

\_\_\_\_. B. \_\_\_\_\_

(By \_\_\_\_\_)

(Introduced \_\_\_\_\_; referred to the

Committee on \_\_\_\_\_.)

{Check "Note" at end for an explanation of the bill.}

{Some further explanations are in footnotes.}

{There is a table of contents at the end.}

{Legislative Services will remove the footnotes and table of contents before introduction.}

AN BILL to amend and reenact . . .

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

That . . . all to read as follows:

**CHAPTER 22. ENVIRONMENTAL RESOURCES**

**ARTICLE 5A. OIL AND GAS SURFACE OWNER'S BILL OF RIGHTS**

**§22-5A-1. Findings and Purpose**

(a)The Legislature finds that the owner of the surface of property where an oil or gas lease operator intends to drill a well in many cases does not own the minerals or any right to the royalty or any other benefit from the drilling of the well on, or the production of oil or gas from under, the surface owner's property.

(b)Under the common law, unless changed by the terms of a severance deed or a lease, the operator only has the right to do what is "fairly necessary" to produce the oil or gas but must

1 give "due regard" to the interest of the surface owner.\*

2 (c)State code only requires that the operators to give the  
3 surface owner 15 days' notice that the operator has applied to  
4 the State for a permit to drill an oil or gas well on the surface  
5 owner's land. And this notice already contains a well site  
6 location and access road location that the operator has already  
7 selected and surveyed to include in the operator's permit  
8 application. The operator may come on to the land and even send  
9 surveyors to mark well sites and road locations without notifying  
10 or talking to the surface owner first.

11 (d)The surface owner has a right to comment on the permit  
12 application if he or she can get comments to the Office of Oil  
13 and Gas of the Department of Environmental Protection within 15  
14 days of filing the permit. However, the surface owner has no  
15 right to a hearing on the surface owner's comments on the permit  
16 application.

17 (e)The surface owner's comments on the operators drilling  
18 permit application cannot cause the State to change the permit on  
19 the grounds that the operator is doing more surface disturbance  
20 and so on to the surface owner's land than is fairly necessary.  
21 The state can only change the permit for the reasons set out in  
22 the next subsection.

23 (f)The State can only change an operator's permit to drill  
24 an oil or gas well based on the surface owner's comments if the  
25 drilling activity proposed in the permit would cause erosion or  
26 sedimentation, if the down hole casing and tubing program would  
27 endanger water sources, if the drilling would be a safety hazard,  
28 if the drilling would damage public lands, or if the State has  
29 issued an actual "violation" for improper activity relating to

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\*85 West Virginia Law Review 817 (1983)

1 other wells.\*

2 (g) As a result, many operators take advantage of this  
3 surprise, plus the operator's advantages of more knowledge and  
4 years of experience compared to the surface owner who has never  
5 seen a well drilled before, plus the operator's vast advantages  
6 of resources and lawyers compared to a citizen landowner - as a  
7 result of these advantages, many operators fail to give due  
8 regard to any preferences of the surface owners and they do more  
9 than is fairly necessary to the surface owner and his or her  
10 land.

11 (h) Although one statute provides that many surface owners  
12 are entitled to compensation for the use of their surface land,  
13 under that statute the surface owners are not entitled to their  
14 land's full market value or to the diminution in the value of  
15 lands adjacent to the well site, access road and pipeline caused  
16 by the well work, even though the surface owners are the ones who  
17 will continue to pay taxes on the disturbed land.\*\*

18 (I) Although the gas will be produced from under the surface  
19 owners, and although the gas will be produced out of a well  
20 placed on their land and piped to market across their land,  
21 surface owners have no right to connect to the well or gathering  
22 pipelines for their domestic use of the gas - at any price.

23 (j)The Legislature therefore exercises its police and other  
24 powers to regulate the exercise of the parties' common law rights  
25 by the enactment of this Article.

26 **§22-5A-2. Definitions.**

27 For the purposes of this Article the words or terms used in  
28 this Article, and any variation of those words or terms required  
29 by the context, have the meanings ascribed to them in Article six

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\*West Virginia Code §22-6-11 and §66-6-6(h).

\*\*West Virginia Code [22-7-1(a)(1),]22-7-3(a)(1)

1 of this chapter unless a different meaning clearly appears from  
2 the context.

3 **§22-5A-3. Notices.**

4 The notices to the surface owner required by this Article  
5 shall be given to the same persons or entities and in the same  
6 manner as set out for notice to surface owners of the drilling  
7 permit as provided in article 6, section 9(a) of this chapter.\*

8 **§22-5A-4. Notice of initial entry upon surface lands. \*\***

9 (a) At least fourteen days before entering upon the surface  
10 land for inspection, measurements, surveying or other evaluation  
11 of proposed access routes and sites for either new well work or  
12 roads or other well work requiring disturbance of the surface  
13 that has not been disturbed before by the operator, an operator

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\*Which is included in this bill for some minor amendments.

