

**H. B. 4558**

(By Mr. Speaker (Mr. Miley), White, Craig,  
Andes, R. Phillips, Reynolds and Nelson)

[Introduced February 14, 2014; referred to the  
Committee on Energy then the Judiciary.]

A BILL to amend and reenact §22C-9-1, §22C-9-2, §22C-9-3 and  
§22C-9-5 of the Code of West Virginia, 1931, as amended; and  
to amend said code by adding thereto a new section, designated  
§22C-9-7a, all relating to oil and gas conservation; providing  
for the unitization of interests in drilling units in  
connection with horizontal oil and gas wells; making findings;  
declaring policy; setting forth application requirements;  
establishing the standard of review; providing for unit  
orders; requiring notice and timeliness; providing for  
hearings; providing a standard of review; addressing oil and  
gas produced from horizontal wells, vertical wells and  
unconventional reservoirs; providing for conflict resolution;  
adding new definitions; and modifying existing definitions.

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

That §22C-9-1, §22C-9-2, §22C-9-3 and §22C-9-5 of the Code of  
West Virginia, 1931, as amended, be amended and reenacted; and that

1 said code be amended by adding thereto a new section, designated  
2 §22C-9-7a, all to read as follows:

3 **ARTICLE 9. OIL AND GAS CONSERVATION.**

4 **§22C-9-1. Declaration of public policy; legislative findings.**

5 (a) It is hereby declared to be the public policy of this  
6 state and in the public interest to:

7 (1) Foster, encourage and promote exploration for and  
8 development, production, utilization and conservation of oil and  
9 gas resources;

10 (2) Prohibit waste of oil and gas resources and unnecessary  
11 surface loss of oil and gas and their constituents;

12 (3) Encourage the maximum recovery of oil and gas; and

13 (4) Safeguard, protect and enforce the correlative rights of  
14 operators and royalty owners in a pool or unit of oil or gas to the  
15 end that each such operator and royalty owner may obtain his or her  
16 just and equitable share of production from ~~such~~ that pool, unit or  
17 unconventional reservoir of oil or gas.

18 (b) The Legislature hereby determines and finds that oil and  
19 natural gas found in West Virginia in shallow sands or strata have  
20 been produced continuously for more than one hundred years; that  
21 oil and gas deposits in such shallow sands or strata have  
22 geological and other characteristics different than those found in  
23 deeper formations; and that in order to encourage the maximum  
24 recovery of oil and gas from all productive formations in this

1 state, it is not in the public interest, with the exception of  
2 shallow wells utilized in a secondary recovery program and oil and  
3 gas produced from horizontal wells, to enact statutory provisions  
4 relating to the exploration for or production from oil and gas from  
5 vertical shallow wells, as defined in section two of this article,  
6 but that it is in the public interest to enact statutory provisions  
7 establishing regulatory procedures and principles to be applied to  
8 the exploration for or production of oil and gas from deep wells  
9 and horizontal wells, as defined in ~~said~~ that section. ~~two~~

10 **§22C-9-2. Definitions.**

11 (a) As used in this article:

12 (1) "Commission" means the Oil and Gas Conservation Commission  
13 and "commissioner" means the Oil and Gas Conservation Commissioner  
14 as provided ~~for~~ in section four of this article;

15 (2) "Director" means the Secretary of the Department of  
16 Environmental Protection and "chief" means the Chief of the Office  
17 of Oil and Gas;

18 (3) "Person" means any natural person, corporation,  
19 partnership, receiver, trustee, executor, administrator, guardian,  
20 fiduciary or other representative of any kind, and includes any  
21 government or any political subdivision or any agency thereof;

22 (4) "Operator" means any owner of the right to develop,  
23 operate and produce oil and gas from a pool and to appropriate the  
24 oil and gas produced therefrom, either for that person or for that

1 person and others; in the event that there is no oil and gas lease  
2 in existence with respect to the tract in question, the owner of  
3 the oil and gas rights therein is the "operator" to the extent of  
4 seven-eighths of the oil and gas in that portion of the pool  
5 underlying the tract owned by such owner, and as "royalty owner" as  
6 to one-eighth interest in such oil and gas; and in the event the  
7 oil is owned separately from the gas, the owner of the substance  
8 being produced or sought to be produced from the pool is the  
9 "operator" as to that pool or acreage included in a unit. The term  
10 operator includes owners of working interests in a lease but does  
11 not include owners whose interests are limited to working interests  
12 in a wellbore only, overriding royalties or net profits interests;

