

HB 3110

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

Revised

Committee Substitute

for

House Bill 3110

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE
2023 MAR 29 P 1:17

FILED

BY DELEGATES ANDERSON, ZATEZALO, HORST, HANSEN,
FEHRENBACHER, COOPER, MARTIN, YOUNG, HARDY AND HECKERT
[Passed March 11, 2023; in effect ninety days from passage.]

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1 AN ACT to amend and reenact §11-13A-5a of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §22-6-2, §22-6-29, and §22-6A-7 of said code, all relating to funding
3 the Office of Oil and Gas in the Department of Environmental Protection; providing for the
4 apportionment of three fourths of one percent of oil and gas severance taxes not to exceed
5 \$1,200,000 to Office of Oil and Gas; establishing two tiers of annual oversight fees for
6 wells producing more than 60,000 cubic feet of gas per day; increasing the expedited
7 permit modification fee by \$2500 over the current level; eliminating the one million dollar
8 cap on deposits to the Oil and Gas Operating Permit and Processing Fund from collections
9 of fees for expedited permits and expedited permit modifications; providing that those fees,
10 if not used for other purposes, may be moved to the Oil and Gas Reclamation Fund; and
11 making technical corrections.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-5a. Dedication of ten percent of oil and gas severance tax for benefit of counties and municipalities and of three fourths of one percent of oil and gas severance tax for the benefit of the Office of Oil and Gas in the Department of Environmental Protection; distribution of major portion of such dedicated tax to oil and gas producing counties; distribution of minor portion of such dedicated tax to all counties and municipalities; reports; rules; special funds in the office of state treasurer; methods and formulae for distribution of such dedicated tax; expenditure of funds by counties and municipalities for public purposes; and requiring special county and municipal budgets and reports thereon.

1 (a) Effective July 1, 1996, five percent of the tax attributable to the severance of oil and
2 gas imposed by §11-13A-3a of this code is hereby dedicated for the use and benefit of counties

3 and municipalities within this state and shall be distributed to the counties and municipalities as
4 provided in this section. Effective July 1, 1997, and thereafter, ten percent of the tax attributable
5 to the severance of oil and gas imposed by section three-a of this article is hereby dedicated for
6 the use and benefit of counties and municipalities within this state and shall be distributed to the
7 counties and municipalities as provided in this section. Effective July 1, 2023, and every year
8 thereafter, three fourths of one percent of the tax attributable to the severance of oil and gas
9 imposed by §11-13A-3a of this code, not to exceed \$1,200,000, is hereby dedicated for the use
10 and benefit of regulating the oil and gas industry by the Office of Oil and Gas in the Department
11 of Environmental Protection and shall be deposited in the Oil and Gas Operating Permit and
12 Processing Fund to ensure that the Office of Oil and Gas has sufficient funding to support its
13 regulatory mission of ensuring the safety of the natural environment of this state.

14 (b) Seventy-five percent of the dedicated tax for counties and municipalities shall be
15 distributed by the State Treasurer in the manner specified in this section to the various counties
16 of this state in which the oil and gas upon which this additional tax is imposed was located at the
17 time it was removed from the ground. Those counties are referred to in this section as the "oil and
18 gas producing counties". The remaining twenty-five percent of the net proceeds of this additional
19 tax on oil and gas shall be distributed among all the counties and municipalities of this state in the
20 manner specified in this section.

21 (c) The Tax Commissioner is hereby granted plenary power and authority to promulgate
22 reasonable rules requiring the furnishing by oil and gas producers of such additional information
23 as may be necessary to compute the allocation required under the provisions of subsection (f) of
24 this section. The Tax Commissioner is also hereby granted plenary power and authority to
25 promulgate such other reasonable rules as may be necessary to implement the provisions of this
26 section.

27 (d) In order to provide a procedure for the distribution of seventy-five percent of the
28 dedicated tax for counties and municipalities on oil and gas to the oil and gas producing counties,

29 the special fund known as the oil and gas county revenue fund established in State Treasurer's
30 office by chapter two hundred forty-two, acts of the Legislature, 1995 regular session, as amended
31 and reenacted in the subsequent act of the Legislature, is hereby continued. In order to provide
32 a procedure for the distribution of the remaining twenty-five percent of the dedicated tax for
33 counties and municipalities on oil and gas to all counties and municipalities of the state, without
34 regard to oil and gas having been produced in those counties or municipalities, the special fund
35 known as the all counties and municipalities revenue fund established in State Treasurer's office
36 by chapter two hundred forty-two, acts of the Legislature, 1995 regular session, as amended and
37 reenacted in the subsequent act of the Legislature, is hereby redesignated as the "all counties
38 and municipalities oil and gas revenue fund" and is hereby continued.