\*\* Much of the concept for these changes came from recent legislation enacted in New Mexico.

The intent is to require the surface owner to get notice that the driller is planning to drill a well on the surface owner's land, plus an offer to meet with the driller, at the very beginning of the driller's planning process. This way the driller will be more flexible. Right now the surface owner is only required to get notice of the proposed well site and access road location after the driller has already paid for a survey of the well site and access road location - at the time the driller files for the drilling permit.

Hopefully the first notice, which includes an offer to meet, results in successful negotiations of a "Surface Use and Compensation Agreement", and the surface owner would then waive all but 10 days further notice time/delay.

If the first notice and meeting does NOT result in an agreed Surface Use and Compensation Agreement, the second notice would include the driller proposed surface use and compensation with lots of time to negotiate or somehow mediate before the driller could come on the land.

In order to give the driller some incentive to come to an agreement with the surface owner, and to give the surface owner some guaranteed recourse for un-agreed unnecessary damage, the bond requirement has a few changes that any responsible driller should be able to meet.

1 shall provide notice of the fact that the operator is entering  
2 the surface land and of the general purposes for such entry. The  
3 fourteen days begins to run from the surface owner's actual  
4 receipt of the notice.

5 (b) The notice shall include:

6 (1)The name, a physical address, a land line telephone  
7 number if one exists, and if in use, cell phone, e-mail or other  
8 electronic contact information of the operator, of any contractor  
9 for the operator, and the actual person or persons who may come  
10 onto the land and their supervisor.

11 (2)The anticipated, approximate dates and times of entry on  
12 to the surface land.

13 (3) A copy of the West Virginia Oil and Gas Production  
14 Compensation Act.

15 (4) A copy of the Soil Erosion and Sediment Control Manual  
16 of the Office of Oil and Gas of the State of West Virginia.

17 (5) An offer to meet with the surface owner either on the  
18 land or, at the option of the surface owner, at another mutually  
19 agreed location. The offer to meet shall be to meet prior to or  
20 at the time of this first entry and in addition prior to the next  
21 required notice.

22 (c)At the meeting the operator shall point out and explain  
23 his preference for locations of well sites, shall consider the  
24 surface owner's suggestions for alternate locations, and if the  
25 surface owners suggestion be used, shall state the reasons it  
26 cannot be used. The surface owner shall state his preference for  
27 access roads to the proposed sites and consider the operator's  
28 suggestions for alternative road locations, and if the surface  
29 owners suggestion cannot be used, the operator shall state the  
30 reasons it cannot be used.

31 **§22-5A-5. Notice of Planned Surface Use.**

32 (a)Before first entering upon the land of the surface owner

1 to disturb the surface to conduct new well work or to disturb the  
2 surface using motorized equipment, the operator shall give the  
3 surface owner notice of the planned well work or other surface  
4 disturbance. The operator may not enter onto the land until  
5 sixty days after the notice has been given unless, prior to  
6 giving the notice required by this section the operator has met  
7 with the surface owner and negotiated a proposed surface use and  
8 compensation agreement, or unless after giving the notice the  
9 operator has met with the surface owner and negotiated a proposed  
10 surface use and compensation agreement that includes a waiver as  
11 allowed by this section. If the operator has negotiated a  
12 proposed surface use and compensation agreement, the operator may  
13 not enter onto the land until 10 days after the surface owner  
14 receives a signed copy or duplicate original of the surface use  
15 and compensation agreement, or 10 days after the application for  
16 the well work permit is filed by the operator pursuant to article  
17 6, section 6 of this chapter, whichever is earlier.

18 (b)The notice of the planned well work shall include:

19 (1)The name, a physical address, land line telephone  
20 number, and if in use, cell phone, e-mail or other electronic  
21 contact information of the operator and of any contractor or  
22 other agent acting on behalf of the operator.

23 (2) A proposed surface use and compensation agreement  
24 as set out in next section.

25 (c)The notice of planned well work shall include a copy of  
26 the West Virginia Oil and Gas Production Compensation Act and the  
27 Soil Erosion and Sediment Control Manual of the West Virginia  
28 Office of Oil and Gas unless the surface owner has already  
29 received them.

30 (d)A statement that if the parties cannot agree, then they  
31 may contact a trained mediator to try to resolve their  
32 differences.

1       (e) The proposed surface use and compensation agreement may  
2 be one that has already been negotiated after giving the notice.  
3 However, any proposed agreement is not final until ten days after  
4 receipt of a signed copy or duplicate original.

5 **§22-5A-6. Surface use and compensation agreement. \***

6       (a) A surface use agreement must be in writing or, if the  
7 surface owner agrees and has the ability to use it, in the form  
8 of an authenticated electronic record.

9       (b) A surface use agreement shall include:

10       (1) The name, physical address, telephone number of the  
11 operator, the surface owner(s) and the mineral owner(s).

