WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 43

BY SENATOR BOSO

[ Introduced February 8, 2017; referred
to the Committee on Energy, Industry and Mining; and then
to the Committee on the Judiciary]
A BILL to amend and reenact §22C-9-4 of the Code of West Virginia, 1931, as amended, relating to restricting the Oil and Gas Conservation Commission’s authority to regulate setback and spacing between deep wells; prohibiting the commission from establishing spacing restrictions on wells that are operated by the same operator; limiting setbacks from unit boundaries between different operators; limiting the spacing between the wells of different operators; and, to the extent spacing and setback limits are controlled by the commission, limiting the distances that may be established to only those between the producing portions of horizontal wells and not the entire well bore.

Be it enacted by the Legislature of West Virginia:

That §22C-9-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-4. Oil and Gas Conservation Commissioner and Commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.

(a) The "Oil and Gas Conservation Commission” shall be composed of five members. The director of the Division of Environmental Protection and the chief of the office of oil and gas shall be members of the commission ex officio. The remaining three members of the commission shall be appointed by the Governor, by and with the advice and consent of the Senate, and may not be employees of the Division of Environmental Protection. Of the three members appointed by the Governor, one shall be an independent producer and at least one shall be a public member not engaged in an activity under the jurisdiction of the Public Service Commission or the federal Energy Regulatory Commission. The third appointee shall possess a degree from an accredited college or university in petroleum engineering or geology and must be a registered professional engineer with particular knowledge and experience in the oil and gas industry and shall serve as
(b) The members of the commission appointed by the Governor shall be appointed for overlapping terms of six years each, except that the original appointments shall be for terms of two, four and six years, respectively. Each member appointed by the Governor shall serve until the members successor has been appointed and qualified. Members may be appointed by the Governor to serve any number of terms. The members of the commission appointed by the Governor, before performing any duty hereunder, shall take and subscribe to the oath required by section 5, article IV of the Constitution of West Virginia. Vacancies in the membership appointed by the Governor shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and such appointment shall be made by the Governor within sixty days of the occurrence of such vacancy. Any member appointed by the Governor may be removed by the Governor in case of incompetency, neglect of duty, gross immorality or malfeasance in office. A commission member’s appointment shall be terminated as a matter of law if that member fails to attend three consecutive meetings. The Governor shall appoint a replacement within thirty days of the termination.

(c) The commission shall meet at such times and places as shall be designated by the chair. The chair may call a meeting of the commission at any time, and shall call a meeting of the commission upon the written request of two members or upon the written request of the oil and gas conservation commissioner or the chief of the office of oil and gas. Notification of each meeting shall be given in writing to each member by the chair at least fourteen calendar days in advance of the meeting. Three members of the commission, at least two of whom are appointed members, shall constitute a quorum for the transaction of any business.

(d) The commission shall pay each member the same compensation as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties and shall reimburse each member for actual and necessary expenses
incurred in the discharge of official duties.

(e) The commission is hereby empowered and it is the commission's duty to execute and
carry out, administer and enforce the provisions of this article in the manner provided herein.

Subject to the provisions of section three of this article, the commission has jurisdiction and
authority over all persons and property necessary therefor. The commission is authorized to make
such investigation of records and facilities as the commission deems proper. In the event of a
conflict between the duty to prevent waste and the duty to protect correlative rights, the
commission's duty to prevent waste shall be paramount.

(f) Without limiting the commission's general authority, the commission shall have specific
authority to:

(1) Regulate the spacing of deep wells: Provided, That the commission may not regulate
or establish minimum well setback or spacing between deep wells operated by the same operator,
regardless of whether there are unit boundaries between or crossed by those wells: Provided,
however, That the commission may not require spacing of more than eight hundred feet between
horizontal wells operated by different operators or require a well setback of more than four
hundred feet from a unit boundary that divides operators: Provided further, That spacing and
setback distances may only be established for the horizontal producing portions of horizontal deep
wells;

(2) Make and enforce reasonable rules and orders reasonably necessary to prevent
waste, protect correlative rights, govern the practice and procedure before the commission and
otherwise administer the provisions of this article;

(3) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the
production of any books, records, maps, charts, diagrams and other pertinent documents, and
administer oaths and affirmations to such witnesses, whenever, in the judgment of the
commission, it is necessary to do so for the effective discharge of the commission's duties under
the provisions of this article; and
(4) Serve as technical advisor regarding oil and gas to the Legislature, its members and committees, to the chief of office of oil and gas, to the Division of Environmental Protection and to any other agency of state government having responsibility related to the oil and gas industry.

(g) The commission may delegate to the commission staff the authority to approve or deny an application for new well permits, to establish drilling units or special field rules if:

(1) The application conforms to the rules of the commission; and

(2) No request for hearing has been received.

(h) The commission may not delegate its authority to:

(1) Propose legislative rules;

(2) Approve or deny an application for new well permits, to establish drilling units or special field rules if the conditions set forth in subsection (g) of this section are not met; or

(3) Approve or deny an application for the pooling of interests within a drilling unit.

(i) Any exception to the field rules or the spacing of wells which does not conform to the rules of the commission, and any application for the pooling of interests within a drilling unit, must be presented to and heard before the commission.

NOTE: The purpose of this bill is to restrict the Oil and Gas Conservation Commission's authority to regulate setback and spacing between deep wells. The bill prohibits the commission from establishing spacing restrictions on wells that are operated by the same operator. The bill limits setbacks from unit boundaries between different operators. The bill limits the spacing between the wells of different operators. To the extent spacing and setback limits are controlled by the commission, the bill limits the distances that may be established to only those between the producing portions of horizontal wells, not the entire well bore.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.