39 Seventy-five percent of the dedicated tax for counties and municipalities on oil and gas
40 shall be deposited in the oil and gas county revenue fund and twenty-five percent of this dedicated
41 tax on oil and gas shall be deposited in the all counties and municipalities oil and gas revenue
42 fund, from time to time, as the proceeds are received by the Tax Commissioner. The moneys in
43 the funds shall be distributed to the respective counties and municipalities entitled to the moneys
44 in the manner set forth in subsection (e) of this section.

45 (e) The moneys in the oil and gas county revenue fund and the moneys in the all counties
46 and municipalities oil and gas revenue fund shall be allocated among and distributed annually to
47 the counties and municipalities entitled to the moneys by the State Treasurer in the manner
48 specified in this section. On or before each distribution date, the State Treasurer shall determine
49 the total amount of moneys in each fund which will be available for distribution to the respective
50 counties and municipalities entitled to the moneys on that distribution date. The amount to which
51 an oil and gas producing county is entitled from the oil and gas county revenue fund shall be
52 determined in accordance with subsection (f) of this section, and the amount to which every
53 county and municipality shall be entitled from the all counties and municipalities oil and gas
54 revenue fund shall be determined in accordance with subsection (g) of this section. After

55 determining, as set forth in subsections (f) and (g) of this section, the amount each county and
56 municipality is entitled to receive from the respective fund or funds, a warrant of the State Auditor
57 for the sum due to the county or municipality shall issue and a check drawn thereon making
58 payment of the sum shall thereafter be distributed to the county or municipality.

59 (f) The amount to which an oil and gas producing county is entitled from the oil and gas
60 county revenue fund shall be determined by:

61 (1) In the case of moneys derived from tax on the severance of gas:

62 (A) Dividing the total amount of moneys in the fund derived from tax on the severance of
63 gas then available for distribution by the total volume of cubic feet of gas extracted in this state
64 during the preceding year; and

65 (B) Multiplying the quotient thus obtained by the number of cubic feet of gas taken from
66 the ground in the county during the preceding year; and

67 (2) In the case of moneys derived from tax on the severance of oil:

68 (A) Dividing the total amount of moneys in the fund derived from tax on the severance of
69 oil then available for distribution by the total number of barrels of oil extracted in this state during
70 the preceding year; and

71 (B) Multiplying the quotient thus obtained by the number of barrels of oil taken from the
72 ground in the county during the preceding year.

73 (g) The amount to which each county and municipality is entitled from the all counties and
74 municipalities oil and gas revenue fund shall be determined in accordance with the provisions of
75 this subsection. For purposes of this subsection "population" means the population as determined
76 by the most recent decennial census taken under the authority of the United States:

77 (1) The State Treasurer shall first apportion the total amount of moneys available in the all
78 counties and municipalities oil and gas revenue fund by multiplying the total amount in the fund
79 by the percentage which the population of each county bears to the total population of the state.
80 The amount thus apportioned for each county is the county's "base share".

81 (2) Each county's base share shall then be subdivided into two portions. One portion is
82 determined by multiplying the base share by that percentage which the total population of all
83 unincorporated areas within the county bears to the total population of the county, and the other
84 portion is determined by multiplying the base share by that percentage which the total population
85 of all municipalities within the county bears to the total population of the county. The former portion
86 shall be paid to the county and the latter portion shall be the "municipalities' portion" of the county's
87 base share. The percentage of the latter portion to which each municipality in the county is entitled
88 shall be determined by multiplying the total of the latter portion by the percentage which the
89 population of each municipality within the county bears to the total population of all municipalities
90 within the county.

91 (h) Moneys distributed to any county or municipality under the provisions of this section,
92 from either or both special funds, shall be deposited in the county or municipal general fund and
93 may be expended by the county commission or governing body of the municipality for such
94 purposes as the county commission or governing body shall determine to be in the best interest
95 of its respective county or municipality: *Provided*, That in counties with population in excess of
96 two hundred thousand, at least seventy-five percent of the funds received from the oil and gas
97 county revenue fund shall be apportioned to and expended within the oil and gas producing area
98 or areas of the county, the oil and gas producing areas of each county to be determined generally
99 by the State Tax Commissioner: *Provided, however*, That the moneys distributed to any county
100 or municipality under the provisions of this section shall not be budgeted for personal services in
101 an amount to exceed one fourth of the total amount of the moneys.