12       (2) Locations and dimensions of well sites, access roads,  
13 pipeline rights of way and other uses given in sufficient detail  
14 and in a format for the surface owner to be able to locate them  
15 on his or her property, and determine what soil and timber or  
16 other vegetation will be disturbed.

17       (3) Specifications for construction of the well site, pits,  
18 disposal areas, access roads, pipelines, and other facilities  
19 or uses associated with the well work, including without  
20 limitation temporary soil erosion and sediment control, top soil  
21 banking and road steepness, side slope, and drainage structures  
22 and their frequency.

23       (4) Specifications for the life of the well reclamation of  
24 the well site, pits, disposal areas, access roads, pipelines,  
25 and other facilities or uses associated with the well work  
26 including without limitation erosion and sediment control for the

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\*This language sets out the subjects that must be addressed in the surface use and compensation agreement. It makes very few requirements for what it must say about those subjects. The idea is to allow this to be negotiated between the parties, but make sure all the possible issues are raised and addressed. And it is in writing so there can be no misunderstandings, and no unilateral changes later.

1 life of the well.

2 (5) Specifications for the revegetation of the well site,  
3 pits, disposal areas, access roads, pipelines, and other  
4 facilities or uses associated with the well work, road surfaces,  
5 soil preparation, temporary seed species, and permanent seed  
6 species.

7 (6) Specifications for maintenance of well sites, pipelines  
8 and access roads, including frequency.

9 (7) Particular specifications for maintenance at all times of  
10 existing roads used by the surface owner that will also be  
11 utilized by the operator, including, without limitation, gating  
12 appliance specifications and gating practices.

13 (8) Compensation to the surface owner pursuant to Article 7  
14 of this Chapter or the common law including without limitation  
15 compensation for occupation of the land disturbed and used by the  
16 well site, access road and pipeline, diminution in value of  
17 adjacent land, and lost timber and other crops and vegetation.

18 (c) A surface use and compensation agreement may also waive  
19 the surface owner's right to comment on the permit application  
20 pursuant to Article 6 of this Chapter if the surface owner is  
21 given a copy of the permit application 10 days before the waiver.

22 (d) A surface use and compensation agreement may not waive  
23 damages for breach of the agreement, for pollution of water  
24 sources or supplies not identified in the agreement, for  
25 negligence or failure to perform tasks in a workmanlike manner,  
26 or for unforeseen damages.

27 **§22-5A-7. Effect of Surface use and compensation agreement on**  
28 **bond.**

29 If an agreed upon surface use and compensation agreement is  
30 not submitted with the permit application, the operator may not  
31 place the well under his blanket bond. Instead the operator  
32 shall furnish an individual well bond, and the bond shall also be

1 conditioned upon payment of any damages or compensation to which  
2 a surface owner may become entitled; provided that the amount of  
3 such bond, notwithstanding the provision of other law, shall be  
4 \$10,000.

5 **§22-5A-8. Well head or gathering gas service access line**

6 (a)Where the owner of the surface that is disturbed for well  
7 work\* or a pipeline is not entitled to or is not given free gas  
8 and does not have access to gas from a regulated utility, the  
9 surface owner shall have the option of connecting to the well or  
10 to any gathering line to the well to obtain gas service for one  
11 residence or farm, or residence and associated farm, for every  
12 disturbed surface tract that is separately owned at the time of  
13 the initial disturbance on that surface tract.

14 (b) The surface owner is responsible for all of the  
15 reasonable actual costs of making the connection.

16 (c) The operator may set reasonable conditions to assure the  
17 safety and integrity of its system in the surface use and  
18 compensation agreement.

19 (d) The operator may require the surface owner to pay for  
20 the gas at a price no greater than that used to determine the  
21 royalty owner's payment.

22 (e) The operator has the duty to warn of known dangers  
23 relating to the surface owner's use of the gas, but is otherwise  
24 not liable for ordinary negligence.

25 (f)The Public Service Commission shall make information

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\*§ 22-6-1. Definitions.

. . .  
(v) "Well work" means the drilling, redrilling, deepening, stimulating, pressuring by injection of any fluid, converting from one type of well to another, combining or physically changing to allow the migration of fluid from one formation to another or plugging or replugging of any well;

1 available to the public at cost on the limitations and risks of  
2 well head and gathering line gas. A copy of the information  
3 shall be provided to the surface owner by the operator before  
4 signing the surface use agreement.

5 (g)The Commission shall propose a legislative rule setting  
6 out the subjects regarding gas service from a well head or  
7 gathering line which must be addressed in a surface use and  
8 compensation agreement which authorizes use of well head or  
9 gathering line gas.

10 (I) A person who receives well head or gathering line gas  
11 pursuant to this section is not a "residential customer" for the  
12 purpose of determining whether a natural gas producer is a public  
13 utility.