13 (5) "Royalty owner" means any owner of oil and gas in place,  
14 or oil and gas rights, to the extent that the owner is not an  
15 operator as defined in subdivision (4) of this section;

16 (6) "Independent producer" means a producer of crude oil or  
17 natural gas whose allowance for depletion is determined under  
18 Section 613A of the federal Internal Revenue Code in effect on July  
19 1, 1997;

20 (7) "Oil" means natural crude oil or petroleum and other  
21 hydrocarbons, regardless of gravity, which are produced at the well  
22 in liquid form by ordinary production methods and which are not the  
23 result of condensation of gas after it leaves the underground  
24 reservoir;

1           (8) "Gas" means all natural gas and all other fluid  
2 hydrocarbons not defined as oil in subdivision (7) of this section;

3           (9) "Pool" means an underground accumulation of petroleum or  
4 gas in a single and separate reservoir (ordinarily a porous  
5 sandstone or limestone). It is characterized by a single  
6 natural-pressure system so that production of petroleum or gas from  
7 one part of the pool affects the reservoir pressure throughout its  
8 extent. A pool is bounded by geologic barriers in all directions,  
9 such as geologic structural conditions, impermeable strata, and  
10 water in the formations, so that it is effectively separated from  
11 any other pools that may be presented in the same district or on  
12 the same geologic structure;

13           (10) "Well" means any shaft or hole sunk, drilled, bored or  
14 dug into the earth or underground strata for the extraction of oil  
15 or gas;

16           (11) "Shallow well" means any well other than a coalbed  
17 methane well, drilled no deeper than one hundred feet below the top  
18 of the "Onondaga Group": *Provided*, That in no event may the  
19 "Onondaga Group" formation or any formation below the "Onondaga  
20 Group" be produced, perforated or stimulated in any manner;

21           (12) "Deep well" means any well, other than a shallow well or  
22 coalbed methane well, drilled to a formation below the top of the  
23 uppermost member of the "Onondaga Group;"

24           (13) "Drilling unit" means the acreage on which one well or

1 more wells may be drilled;

2 (14) "Waste" means and includes:

3 (A) Physical waste, as that term is generally understood in  
4 the oil and gas industry;

5 (B) The locating, drilling, equipping, operating or producing  
6 of any oil or gas well in a manner that causes, or tends to cause,  
7 a reduction in the quantity of oil or gas ultimately recoverable  
8 from a pool under prudent and proper operations, or that causes or  
9 tends to cause unnecessary or excessive surface loss of oil or gas;  
10 or

11 (C) The drilling of more horizontal wells or deep wells than  
12 are reasonably required to recover efficiently and economically the  
13 maximum amount of oil and gas from a pool. Waste does not include  
14 gas vented or released from any mine areas as defined in section  
15 two, article one, chapter twenty-two-a of this code or from  
16 adjacent coal seams which are the subject of a current permit  
17 issued under article two of chapter twenty-two-a of this code:  
18 *Provided*, That this exclusion does not address ownership of the  
19 gas;

20 (15) "Correlative rights" means the reasonable opportunity of  
21 each person entitled thereto to recover and receive without waste  
22 the oil and gas in and under his or her tract or tracts, or the  
23 equivalent thereof; ~~and~~

24 (16) "Just and equitable share of production" means, as to

1 each person, an amount of oil or gas or both substantially equal to  
2 the amount of recoverable oil and gas in that part of a pool  
3 underlying the person's tract or tracts;

4 (17) "Unconventional reservoir" means any geologic formation  
5 that contains or is otherwise productive of oil or natural gas that  
6 generally cannot be produced at economic flow rates or in economic  
7 volumes except by wells stimulated by multiple hydraulic fracture  
8 treatments, a horizontal wellbore, or by using multilateral  
9 wellbores or some other technique to expose more of the formation  
10 to the wellbore;

11 (18) "Horizontal drilling" means a method of drilling a well  
12 for the production of oil and gas that is intended to maximize the  
13 length of wellbore that is exposed to the formation and in which  
14 the wellbore is initially vertical but is eventually curved to  
15 become horizontal, or nearly horizontal, to parallel a particular  
16 geologic formation; and

17 (19) "Horizontal well" means an oil and gas well, other than  
18 a coalbed methane well, where the wellbore is initially drilled  
19 using a horizontal drilling method. A horizontal well may include  
20 multiple horizontal side laterals drilled into the same formation.  
21 A horizontal well may have completions into multiple formations  
22 from the same well. Multiple horizontal wells may be drilled from  
23 the same well pad.