102 (i) On or before March 28, 1997, and each March 28 thereafter, each county commission
103 or governing body of a municipality receiving any such moneys shall submit to the Tax
104 Commissioner on forms provided by the Tax Commissioner a special budget, detailing how the
105 moneys are to be spent during the subsequent fiscal year. The budget shall be followed in
106 expending the moneys unless a subsequent budget is approved by the State Tax Commissioner.

107 All unexpended balances remaining in the county or municipality general fund at the close of a
108 fiscal year shall remain in the General Fund and may be expended by the county or municipality
109 without restriction.

110 (j) On or before December 15, 1996, and each December 15 thereafter, the Tax
111 Commissioner shall deliver to the clerk of the Senate and the Clerk of the House of Delegates a
112 consolidated report of the budgets, created by subsection (i) of this section, for all county
113 commissions and municipalities as of July 15, of the current year.

114 (k) The State Tax Commissioner shall retain for the benefit of the state from the dedicated
115 tax attributable to the severance of oil and gas the amount of \$35,000 annually as a fee for the
116 administration of the additional tax by the Tax Commissioner.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION; ENFORCEMENT.

§22-6-2. Secretary – powers and duties generally; department records open to public; inspectors.

1 (a) The secretary shall have as his or her duty the supervision of the execution and
2 enforcement of matters related to oil and gas set out in §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-
3 1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code.

4 (b) The secretary is authorized to propose rules for legislative approval in accordance with
5 the provisions of §29A-3-1 *et seq.* of this code necessary to effectuate the above stated purposes.

6 (c) The secretary shall have full charge of the oil and gas matters set out in §22-6-1 *et*
7 *seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.*
8 of this code. In addition to all other powers and duties conferred upon him or her, the secretary
9 shall have the power and duty to:

10 (1) Supervise and direct the activities of the Office of Oil and Gas and see that the
11 purposes set forth in §22-6-2(a) and §22-6-2(b) of this code are carried out;

12 (2) Determine the number of supervising oil and gas inspectors and oil and gas inspectors
13 needed to carry out the purposes of §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1
14 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code and appoint them as such. All
15 appointees must be qualified civil service employees, but no person is eligible for appointment
16 until he or she has served in a probationary status for a period of six months to the satisfaction of
17 the secretary;

18 (3) Supervise and direct such oil and gas inspectors and supervising inspectors in the
19 performance of their duties;

20 (4) Make investigations or inspections necessary to ensure compliance with and to enforce
21 the provisions of §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et*
22 *seq.*, and §22-21-1 *et seq.* of this code;

23 (5) Prepare report forms to be used by oil and gas inspectors or the supervising inspector
24 in making their findings, orders, and notices upon inspections made in accordance with §22-6-1
25 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.*
26 of this code;

27 (6) Employ a hearing officer and such clerks, stenographers, and other employees as may
28 be necessary to carry out his or her duties and the purposes of the Office of Oil and Gas and fix
29 their compensation;

30 (7) Hear and determine applications made by owners, well operators, and coal operators
31 for the annulment or revision of orders made by oil and gas inspectors or the supervising
32 inspector, and to make inspections, in accordance with the provisions of §22-6-1 *et seq.*, §22-6A-
33 1 *et seq.*, §22-8-1 *et seq.*, and §22-9-1 *et seq.* of this code;

34 (8) Cause a properly indexed permanent and public record to be kept of all inspections
35 made by the secretary or by oil and gas inspectors or the supervising inspector;

36 (9) Conduct research and studies as the secretary shall deem necessary to aid in
37 protecting the health and safety of persons employed within or at potential or existing oil or gas
38 production fields within this state, to improve drilling and production methods, and to provide for
39 the more efficient protection and preservation of oil and gas-bearing rock strata and property used
40 in connection therewith;

41 (10) Collect a permit fee of \$400 for each permit application filed other than an application
42 for a deep well, horizontal wells regulated pursuant to §22-6A-1 *et seq.* of this code, or a coalbed
43 methane well; and collect a permit fee of \$650 for each permit application filed for a deep well:
44 *Provided*, That no permit application fee is required when an application is submitted solely for
45 the plugging or replugging of a well, or to modify an existing application for which the operator
46 previously has submitted a permit fee under this section. All application fees required hereunder
47 are in lieu of and not in addition to any fees imposed under §22-11-1 *et seq.* of this code relating
48 to discharges of stormwater but are in addition to any other fees required by the provisions of
49 §22-6-1 *et seq.* of this code: *Provided, however*, That upon a final determination by the United
50 States Environmental Protection Agency regarding the scope of the exemption under Section
51 402(l)(2) of the federal Clean Water Act (33 U.S.C. 1342(l)(2)), which determination requires a
52 "national pollutant discharge elimination system" permit for stormwater discharges from the oil
53 and gas operations described therein, any permit fees for stormwater permits required under §22-
54 11-1 *et seq.* of this code for such operations may not exceed \$100;