14 **§22-5A-9. Right to hearing and appeal.**

15 If a surface owner files comments pursuant to Article 6,  
16 Section 10 of this Chapter, and if the Chief of the Office of Oil  
17 and Gas is not able mediate an agreement between the surface  
18 owner and the operator compliant with the laws and regulations  
19 and permits of the State on the issues raised in the comments,  
20 then the Chief shall hold a hearing as a contested case pursuant  
21 to Chapter twenty-nine-A, Article 5 of this Code before  
22 completing his review or issuing a permit pursuant to Article 6,  
23 Section 11 of this Chapter.

24 **§22-5A-10. Options for surface use and revegetation.**

25 (a) The Office of Oil and Gas shall include in its Soil  
26 Erosion and Sediment Control Manual alternatives for road  
27 construction,\* that include the interests of the surface owner  
28 for a permanent road intended for regular travel through his  
29 property or a road that has minimal impacts upon the property,  
30 and alternatives for revegetation with fast growing, wildlife,

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\*Big, graveled, vs. return to nature.

1 or native seed species or other individually negotiated seed  
2 species subject to approval by the Chief.

3 (b) Any requirement of the Soil Erosion and Sediment Control  
4 Manual that can be waived by the inspector of the Office of Oil  
5 and Gas can only be waived if the surface owner also agrees in  
6 writing. If the surface owner is a natural person or persons,  
7 the waiver must be in writing and separately signed from other  
8 waivers.

9 (c) Day lighting, the practice of clearing woody material  
10 back from the roadway in an attempt to accelerate drying of the  
11 road surface may only be used with the written consent of the  
12 surface owners.

13 **§22-5A-10. Effective dates.**

14 Sections 1, 2, 3, 4, 5, 6, 7 and 9 shall apply to all  
15 permits issued more than ninety days from passage. Section 8  
16 shall take effect 90 days from passage. Subsections (b) and (c)  
17 of Section 10 take effect from passage. Subsection (a) of  
18 Section 10 takes effect September 1, 2008.

19  
20 **ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS;**  
21 **ADMINISTRATION; ENFORCEMENT**

22 **§ 22-6-6. Permit required for well work; permit fee;**  
23 **application; soil erosion control plan**

24 (a) It is unlawful for any person to commence any well  
25 work, including site preparation work which involves any  
26 disturbance of land, without first securing from the director a  
27 well work permit. An application may propose and a permit may  
28 approve two or more activities defined as well work.

29 (b) The application for a well work permit shall be  
30 accompanied by applicable bond as prescribed by section twelve,  
31 fourteen or twenty-three of this Article, and the applicable plat  
32 required by section twelve or fourteen of this Article.

1 (c) Every permit application filed under this section shall  
2 be verified and shall contain the following:

3 (1) The names and addresses of (I) the well operator, (ii)  
4 the agent required to be designated under subsection (e) of this  
5 section, and (iii) every person whom the applicant must notify  
6 under any section of this Article together with a certification  
7 and evidence that a copy of the application and all other  
8 required documentation has been delivered to all such persons;

9 (2) The name and address of every coal operator operating  
10 coal seams under the tract of land on which the well is or may be  
11 located, and the coal seam owner of record and lessee of record  
12 required to be given notice by section twelve, if any, if said  
13 owner or lessee is not yet operating said coal seams;

14 (3) The number of the well or such other identification as  
15 the director may require;

16 (4) The type of well;

17 (5) The well work for which a permit is requested;

18 (6) The approximate depth to which the well is to be drilled  
19 or deepened, or the actual depth if the well has been drilled;

20 (7) Any permit application fee required by law;

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

26 (9) If the proposed well work is to convert an oil well or a  
27 combination well or to drill a new well for the purpose of  
28 introducing pressure for the recovery of oil as provided in  
29 section twenty-five of this Article, specifications in accordance  
30 with the data requirements of section fourteen of this Article;

31 (10) If the proposed well work is to plug or replug the  
32 well, (I) specifications in accordance with the data requirements

1 of section twenty-three of this Article, (ii) a copy of all logs  
2 in the operator's possession as the director may require, and  
3 (iii) a work order showing in detail the proposed manner of  
4 plugging or unplugging the well, in order that a representative  
5 of the director and any interested persons may be present when  
6 the work is done. In the event of an application to drill,  
7 redrill or deepen a well, if the well work is unsuccessful so  
8 that the well must be plugged and abandoned, and if the well is  
9 one on which the well work has been continuously progressing  
10 pursuant to a permit, the operator may proceed to plug the well  
11 as soon as the operator has obtained the verbal permission of the  
12 director or the director's designated representative to plug and  
13 abandon the well, except that the operator shall make reasonable  
14 effort to notify as soon as practicable the surface owner and the  
15 coal owner, if any, of the land at the well location, and shall  
16 also timely file the plugging affidavit required by section  
17 twenty-three of this Article;

18 (11) If the proposed well work is to stimulate an oil or gas  
19 well, specifications in accordance with the data requirements of  
20 section thirteen of this Article;

21 (12) The erosion and sediment control plan required under  
22 subsection (d) of this section for applications for permits to  
23 drill; and

24 (13) Any other relevant information which the director may  
25 require by rule.

