funds delivered to escrow
203 accounts.

204 (m) No provision of this section or article shall obviate
205 the requirement that the coal owner's consent and agree-
206 ment be obtained prior to the issuance of a permit as
207 required under section seven of this article.

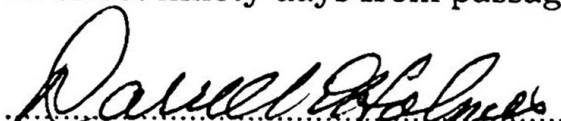
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


.....
Chairman Senate Committee

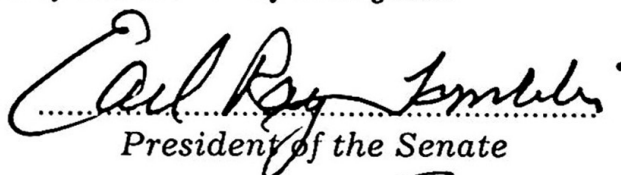

.....
Chairman House Committee


Originated in the Senate.

In effect ninety days from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within is approved this the 6th
Day of May, 2009.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAY 1 2009

Time 2:50 pm