55 (11) On or after July 1 of each year, collect from the responsible operator of the first 400
56 wells subject to §22-6-1 *et seq.*, §22-6A-1 *et seq.* or §22-21-1 *et seq.* of this code that has not yet
57 been plugged, and that produces more than an average, calculated by dividing the annual
58 production by 365, of 250,000 cubic feet of gas per day or more as reported to the State Tax
59 Commissioner in the previous reporting year, an annual oversight fee of \$350 for each well;

60 (12) On or after July 1 of each year, collect from the responsible operator of the first 400
61 wells subject to §22-6-1 *et seq.*, §22-6A-1 *et seq.* or §22-21-1 *et seq.* of this code that has not yet

62 been plugged, and that produces an average, calculated by dividing the annual production by
63 365, of less than or equal to 250,000 cubic feet of gas but more than 60,000 cubic feet of gas per
64 day as reported to the State Tax Commissioner in the previous reporting year, an annual oversight
65 fee of \$75 for each well;

66 (13) On or after July 1 of each year, collect from the responsible operator of the first 4,000
67 wells subject to §22-6-1 *et seq.*, §22-6A-1 *et seq.* or §22-21-1 *et seq.* of this code that has not yet
68 been plugged, and that produces an average, calculated by dividing the annual production by
69 365, of less than or equal to 60,000 cubic feet of gas but more than 10,000 cubic feet of gas per
70 day as reported to the State Tax Commissioner in the previous reporting year, an annual oversight
71 fee of \$25 for each well; *Provided*, That responsible operators with 500 or fewer unplugged wells
72 that produce an average, calculated by dividing the annual production by 365, of less than or
73 equal to 60,000 cubic feet of gas but more than 10,000 cubic feet of gas per day are not subject
74 to fees under this subdivision;

75 (14) Perform all other duties which are expressly imposed upon the secretary by the
76 provisions of this chapter;

77 (15) Perform all duties as the permit issuing authority for the state in all matters pertaining
78 to the exploration, development, production, storage, and recovery of this state's oil and gas;

79 (16) Adopt rules with respect to the issuance, denial, retention, suspension, or revocation
80 of permits, authorizations, and requirements of this chapter, which rules shall assure that the
81 rules, permits, and authorizations issued by the secretary are adequate to satisfy the purposes of
82 §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-7-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-10-1 *et*
83 *seq.*, and §22-21-1 *et seq.* of this code particularly with respect to the consolidation of the various
84 state and federal programs which place permitting requirements on the exploration, development,
85 production, storage, and recovery of this state's oil and gas; and

86 (17) Perform such acts as may be necessary or appropriate to secure to this state the
87 benefits of federal legislation establishing programs relating to the exploration, development,

88 production, storage, and recovery of this state's oil and gas, which programs are assumable by
89 the state.

90 (d) The secretary shall have authority to visit and inspect any well or well site and any
91 other oil or gas facility in this state and may call for the assistance of any oil and gas inspector or
92 inspectors or supervising inspector whenever such assistance is necessary in the inspection of
93 any such well or well site or any other oil or gas facility. Similarly, all oil and gas inspectors and
94 supervising inspectors shall have authority to visit and inspect any well or well site and any other
95 oil or gas facility in this state. Such inspectors shall make all necessary inspections of oil and gas
96 operations required by §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et seq.*, §22-9-1 *et seq.*, §22-
97 10-1 *et seq.*, and §22-21-1 *et seq.* of this code; administer and enforce all oil and gas laws and
98 rules; and perform other duties and services as may be prescribed by the secretary. The
99 inspectors shall note and describe all violations of §22-6-1 *et seq.*, §22-6A-1 *et seq.*, §22-8-1 *et*
100 *seq.*, §22-9-1 *et seq.*, §22-10-1 *et seq.*, and §22-21-1 *et seq.* of this code and promptly report
101 those violations to the secretary in writing, furnishing at the same time a copy of the report to the
102 operator concerned. Any well operator, coal operator operating coal seams beneath the tract of
103 land, or the coal seam owner or lessee, if any, if said owner or lessee is not yet operating said
104 coal seams beneath said tract of land, may request the secretary to have an immediate inspection
105 made. The operator or owner of every well or well site or any other oil or gas facility shall cooperate
106 with the secretary, all oil and gas inspectors and the supervising inspector in making inspections
107 or obtaining information.