26 (d) An erosion and sediment control plan shall accompany  
27 each application for a well work permit ~~except for a well work~~  
28 ~~permit to plug or replug any well.~~ Such plan shall contain  
29 methods of stabilization and drainage, including a map of the  
30 project area indicating the amount of acreage disturbed,  
31 including without limitation acreage disturbed for pipelines and  
32 the type and spacing of access road drainage structures. The

1 erosion and sediment control plan shall meet the minimum  
2 requirements of the West Virginia erosion and sediment control  
3 manual as adopted and from time to time amended by the division,  
4 in consultation with the several soil conservation districts  
5 pursuant to the control program established in this state through  
6 section 208 of the federal Water Pollution Control Act Amendments  
7 of 1972 (> 33 U.S.C. § 1288). The erosion and sediment control  
8 plan shall become part of the terms and conditions of a well work  
9 permit, ~~except for a well work permit to plug or replug any well,~~  
10 which is issued and the provisions of the plan shall be carried  
11 out where applicable in the operation. The erosion and sediment  
12 control plan shall set out the proposed method of reclamation  
13 which shall comply with the requirements of section thirty of  
14 this Article.

15 (e) The well operator named in such application shall  
16 designate the name and address of an agent for such operator who  
17 shall be the attorney-in-fact for the operator and who shall be a  
18 resident of the state of West Virginia upon whom notices, orders  
19 or other communications issued pursuant to this Article or  
20 Article eleven, chapter twenty-two, may be served, and upon whom  
21 process may be served. Every well operator required to designate  
22 an agent under this section shall within five days after the  
23 termination of such designation notify the director of such  
24 termination and designate a new agent.

25 (f) The well owner or operator shall install the permit  
26 number as issued by the director in a legible and permanent  
27 manner to the well upon completion of any permitted work. The  
28 dimensions, specifications and manner of installation shall be in  
29 accordance with the rules of the director.

30 (g) The director may waive the requirements of this section  
31 and sections nine, ten and eleven of this Article in any  
32 emergency situation, if the director deems such action necessary.

1 In such case the director may issue an emergency permit which  
2 would be effective for not more than thirty days, but which would  
3 be subject to reinsurance by the director.

4 (h) The director shall deny the issuance of a permit if the  
5 director determines that the applicant has committed a  
6 substantial violation of a previously issued permit, including  
7 the erosion and sediment control plan, or a substantial violation  
8 of one or more of the rules promulgated hereunder, \*whether or  
9 not a finding or order has been made pursuant to sections three  
10 and four of this Article, and or if a finding or order has been  
11 made pursuant to sections three and four of this Article, the  
12 applicant has failed to abate or seek review of the violation  
13 within the time prescribed by the director pursuant to the  
14 provisions of sections three and four of this Article and the  
15 rules promulgated hereunder, which time may not be unreasonable:  
16 Provided, That in the event that the director does find that a  
17 substantial violation has occurred and that the operator has  
18 failed to abate or seek review of the violation in the time  
19 prescribed, the director may suspend the permit on which said  
20 violation exists, after which suspension the operator shall  
21 forthwith cease all well work being conducted under the permit:  
22 Provided, however, That the director may reinstate the permit  
23 without further notice, at which time the well work may be

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\*Right now the Office of Oil and Gas is not refusing to issue a permit for a new well to an operator if the operator has a current well that is in violation of a permit or other law unless the State has made a formal finding or order ("violation"). There are only 14 inspectors for 45,000 active wells. The number of inspectors has remained the same even though the number of well work permits has tripled in the last eight years. Under this pressure, the Office of Oil and Gas often uses informal enforcement methods rather than formal "violations". So the current provision for refusing permits to operators in violation of a permit or law is having little effect.

1 continued. The director shall make written findings of any such  
2 determination and may enforce the same in the circuit courts of  
3 this state and the operator may appeal such suspension pursuant  
4 to the provisions of section forty of this Article. The director  
5 shall make a written finding of any such determination.

6 (I) Any person who violates any provision of this section  
7 shall be guilty of a misdemeanor, and, upon conviction thereof,  
8 shall be fined not more than five thousand dollars, or be  
9 imprisoned in the county jail not more than twelve months, or  
10 both fined and imprisoned.