24 (b) Unless the context clearly indicates otherwise, the use of

1 the word "and" and the word "or" are interchangeable, as, for  
2 example, "oil and gas" means oil or gas or both.

3 (c) A person with an interest in oil and gas in a unit formed  
4 under this article who does not consent to the unit has no  
5 liability in connection with well site preparation, drilling,  
6 completion, maintenance, reclamation, plugging and other operations  
7 with respect to wells drilled in such unit.

8 **§22C-9-3. Application of article; exclusions.**

9 (a) Except as provided in subsection (b) of this section, the  
10 provisions of this article shall apply to all lands located in this  
11 state, however owned, including any lands owned or administered by  
12 any government or any agency or subdivision thereof, over which the  
13 state has jurisdiction under its police power. The provisions of  
14 this article are in addition to and not in derogation of or  
15 substitution for the provisions of article six or six-a, chapter  
16 twenty-two of this code.

17 (b) This article ~~shall~~ does not apply to or affect:

18 (1) Shallow wells other than shallow horizontal wells and  
19 those utilized in secondary recovery programs as set forth in  
20 section eight of this article;

21 (2) Any well commenced or completed prior to March 9, 1972,  
22 unless such well is, after completion (whether such completion is  
23 prior or subsequent to that date):

24 (A) Deepened or drilled laterally subsequent to that date to



1 produce from a formation at or below the top of the uppermost  
2 member of the "Onondaga Group"; ~~or~~

3 (B) Involved in secondary recovery operations for oil under an  
4 order of the commission entered pursuant to section eight of this  
5 article; or

6 (C) Drilled laterally as a horizontal well at any depth.

7 (3) Gas storage operations or any well employed to inject gas  
8 into or withdraw gas from a gas storage reservoir or any well  
9 employed for storage observation; ~~or~~

10 (4) Free gas rights; or

11 (5) Coalbed methane wells.

12 (c) The provisions of this article ~~shall~~ may not be construed  
13 to grant to the commissioner or the commission authority or power  
14 to:

15 (1) Limit production or output, or prorate production of any  
16 oil or gas well, except as provided in subdivision (6), subsection  
17 (a), section seven of this article; or

18 (2) Fix prices of oil or gas.

19 (d) Nothing contained in either this chapter or chapter  
20 twenty-two of this code may be construed so as to require, prior to  
21 commencement of plugging operations, a lessee under a lease  
22 covering a well to give or sell the well to any person owning an  
23 interest in the well, including, but not limited to, a respective  
24 lessor, or agent of the lessor, nor shall the lessee be required to

1 grant to a person owning an interest in the well, including, but  
2 not limited to, a respective lessor, or agent of a lessor, an  
3 opportunity to qualify under section twenty-six, article six,  
4 chapter twenty-two of this code to continue operation of the well.

5 **§22C-9-5. Rules; notice requirements.**

6 (a) The commission may propose rules for legislative approval  
7 in accordance with the provisions of article three, chapter  
8 twenty-nine-a of this code, to implement and make effective the  
9 provisions of this article and the powers and authority conferred  
10 and the duties imposed upon the commission under the provisions of  
11 this article.

12 (b) Notwithstanding the provisions of section two, article  
13 seven, chapter twenty-nine-a of this code, any notice required  
14 under the provisions of this article shall be given at the  
15 direction of the commission by personal or substituted service or  
16 by certified United States mail, addressed, postage prepaid, to the  
17 last-known mailing address, if any, of the person being served,  
18 with the direction that the same be delivered to addressee only,  
19 return receipt requested. In the case of providing notice upon the  
20 filing of an application with the commission, the commission shall  
21 cause notice to be published as a Class II legal advertisement in  
22 compliance with the provisions of article three, chapter fifty-nine  
23 of this code, and the publication area for such publication shall  
24 be the county or counties wherein any land which may be affected by