108 (e) Subject to the provisions of §29B-1-1 *et seq.* of this code, all records of the office shall
109 be open to the public.

§22-6-29. Operating permit and processing fund; special reclamation fund; fees.

1 (a) There is hereby continued within the Treasury of the State of West Virginia the special
2 fund known as the Oil and Gas Operating Permit and Processing Fund, and the secretary shall
3 deposit with the state Treasurer to the credit of such special fund all fees collected under the
4 provisions of §22-6-2(c)(10), §22-6-2(c)(11), §22-6-2(c)(12), and §22-6-2(c)(13) of this code.

5 The Oil and Gas Operating Permit and Processing Fund shall be administered by the
6 secretary for the purposes of carrying out the provisions of this chapter. Fees collected under
7 §22-6-2(c)(11), (12) and (13) of this code not used for other purposes may only be transferred to
8 the Oil and Gas Reclamation Fund that is continued in §22-6-29(b) of this code at the discretion
9 of the secretary.

10 The secretary shall make an annual report to the Governor and to the Legislature on the
11 use of the fund, and shall make a detailed accounting of all expenditures from the Oil and Gas
12 Operating Permit and Processing Fund.

13 (b) In addition to any other fees required by the provisions of §22-6-1 *et seq.* of this code,
14 every applicant for a permit to drill a well shall, before the permit is issued, pay to the secretary a
15 special reclamation fee of \$150 for each activity for which a well work application is required to
16 be filed: *Provided*, That a special reclamation fee shall not be assessed for plugging activities.
17 Such special reclamation fee shall be paid at the time the application for a drilling permit is filed
18 with the secretary and the payment of such reclamation fee shall be a condition precedent to the
19 issuance of said permit.

20 There is hereby continued within the Treasury of the State of West Virginia the special
21 fund known as the Oil and Gas Reclamation Fund, and the secretary shall deposit with the state
22 Treasurer to the credit of such special fund all special reclamation fees collected. The proceeds
23 of any bond forfeited under the provisions of §22-6-1 *et seq.* of this code shall inure to the benefit
24 of, and shall be deposited in, such Oil and Gas Reclamation Fund.

25 The Oil and Gas Reclamation Fund shall be administered by the secretary. The secretary
26 shall cause to be prepared plans for the reclaiming and plugging of abandoned wells which have
27 not been reclaimed or plugged or which have been improperly reclaimed or plugged. The
28 secretary, as funds become available in the Oil and Gas Reclamation Fund, shall reclaim and
29 properly plug wells in accordance with said plans and specifications and in accordance with the
30 provisions of §22-6-1 *et seq.* of this code relating to the reclaiming and plugging of wells and all

31 rules promulgated thereunder. Such funds may also be utilized for the purchase of abandoned
32 wells, where such purchase is necessary, and for the reclamation of such abandoned wells, and
33 for any engineering, administrative, and research costs as may be necessary to properly
34 effectuate the reclaiming and plugging of all wells, abandoned or otherwise.

35 The secretary may avail the division of any federal funds provided on a matching basis
36 that may be made available for the purpose of reclaiming or plugging any wells.

37 The secretary shall make an annual report to the Governor and to the Legislature setting
38 forth the number of wells reclaimed or plugged through the use of the Oil and Gas Reclamation
39 Fund provided for herein. Such report shall identify each such reclamation and plugging project,
40 state the number of wells reclaimed or plugged thereby, show the county wherein such wells are
41 located, and shall make a detailed accounting of all expenditures from the Oil and Gas
42 Reclamation Fund.

43 All wells shall be reclaimed or plugged by contract entered into by the secretary on a
44 competitive bid basis as provided for under the provisions of §5A-3-1 *et seq.* of this code and the
45 rules promulgated thereunder.

ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.

§22-6A-7. Horizontal well permit required; permit fee; application; soil erosion control plan; well site safety plan; site construction plan; water management plan; permit fee; installation of permit number; suspension and transfer of a permit.

1 (a) It is unlawful for any person to commence any well work, including site preparation
2 work which involves any disturbance of land, for a horizontal well without first securing from the
3 secretary a well work permit pursuant to this article.