11 **§ 22-6-9. Notice to property owners**

12 (a) No later than the filing date of the application, the  
13 applicant for a permit for any well work shall deliver by  
14 personal service or by certified mail, return receipt requested,  
15 copies of the application, well plat and erosion and sediment  
16 control plan required by section six of this Article to each of  
17 the following persons:

18 (1) The owners of record of the surface of the tract on  
19 which the well is, or is to be located; and

20 (2) The owners of record of the surface tract or tracts  
21 overlying the oil and gas leasehold being developed by the  
22 proposed well work, if such surface tract is to be utilized for  
23 roads, pipelines or other land disturbance as described in the  
24 erosion and sediment control plan submitted pursuant to section  
25 six of this Article.

26 (b) If more than three tenants in common or other co-owners  
27 of interests described in subsection (a) of this section hold  
28 interests in such lands, the applicant may serve the documents  
29 required upon the person described in the records of the sheriff  
30 required to be maintained pursuant to section eight, Article one,

1 chapter eleven-a of this code <sup>\*</sup>or plus any other owner who has  
2 requested a copy in a record and any owner occupying the land:  
3 Provided, That the operator must check the grantor records of  
4 deeds from the date from which the sheriff's records were taken  
5 to the present, and if there is a new owner or owners, then  
6 service must be made on those new owners. If there is no owner  
7 occupying the surface and neither a current location for personal  
8 service nor a mailing address for registered or certified mail  
9 notice of the person described in the tax records can be obtained  
10 after reasonable diligence and, no other owner has requested a  
11 copy, the applicant may instead publish in the county in which  
12 the well is located or to be located a Class II legal  
13 advertisement as described in section two, Article three, chapter  
14 fifty-nine of this code, containing such notice and information  
15 as the director shall prescribe by rule, with the first  
16 publication date being at least ten days prior to the filing of  
17 the permit application: Provided, That all owners occupying the  
18 tracts where the well work is, or is proposed to be located at  
19 the filing date of the permit application shall receive actual  
20 service of the documents required by subsection (a) of this  
21 section.

22 (c) Materials served upon persons described in subsections  
23 (a) and (b) of this section shall contain a statement of the  
24 methods and time limits for filing comments, who may file  
25 comments and the name and address of the director for the purpose  
26 of filing comments and obtaining additional information and a  
27 statement that such persons may request, at the time of  
28 submitting comments, notice of the permit decision ~~and materials~~  
29 served shall also include a list of persons qualified to test

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\*A common complaint from surface owners is that they do not get this notice. Perhaps they are being hidden in the want ads. The change contemplates the original intent of the legislation.

1 water as provided in this section. Materials served shall also  
2 include a notice that the surface owner may be entitled to  
3 compensation pursuant to the West Virginia Oil and Gas Production  
4 Compensation Act.\*

5 (d) Any person entitled to submit comments shall also be  
6 entitled to receive a copy of the permit as issued or a copy of  
7 the order denying the permit if such person requests the receipt  
8 thereof as a part of the comments concerning said permit  
9 application.

10 (e) Persons entitled to notice may contact the district  
11 office of the division to ascertain the names and location of  
12 water testing laboratories in the area capable and qualified to  
13 test water supplies in accordance with standard accepted methods.  
14 In compiling such list of names the division shall consult with  
15 the state bureau of public health and local health departments.

16 **ARTICLE 7. OIL AND GAS PRODUCTION DAMAGE COMPENSATION**

17 **§ 22-7-3. Compensation of surface owners for drilling operations**

18 (a) The oil and gas developer shall be obligated to pay the  
19 surface owner compensation for:

20 (1) Lost income or expenses incurred as a result of being  
21 unable to dedicate land actually occupied by the driller's  
22 operation or to which access is prevented by such drilling  
23 operation to the uses to which it was dedicated prior to  
24 commencement of the activity for which a permit was obtained  
25 measured from the date the operator enters upon the land until  
26 the date reclamation is completed,

27 (2) the market value of crops destroyed, damaged or

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\*It is not uncommon for the operator and a surface owner to work out an agreement on the well site and access road locating, and for the driller to insist on such an agreement also including an agreed claim for damages to the land. The current Code does not notify the surface owner of any of the surface owner's rights under this Act until after the well has already been drilled.

1 prevented from reaching market,

2 (3) Any damage to a water supply in use prior to the  
3 commencement of the permitted activity,

4 (4) The cost of repair of personal property up to the value  
5 of replacement by personal property of like age, wear and  
6 quality, and

7 (5) The diminution in value, if any, of the surface lands  
8 and other property after completion of the surface disturbance  
9 done pursuant to the activity for which the permit was issued  
10 determined according to the ~~actual use made~~ market value thereof  
11 ~~by the surface owner~~ immediately prior to the commencement of the  
12 permitted activity, including the surface lands actually  
13 disturbed, and any adjacent surface lands the market value of  
14 which is diminished by the presence of the well and the surface  
15 disturbance and other appurtenances.\*

16 The amount of damages may be determined by any formula  
17 mutually agreeable between the surface owner and the oil and gas  
18 developer.