1       (a) Declaration of public policy; legislative findings  
2 regarding unitization for all horizontal wells. -- The Legislature  
3 finds that horizontal drilling is a technique that effectively and  
4 efficiently recovers natural resources and should be encouraged as  
5 a means of production of oil and gas, and it is hereby declared to  
6 be the public policy of this state and in the public interest to:

7       (1) Foster, encourage and promote exploration for and  
8 development, production, utilization and conservation of oil and  
9 gas resources by horizontal drilling in deep and shallow  
10 formations;

11       (2) Prohibit waste of oil and gas resources and unnecessary  
12 surface loss of oil and gas and their constituents;

13       (3) Encourage the maximum recovery of oil and gas; and

14       (4) Safeguard, protect and enforce the correlative rights of  
15 operators and royalty owners of oil and gas in a horizontal well  
16 unit to the end that each such operator and royalty owner may  
17 obtain his or her just and equitable share of production from that  
18 pool, horizontal well unit or unconventional reservoir of oil or  
19 gas.

20       (b) Definitions. -- Unless the context in which used clearly  
21 requires a different meaning, as used in this section:

22       (1) "Bonded operator" means a person that: (A) Has posted a  
23 bond under article six or six-a, chapter twenty-two of this code;  
24 (B) is registered as an oil and gas well operator with the West

1 Virginia Department of Environmental Protection, Office of Oil and  
2 Gas; and (C) operates eight or more oil and gas wells, as defined  
3 in articles six and six-a, chapter twenty-two of this code, in West  
4 Virginia that are active, producing oil and gas wells.

5 (2) "Executive interest" and "executory interest" means the  
6 interest entitling the owner thereof to lease the oil and gas  
7 estate or amend an existing oil and gas lease. For purposes of  
8 this section, the owner of the executive interest is the royalty  
9 owner and interested party for purposes of notice and participation  
10 in proceedings hereunder, and all horizontal well unit orders are  
11 binding on the owners of executive interests and nonexecutive  
12 interests in a horizontal well unit. The owners of the executive  
13 interest and the associated nonexecutive interest owners shall be  
14 considered to be the same interest for purposes of computing  
15 percentages pursuant to paragraph (A), subdivision two, subsection  
16 (c) of this section.

17 (3) "Horizontal well unit" means an area in which horizontal  
18 drilling may occur, and that is designated for the allocation of  
19 production from one or more horizontal wells drilled in the unit to  
20 all oil and gas tracts, or portions thereof, included in the unit  
21 for production of oil and gas and payment of royalty and proceeds  
22 of production regardless of the tract or tracts in which the  
23 horizontal well is drilled or completed, and the corresponding  
24 authorization to drill and produce oil and gas from such area as a

1 unit, notwithstanding the lack of adequate consensual rights  
2 allowing pooling or unitization of oil and gas or allowing drilling  
3 horizontally across tract lines. When a horizontal well unit is  
4 formed, that portion of the production allocated to each tract or  
5 portion thereof included in the horizontal well unit shall, when  
6 produced, be deemed for all purposes to have been actually produced  
7 from such tract by an oil and gas well drilled, completed and  
8 producing thereon.

9       (4) "Lateral" means the portion of a well bore that deviates  
10 from approximate vertical orientation to approximate horizontal  
11 orientation and all well bore beyond such initial deviation to  
12 total depth or terminus thereof.

13       (5) "Overriding royalty" means an interest carved out of the  
14 leasehold or out of the working interest and may not be included  
15 within the meaning of royalty.

16       (6) "Royalty owner" means any owner of oil and gas in place or  
17 interest derived from the oil and gas in place. Royalty is not  
18 carved out of a leasehold interest. For example, if a fee owner  
19 of oil and gas leases property for oil and gas production and  
20 conveys to another the right to receive one half of the oil and gas  
21 when produced, both parties are royalty owners.

22       (7) "Target formation" means the primary geologic formation  
23 from which oil or gas is intended to be produced from a horizontal  
24 drilling operation, and, where completions can reasonably be

1 expected to produce from formations above or below the target  
2 formation, shall also include the formations from which production  
3 can reasonably be expected.

4 (8) "Unitization" means the combination of two or more tracts  
5 of oil and gas, or portions thereof, for drilling of horizontal  
6 wells and production of oil and gas from the unit with allocation  
7 of production to the net acreage of each tract included in the unit  
8 to operate as a consolidated horizontal well unit.