4 (b) Every permit application filed under this section shall be on a form as may be
5 prescribed by the secretary, shall be verified, and shall contain the following information:

6 (1) The names and addresses of: (A) The well operator; (B) the agent required to be
7 designated under subsection (k) of this section; and (C) every person whom the applicant shall

8 notify under any section of this article, together with a certification and evidence that a copy of the
9 application and all other required documentation has been delivered to all such persons;

10 (2) The names and addresses of every coal operator operating coal seams under the tract
11 of land on which the well is or may be located, and the coal seam owner of record and lessee of
12 record required to be given notice by §22-6A-5(a)(6) of this code, if any, if the owner or lessee is
13 not yet operating the coal seams;

14 (3) The number of the well or other identification the secretary may require;

15 (4) The well work for which a permit is requested;

16 (5) The approximate total depth to which the well is to be drilled or deepened, or the actual
17 depth if the well has been drilled; the proposed angle and direction of the well; the actual depth
18 or the approximate depth at which the well to be drilled deviates from vertical, the angle, and
19 direction of the nonvertical well bore until the well reaches its total target depth or its actual final
20 depth; and the length and direction of any actual or proposed horizontal lateral or well bore;

21 (6) Each formation in which the well will be completed if applicable;

22 (7) A description of any means used to stimulate the well;

23 (8) If the proposed well work will require casing or tubing to be set, the entire casing
24 program for the well, including the size of each string of pipe, the starting point and depth to which
25 each string is to be set and the extent to which each such string is to be cemented;

26 (9) If the proposed well work is to convert an existing well, all information required by this
27 section, all formations from which production is anticipated, and any plans to plug any portion of
28 the well;

29 (10) If the proposed well work is to plug or replug the well, all information necessary to
30 demonstrate compliance with the legislative rules promulgated by the secretary in accordance
31 with §22-6A-13 of this code;

32 (11) If the proposed well work is to stimulate a horizontal well, all information necessary
33 to demonstrate compliance with the requirements of §22-6A-5(a)(7) of this code;

34 (12) The erosion and sediment control plan required under subsection (c) of this section
35 for applications for permits to drill;

36 (13) A well site safety plan to address proper safety measures to be employed for the
37 protection of persons on the site as well as the general public. The plan shall encompass all
38 aspects of the operation, including the actual well work for which the permit was obtained,
39 completion activities and production activities, and shall provide an emergency point of contact
40 for the well operator. The well operator shall provide a copy of the well site safety plan to the local
41 emergency planning committee established pursuant to §15-5A-7 of this code for the emergency
42 planning district in which the well work will occur at least seven days before commencement of
43 well work or site preparation work that involves any disturbance of land;

44 (14) A certification from the operator that: (A) It has provided the owners of the surface
45 described in §22-6A-10(b)(1), §22-6A-10(b)(2), and §22-6A-10(b)(4) of this code, the information
46 required by §22-6A-16(b) and §22-6A-16(c) of this code; (B) that the requirement was deemed
47 satisfied as a result of giving the surface owner notice of entry to survey pursuant to §22-6A-10(a)
48 of this code; or (C) the notice requirements of §22-6A-16(b) of this code were waived in writing
49 by the surface owner; and

50 (15) Any other relevant information which the secretary may reasonably require.

51 (c)(1) An erosion and sediment control plan shall accompany each application for a well
52 work permit under this article. The plan shall contain methods of stabilization and drainage,
53 including a map of the project area indicating the amount of acreage disturbed. The erosion and
54 sediment control plan shall meet the minimum requirements of the West Virginia Erosion and
55 Sediment Control Manual as adopted and from time to time amended by the department. The
56 erosion and sediment control plan shall become part of the terms and conditions of any well work
57 permit that is issued pursuant to this article and the provisions of the plan shall be carried out
58 where applicable in the operation. The erosion and sediment control plan shall set out the

59 proposed method of reclamation which shall comply with the requirements of §22-6A-14 of this
60 code.

61 (2) For well sites that disturb three acres or more of surface, excluding pipelines, gathering
62 lines and roads, the erosion and sediment control plan submitted in accordance with this section
63 shall be certified by a registered professional engineer.

64 (d) For well sites that disturb three acres or more of surface, excluding pipelines, gathering
65 lines and roads, the operator shall submit a site construction plan that shall be certified by a
66 registered professional engineer and contains information that the secretary may require by rule.