19 (b) Any reservation or assignment of the compensation  
20 provided in this section apart from the surface estate except to

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\*Several other states with surface damage compensation laws do not limit the damages to only the land actually used for the well site and access road, and do not limit the measure of damages to actual use, instead of market value:

See Montana Code (Annotated 2001) 82-10, Part 5. "Surface Owner Damage and Disruption Compensation." (Enacted in 1981); stating "lost land value".

See New Mexico "Surface Owner Compensation's Act"; becomes effective September 1, 2007; stating "damages sustained as a result of the operator's oil and gas operations."

See North Dakota Century Code § 38-11.1-01 to 10. "Oil and Gas Production Damage Compensation"; (1981, stating "lost land value".

See Wyoming Statutes 30-5-401 through 30-5-410. Wyoming Surface Owner Accommodation Act. (1987); stating "lost of land value.

1 a tenant of the surface estate is prohibited.

2 (c) In the case of surface lands owned by more than one  
3 person as tenants in common, joint tenants or other co-ownership,  
4 any claim for compensation under this Article shall be for the  
5 benefit of all such co-owners. The resolution of a claim for  
6 compensation provided in this Article shall operate as a bar to  
7 the assertion of additional claims under this section arising out  
8 of the same drilling operations.

9 **§ 22-7-5. Notification of claim**

10 Any surface owner, to receive compensation under section  
11 three of this Article, shall notify the oil and gas developer of  
12 the damages sustained by the person within at any time after  
13 ninety days after the drilling rig is removed from the site, but  
14 no later than two years after the date that the oil and gas  
15 developer files notice that reclamation is commencing under  
16 section thirty, Article six of this chapter. Such notice shall  
17 be given to surface owners, by delivering it in person, by  
18 registered or certified mail, return receipt requested, and shall  
19 be complete upon mailing. If more than three tenants in common  
20 or other co-owners hold interests in such lands, the developer  
21 may give such notice to the person described in the records of  
22 the sheriff required to be maintained pursuant to section eight,  
23 Article one, chapter eleven-a of this code ~~or~~ , and to any other  
24 owner requesting a copy or if neither a current location for  
25 personal service nor a mailing address for registered or  
26 certified mail notice can be obtained after reasonable diligence,  
27 and no other owner has requested a copy publish in the county in  
28 which the well is located or to be located a Class II legal  
29 advertisement as described in section two, Article three, chapter  
30 fifty-nine of this code, containing such notice and information  
31 as the director shall prescribe by rule.

32 **§ 22-7-7. Rejection; legal action; arbitration; fees and costs**

1 (a) Unless the oil and gas developer has paid the surface  
2 owner a negotiated settlement of compensation within sixty days  
3 after the date the notification of claim was mailed under section  
4 five of this Article, the surface owner may ~~within eighty days~~  
5 ~~after the notification mail date,~~ \*either (I) bring an action for  
6 compensation pursuant to this article in the circuit court of the  
7 county in which the well is located within the statute of  
8 limitations for a common law damages action, or (ii) within \*\*one  
9 hundred and twenty days after the notification mail date, elect  
10 instead, by written notice delivered by personal service or by  
11 certified mail, return receipt requested, to the designated agent  
12 named by the oil and gas developer under the provisions of  
13 section six, Article six of this chapter, to have his  
14 compensation finally determined by binding arbitration pursuant  
15 to Article ten, chapter fifty-five of this code. A surface owner  
16 may not proceed in Circuit Court after receiving an arbitration  
17 award pursuant to this Article.

18 Settlement negotiations, offers and counter-offers between  
19 the surface owner and the oil and gas developer shall not be  
20 admissible as evidence in any arbitration or judicial proceeding  
21 authorized under this Article, or in any proceeding resulting  
22 from the assertion of common law remedies.

23 (b) The compensation to be awarded to the surface owner  
24 shall be determined by a panel of three disinterested  
25 arbitrators. The first arbitrator shall be chosen by the surface  
26 owner in such party's notice of election under this section to

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\*If the surface owner decides to proceed in court there is no reason to make him do so any earlier than the existing statute of limitations, and 20 days was an unreasonably short period of time in which to do so.

\*\*Eighty minus sixty is twenty days. That is not a reasonable time for a surface owner to contact and obtain the advice of a lawyer to determine which course to pursue.

1 the oil and gas developer; the second arbitrator shall be chosen  
2 by the oil and gas developer within ten days after receipt of the  
3 notice of election; and the third arbitrator shall be chosen  
4 jointly by the first two arbitrators within twenty days  
5 thereafter. If they are unable to agree upon the third  
6 arbitrator within twenty days, then the two arbitrators are  
7 hereby empowered to and shall forthwith submit the matter to the  
8 court under the provisions of section one, Article ten, chapter  
9 fifty-five of this code, so that, among other things, the third  
10 arbitrator can be chosen by the judge of the circuit court of the  
11 county wherein the surface estate lies.