9 (9) "Unitization consideration" means consideration provided  
10 as set forth in subsection (f) of this section. Unitization  
11 consideration relates to the net acreage of the nonconsenting  
12 royalty owner included in a horizontal well unit and is as  
13 determined to be just and reasonable by the commission.

14 (10) "Unknown and unlocatable interest owner" means a royalty  
15 owner, operator or other person vested with an interest in oil and  
16 gas in the target formation to be included in a horizontal well  
17 unit, whose present identity or location cannot be determined from:

18 (A) A reasonable review of the records of the clerk of the  
19 county commission for the county or counties where the oil and gas  
20 is located;

21 (B) Diligent inquiry to known interest owners in the same  
22 tract;

23 (C) Inquiry to the sheriff's and assessor's offices of the  
24 county or counties in which the oil and gas interest is located;

1 and

2 (D) A mailing to the last known address, if available, of such  
3 person as reflected in the records of said sheriff's or assessor's  
4 office, and includes the unknown heirs, representatives, successors  
5 and assigns of such person.

6 (c) Applicability. --

7 (1) For all horizontal wells, including shallow and deep  
8 horizontal wells, the commission has the authority to unitize  
9 tracts, or portions thereof, in a horizontal well unit established  
10 under this section upon the filing of an application with the  
11 commission by a person that controls the horizontal well unit and  
12 upon the issuance of a horizontal well unit order pursuant to this  
13 section.

14 (2) Before filing an application under this section, an  
15 applicant must have:

16 (A) With respect to the royalty interest, obtained by  
17 ownership, lease, lease amendment, assignment, farmout, contract or  
18 other agreement the right, consent or agreement to pool or unitize  
19 the acreage to be included in the horizontal well unit from  
20 executory interest royalty owners of sixty-seven percent or more of  
21 the net acreage proposed to be included in the horizontal well  
22 unit, as provided and determined in accordance with subdivision (3)  
23 of this subsection;

24 (B) With respect to the operator interest, obtained by



1 ownership, lease, lease amendment, assignment, farmout, contract,  
2 or other agreement, the right, consent or agreement to pool or  
3 unitize as to eighty five percent or more of the net acreage  
4 proposed to be included in the horizontal well unit owned, leased,  
5 or operated by bonded operators and the applicant, collectively, by  
6 ownership, lease, farmout, assignment, contract or other agreement;  
7 and

8       (C) (i) Made good faith offers to consent or agree to  
9 unitization to, and has negotiated in good faith with, all known  
10 and locatable royalty owners having executory interests in the oil  
11 and gas in the target formation within the acreage to be included  
12 in the proposed horizontal well unit who have not previously  
13 consented or agreed to the pooling or unitization of such  
14 interests; and

15       (ii) Made good faith offers to participate or consent or agree  
16 to the proposed horizontal well unit to, and has negotiated in good  
17 faith with, all known and locatable operators who have not  
18 previously agreed to participate or consent or agree to pooling and  
19 unitization of the acreage to be included in a proposed horizontal  
20 well unit.

21       A person who satisfies the conditions of paragraphs (A)  
22 through (C) of this subdivision is referred to in this section as  
23 a person that controls the horizontal well unit.

24       (3) For purposes of determining whether a person has obtained

1 the requisite control of the proposed horizontal well unit, the  
2 commission may not include overriding royalty owners, nonexecutive  
3 interest royalty owners, or acreage owned or otherwise held by  
4 unknown and unlocatable interest owners or acreage owned or  
5 otherwise held by operators who are not bonded operators.  
6 Furthermore, for purposes of determining whether a person has the  
7 requisite control of the proposed horizontal well unit, the  
8 identity and rights of royalty owners and bonded operators shall be  
9 determined as of the date on which the application for a horizontal  
10 well unit is filed.

11 (4) If the applicant has not met all the provisions of this  
12 subsection, the application shall be dismissed without prejudice.

13 (5) If the applicant meets all of the provisions of this  
14 subsection, the commission shall authorize unitization of tracts,  
15 or portions thereof, as to all interests in oil and gas in the  
16 target formation acreage proposed to be unitized for horizontal  
17 drilling, including interests of unknown and unlocatable owners,  
18 for production of oil and gas from the target formation as a  
19 horizontal well unit, and shall issue a horizontal well unit order  
20 in accordance with this section.