67 (e) In addition to the other requirements of this section, if the drilling, fracturing, or
68 stimulating of the horizontal well requires the use of water obtained by withdrawals from waters
69 of this state in amounts that exceed 210,000 gallons during any 30-day period, the application for
70 a well work permit shall include a water management plan, which may be submitted on an
71 individual well basis or on a watershed basis, and which shall include the following information:

72 (1) The type of water source, such as surface or groundwater, the county of each source
73 to be used by the operation for water withdrawals and the latitude and longitude of each
74 anticipated withdrawal location;

75 (2) The anticipated volume of each water withdrawal;

76 (3) The anticipated months when water withdrawals will be made;

77 (4) The planned management and disposition of wastewater after completion from
78 fracturing, refracturing, stimulation, and production activities;

79 (5) A listing of the anticipated additives that may be used in water utilized for fracturing or
80 stimulating the well. Upon well completion, a listing of the additives that were actually used in the
81 fracturing or stimulating of the well shall be submitted as part of the completion log or report
82 required by §22-6A-5(a)(14) of this code;

83 (6) For all surface water withdrawals, a water management plan that includes the
84 information requested in subdivisions (1) through (5) of this subsection and the following:

85 (A) Identification of the current designated and existing water uses, including any public
86 water intakes within one mile downstream of the withdrawal location;

87 (B) For surface waters, a demonstration, using methods acceptable to the secretary, that
88 sufficient in-stream flow will be available immediately downstream of the point of withdrawal. A
89 sufficient in-stream flow is maintained when a pass-by flow that is protective of the identified use
90 of the stream is preserved immediately downstream of the point of withdrawal; and

91 (C) Methods to be used for surface water withdrawal to minimize adverse impact to aquatic
92 life; and

93 (7) This subsection is intended to be consistent with and does not supersede, revise,
94 repeal, or otherwise modify §22-11-1 *et seq.*, §22-12-1 *et seq.*, or §22-26-1 *et seq.* of this code
95 and does not revise, repeal, or otherwise modify the common law doctrine of riparian rights in
96 West Virginia law.

97 (f) An application may propose and a permit may approve two or more activities defined
98 as well work; however, a separate permit shall be obtained for each horizontal well drilled.

99 (g) The application for a permit under this section shall be accompanied by the applicable
100 bond as required by §22-6A-15 of this code, the applicable plat required by §22-6A-5(a)(6) of this
101 code, and a permit fee of \$10,000 for the initial horizontal well drilled at a location and a permit
102 fee of \$5,000 for each additional horizontal well drilled on a single well pad at the same location.

103 (h)(1) An applicant may enter into an expedited permit application process with the
104 secretary for a well permit and pay an additional expedited permit fee of \$20,000 for the initial
105 horizontal well drilled at a location and an additional expedited permit fee of \$10,000 for each
106 additional horizontal well drilled on a single well pad at the same location: *Provided*, That deep
107 well permitting is excluded from this expedited permit process due to the independent board
108 review and approval requirement which is outside the secretary's control.

109 (2) Upon entering into an expedited permit process and meeting all the criteria set forth in
110 this article, the secretary shall issue or deny a permit within 45 days of the submission of a permit

111 application under this article, unless the secretary seeks additional information or modification
112 from the applicant, which would toll the 45 day period until the secretary receives the required
113 responsive information from the applicant.

114 (3) Each day the agency exceeds: (A) The 45-day deadline for approval or denial of an
115 expedited initial horizontal well drilled, the secretary shall refund \$1,333.33 per day up to and
116 including day 60 after the submission of a permit application until the expedited fee is reduced to
117 the normal permit fee amount; or (B) the 45-day deadline for approval or denial of an expedited
118 permit for any additional horizontal well drilled on a single well pad at the same location, the
119 secretary shall be required to refund \$666.66 per day up to and including day 60 after the
120 submission of a permit application, until the expedited fee is reduced to the normal permit fee
121 amount.

122 (4)(A) After all refunds are paid by the secretary, one half of the additional expedited permit
123 fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and shall be
124 used by the agency to cover costs to review, process, and approve or deny the applicable
125 horizontal well permit applications and modifications pending before the agency.

126 (B) After all refunds are paid by the secretary, one half of the additional expedited permit
127 fee shall be deposited in the Oil and Gas Reclamation Fund and used specifically for the
128 reclamation and plugging of orphaned oil or gas wells.

129 (i)(1) An applicant may enter into an expedited permit modification application process
130 with the secretary for a well permit and pay an additional expedited permit modification fee of
131 \$5,000 for the modification of the permit for any horizontal well drilled at a location: *Provided*, That
132 deep well permit modifications are excluded from this expedited permit modification process if the
133 modification is subject to independent board review and approval.

134 (2) Upon entering into an expedited permit modification process and meeting all the criteria
135 set forth in this article, the secretary shall issue or deny a permit modification within 20 days of
136 the submission of a permit modification application under this article, unless the secretary seeks

137 additional information or further modification from the applicant, which would toll the 20 day period
138 until the secretary receives the required responsive information from the applicant.

139 (3) Each day the agency exceeds the 20-day deadline for approval or denial of an
140 expedited horizontal well permit modification, the secretary shall refund \$500 per day up to and
141 including day 30 after the submission of an expedited permit modification application, until the
142 expedited permit modification fee of \$5,000 is reduced to zero.