12 (c) The following persons shall be deemed interested and not  
13 be appointed as arbitrators: Any person who is personally  
14 interested in the land on which rotary drilling is being  
15 performed or has been performed, or in any interest or right  
16 therein, or in the compensation and any damages to be awarded  
17 therefor, or who is related by blood or marriage to any person  
18 having such personal interest, or who stands in the relation of  
19 guardian and ward, master and servant, principal and agent, or  
20 partner, real estate broker, or surety to any person having such  
21 personal interest, or who has enmity against or bias in favor of  
22 any person who has such personal interest or who is the owner of,  
23 or interested in, such land or the oil and gas development  
24 thereof. No person shall be deemed interested or incompetent to  
25 act as arbitrator by reason of being an inhabitant of the county,  
26 district or municipal corporation wherein the land is located, or  
27 holding an interest in any other land therein.

28 (d) The panel of arbitrators shall hold hearings and take  
29 such testimony and receive such exhibits as shall be necessary to  
30 determine the amount of compensation to be paid to the surface  
31 owner. However, no award of compensation shall be made to the  
32 surface owner unless the panel of arbitrators has first viewed

1 the surface estate in question. A transcript of the evidence may  
2 be made but shall not be required.

3 (e) Each party shall pay the compensation of such party's  
4 arbitrator and one half of the compensation of the third  
5 arbitrator, or such party's own court costs as the case may be.

6 **§ 22-7-7. Effective date of amendments**

7 The amendments to this Article made by the regular session  
8 of the 2008 Legislature take effect for all well work for which a  
9 notice that the operator is commencing reclamation pursuant to  
10 Section 5 of this article.

NOTE: The purposes of this bill are:

•To aid surface owners in having their existing common law rights recognized and respected by oil and gas well drillers by:

-Requiring the driller to notify the surface owner and offer to meet with the surface owner before first coming on to the surface owner's land to even begin planning oil or gas wells and access roads or survey, etc.

-Requiring drillers after that to notify surface owners of their actual plans for use of the surface by giving them a proposed "surface use and compensation agreement". Require this 60 days before entry onto the land - much earlier than the current 15-day notice of their right to comment on only limited provisions of the drilling permit application that already has the well site and access road surveyed. Allow the 60 day period to be waived if the surface owner and driller can negotiate an agreed "surface use and compensation agreement."

-Requiring the driller to give an individual well bond, instead of using a blanket bond, if the driller and the surface owner cannot agree to the terms of surface use and compensation, and making that bond guarantee the surface owner's compensation.

-Requiring the drillers to include copies of relevant statutes protecting and compensating them when giving notices to surface owners.

-Requiring surface owner consent to "daylighting" of roads and to waivers by the State of provisions of the state's Soil Erosion and Sediment Control Manual.

-Giving the surface owner the right to a hearing on their comments on the gas well permit application unless this is waived as a part of the "surface use and compensation agreement".

•Recognize that the needs of, and uses by, different surface owners may vary by:

-Providing the surface owner with a variety of revegetation options to choose from.

-Providing a variety of options for access road "reclamation" during the life of the well.

•In order to provide balance for the surface owners against the well drillers' intrusions and inconveniences upon their property and lives caused by well drilling, require the driller to offer surface owners, at cost, residential gas service from the wells or gathering lines crossing their land.

•Clarify that a surface owner who will have a pipeline placed on his surface land is entitled to notice on the well driller's permit application.

•Clarify that when a surface tract is owned by more than three persons, service on the surface owner of the application for the drilling permit can only be made upon them by publication if the owner on the tax records cannot be located, if there is no owner occupying the surface, and if no other owner has requested a copy.

•Require the operator, when determining the surface owner who needs service of notices, to check the grantor deed indexes forward from the time the sheriff's tax information was obtained from the deed records.

•Require a soil erosion and sediment control plan for plugging wells in addition to drilling new wells.

•Amending the Oil and Gas Production Damage Compensation Act to:

-Compensate the surface owner for the market value of the land taken by the driller, instead of its actual use at the time of the taking.

-Make sure the surface owner gets the notice that reclamation has begun, and allow the surface owner to proceed to recover damages even if the driller is delaying sending out the reclamation notice.

-Give the surface owner more time to elect between arbitration and court action, and not limit the time the surface owner has to file a circuit court action because he tried arbitration first.

-Clarify that the Oil and Gas Production Damage Compensation Act requires compensation for the loss of value of not only the surface lands actually disturbed, but also any adjacent surface lands, the market value of which is diminished by the presence of the well, access road and other surface disturbances and uses.

- Authorize the Office of Oil and Gas to deny a new permit to an operator who is in violation of a current permit or regulation even if he has not yet had a formal "violation" issued against him.

- Consider the needs of the drillers by allowing shorter notice periods and relaxed bonding requirements where the driller and the surface owner enter into a written "Surface Use and Compensation Agreement."

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

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