21 (d) Application requirements. --

22 (1) An applicant who is a person that controls the horizontal  
23 well unit proposed for a horizontal well unit order and has drilled  
24 or plans to drill one or more horizontal wells in the proposed

1 horizontal well unit may file an application with the commission  
2 for a horizontal well unit order. The application shall contain:

3 (A) A description of the proposed horizontal well unit and  
4 identification of the target formation or formations;

5 (B) A statement of the nature of the operations contemplated;

6 (C) A plat that depicts the boundaries and acreage of the  
7 proposed horizontal well unit, the tracts in the horizontal well  
8 unit, the surface tax map and parcel numbers of the tracts to be  
9 included in the horizontal well unit in accordance with county  
10 assessor's records, and the district(s) and county or counties  
11 where the proposed horizontal well unit is located. The plat shall  
12 show the surface location of the vertical borehole of the  
13 horizontal well(s) to be included in the proposed horizontal well  
14 unit determined by survey, the courses and distances of such  
15 surface location from two permanent points or landmarks on those  
16 tracts, the deviation from vertical, and also the proposed  
17 horizontal lateral portion of each proposed horizontal well to be  
18 included in the proposed horizontal well unit. The plat shall show  
19 the proposed horizontal well unit name, the proposed horizontal  
20 well names, and if known, the well number of each horizontal well  
21 to be drilled in the horizontal well unit. The plat shall also  
22 show the location of each permitted, active oil and gas well  
23 located in the horizontal well unit, and the name of the operator  
24 of such well as shown by the records of the Department of

1 Environmental Protection, Office of Oil and Gas: Provided, That the  
2 applicant may not be required to depict or identify any abandoned  
3 or plugged well;

4 (D) A listing of all oil and gas tracts, or portions thereof,  
5 within the proposed horizontal well unit, the size of each tract,  
6 and the extent to which each tract is leased;

7 (E) The names and last known addresses of royalty owners of  
8 the target formation of each tract within the proposed horizontal  
9 well unit, specifying:

10 (i) Which, if any, of them are unknown and unlocatable;

11 (ii) Which of them hold executive rights; and

12 (iii) With respect to owners of an executory interest, whether  
13 they have consented to pooling or unitization of the acreage  
14 proposed to be included in the horizontal well unit;

15 (F) The names and last known addresses of operators of  
16 proposed horizontal well unit target formation acreage whose  
17 interest is of record in the county where the property is located,  
18 specifying:

19 (i) Which, if any, of them are unknown and unlocatable; and

20 ii) Which, if any of them, are bonded operators, and if a  
21 bonded operator, whether he or she has consented to pooling or  
22 unitization as to the acreage proposed to be included in the  
23 horizontal well unit;

24 (G) Information regarding the applicant's actions to identify

1 and locate unknown and unlocatable owners of target formation  
2 acreage to be included in the horizontal well unit;

3 (H) The percentage of the net acreage in the proposed  
4 horizontal well unit owned by executory interest target formation  
5 royalty owners who have consented to pooling or unitization;

6 (I) The percentage of the net acreage in the proposed  
7 horizontal well unit held by bonded operators and the applicant,  
8 collectively, as to which consent or agreement to pooling or  
9 unitization has been granted;

10 (J) A percentage allocation to the separately owned tracts, or  
11 portions thereof, in the proposed horizontal well unit of the oil  
12 and gas that will be produced from the horizontal well unit as  
13 determined by the proportion that each tract's net acreage within  
14 the horizontal well unit bears to the total net acreage in the  
15 horizontal well unit;

16 (K) A certification that the applicant meets the requirements  
17 of subsection (c) of this section with respect to the proposed  
18 horizontal well unit, a list of the instruments granting such  
19 control, and a certification that the applicant has mailed a copy  
20 of the application to all known and locatable interested parties by  
21 United States certified mail, return receipt requested, to their  
22 last known address and to the most current address filed with the  
23 West Virginia Department of Environmental Protection and the Office  
24 of Oil and Gas; and

1       (L) A statement whether the applicant has submitted, either  
2 previously or contemporaneously with the application filed pursuant  
3 to this section, an application for a well work permit with the  
4 Department of Environmental Protection for one or more horizontal  
5 wells to be completed within the boundaries of the proposed  
6 horizontal well unit.

7       (2) Upon the filing of an application for a horizontal well  
8 unit order, the commission shall provide notice of a hearing to all  
9 interested parties, as defined in this section, in accordance with  
10 section five of this article and subsection (c) of this section.