143 (4)(A) After all refunds are paid by the secretary, one half of the expedited permit
144 modification fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and
145 shall be used by the agency to cover costs to review, process, and approve or deny the applicable
146 horizontal well permit applications and modifications pending before the agency.

147 (B) After all refunds are paid by the secretary, one half of the expedited permit modification
148 fee shall be deposited in the Oil and Gas Reclamation Fund and used specifically for the
149 reclamation and plugging of orphaned oil or gas wells.

150 (j) Any balance in the Oil and Gas Reclamation Fund, earmarked specifically for the
151 reclamation and plugging of orphaned oil or gas wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-
152 7(i)(4)(B) of this code, which remains at the end of any state fiscal year does not revert to the
153 General Revenue Fund but shall remain in the special revenue account as indicated and may be
154 used only as provided in §22-6-29(b) of this code. The revenues deposited in the Oil and Gas
155 Reclamation Fund, earmarked specifically for the reclamation and plugging of orphaned oil or gas
156 wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-7(i)(4)(B) of this code may not be designated as
157 nonaligned state special revenue funds under §11B-2-32 of this code.

158 (k) The well operator named in the application shall designate the name and address of
159 an agent for the operator who is the attorney-in-fact for the operator and who is a resident of the
160 State of West Virginia upon whom notices, orders, or other communications issued pursuant to
161 this article or §22-11-1 *et seq.* of this code may be served, and upon whom process may be
162 served. Every well operator required to designate an agent under this section shall, within five

163 days after the termination of the designation, notify the secretary of the termination and designate
164 a new agent.

165 (l) The well owner or operator shall install the permit number as issued by the secretary
166 and a contact telephone number for the operator in a legible and permanent manner to the well
167 upon completion of any permitted work. The dimensions, specifications, and manner of installation
168 shall be in accordance with the rules of the secretary.

169 (m) The secretary may waive the requirements of this section and §22-6A-8, §22-6A-10,
170 §22-6A-11, and §22-6A-24 of this code in any emergency situation if the secretary considers the
171 action necessary. In that case the secretary may issue an emergency permit which is effective for
172 not more than 30 days, unless reissued by the secretary.

173 (n) The secretary shall deny the issuance of a permit if the secretary determines that the
174 applicant has committed a substantial violation of a previously issued permit for a horizontal well,
175 including the applicable erosion and sediment control plan associated with the previously issued
176 permit, or a substantial violation of one or more of the rules promulgated under this article, and in
177 each instance has failed to abate or seek review of the violation within the time prescribed by the
178 secretary pursuant to the provisions of §22-6A-5(a)(1) and §22-6A-5(a)(2) of this code and the
179 rules promulgated hereunder, which time may not be unreasonable.

180 (o) If the secretary finds that a substantial violation has occurred and that the operator has
181 failed to abate or seek review of the violation in the time prescribed, the secretary may suspend
182 the permit on which the violation exists, after which suspension the operator shall forthwith cease
183 all well work being conducted under the permit. However, the secretary may reinstate the permit
184 without further notice, at which time the well work may be continued. The secretary shall make
185 written findings of the suspension and may enforce the same in the circuit courts of this state. The
186 operator may appeal a suspension pursuant to the provisions of §22-6A-5(a)(23) of this code.
187 The secretary shall make a written finding of any such determination.

188 (p) Any well work permit issued in accordance with this section may be transferred with
189 the prior written approval of the secretary upon his or her finding that the proposed transferee
190 meets all requirements for holding a well work permit, notwithstanding any other provision of this
191 article or rule adopted pursuant to this article. Application for the transfer of any well work permit
192 shall be upon forms prescribed by the secretary and submitted with a permit transfer fee of \$500.
193 Within 90 days of the receipt of approval by the secretary, the transferee shall give notice of the
194 transfer to those persons entitled to notice in §22-6A-10(b) of this code by personal service or by
195 registered mail or by any method of delivery that requires a receipt or signature confirmation, and
196 shall further update the emergency point of contact provided pursuant to §22-6A-7(b)(13).

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

Stew Harris

.....
Clerk of the House of Delegates

Joe Lavin

.....
Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

2023 MAR 29 P 1:17

FILED

Ray Haskew

.....
Speaker of the House of Delegates

G. P. B.

.....
President of the Senate

The within is approved this the 29th
Day of March, 2023.

James Justice

.....
Governor

PRESENTED TO THE GOVERNOR

MAR 27 2023

Time 2:52pm