11       (e) Standard of review. --

12       (1) The commission shall evaluate the application and shall  
13 consider:

14       (A) The ownership and control of the tracts, or portions  
15 thereof, in the proposed horizontal well unit;

16       (B) Whether the tracts, or portions thereof, proposed to be  
17 made subject to a horizontal well unit order are owned ,in whole  
18 or in part, by unknown or unlocatable owners;

19       (C) Information regarding the applicant's actions to locate  
20 unknown and unlocatable interest owners for the tracts, or portions  
21 thereof, sought to be included in the horizontal well unit;

22       (D) The percentage of executory interest royalty owner target  
23 formation acreage to be included in the horizontal well unit as to  
24 which consent or agreement for pooling or unitization has been

1 granted;

2 (E) The percentage of proposed horizontal well unit target  
3 formation acreage held, collectively, by the applicant and bonded  
4 operators who have consented or agreed to the unit in accordance  
5 with subsection (c) of this section;

6 (F) Whether the applicant is a person that controls the  
7 horizontal well unit proposed for unitization;

8 (G) The area to be drained by well(s) completed or to be  
9 completed in the horizontal well unit;

10 (H) Correlative rights;

11 (I) The extent to which the application will prevent waste;

12 (J) Whether the applicant has complied with subsection (c) of  
13 this section; and

14 (K) Whether notice has been provided in accordance with this  
15 section.

16 (2) The commission may not issue a horizontal well unit order  
17 pursuant to this section unless it finds that the applicant has  
18 before the filing of the application met the requirements of  
19 subsection (c) of this section.

20 (3) The commission may not change the operator of an existing  
21 well drilled in the proposed horizontal well unit, or a well  
22 actually being drilled within the proposed horizontal well unit as  
23 of the date the application is filed under this section, and shall  
24 consider and protect the interests of owners of such well when

1 issuing a horizontal well unit order.

2 (f) Horizontal Well Unit Orders. --

3 (1) A horizontal well unit order under this section shall  
4 specify:

5 (A) The size and boundaries of the horizontal well unit giving  
6 due regard for maximization of the amount of oil and gas produced  
7 to prevent waste and protect correlative rights: Provided, That a  
8 horizontal well unit's size may not exceed six hundred forty acres:  
9 Provided, however, That the commission may exceed the acreage  
10 limitation by ten percent if the applicant demonstrates that the  
11 proposed horizontal well unit area would be drained efficiently and  
12 economically by a larger horizontal well unit;

13 (B) The horizontal wells which may be drilled in the  
14 horizontal well unit, and whether the horizontal wells to be  
15 drilled are shallow or deep;

16 (C) In the event there are vertical wells completed in the  
17 target formation in the horizontal well unit, the area where a  
18 horizontal well may not be completed;

19 (D) The target formation or target formations to which the  
20 horizontal well unit applies; and

21 (E) Any unitization consideration due.

22 (2) An order authorizing unitization of tracts with unknown or  
23 unlocatable owners shall contain a finding that identifies such  
24 persons as unknown or unlocatable.



1       (3) An order shall specify that the allocation of the  
2 percentage of production of the horizontal wells drilled in the  
3 horizontal well unit to the separately owned tracts, or portions  
4 thereof, included within the horizontal well unit shall be in the  
5 proportion that each tract's net acreage within the horizontal well  
6 unit bears to the total net acreage within the horizontal well  
7 unit.

8       (4) A horizontal well unit order shall authorize and perfect  
9 unitization of all interests in the target formation as to the  
10 tracts, or portions thereof, included in the horizontal well unit.

11       (5) If the applicant is a person that controls the horizontal  
12 well unit proposed for a horizontal well unit order under this  
13 section, the commission shall form a horizontal well unit pursuant  
14 to this section and authorize the drilling and operation of one or  
15 more horizontal wells in the unit for the production of oil or gas  
16 from the target formation from any tract within the horizontal well  
17 unit.

18       (6) With respect to royalty owners of leased tracts who have  
19 not consented to pooling or unitization, the commission may require  
20 that unitization consideration be provided to executive interest  
21 royalty owners equivalent to just and reasonable consideration for  
22 the modification of rights under a lease. Further, if an award of  
23 unitization consideration differs from the rights under a lease or  
24 other contract, the applicant, all royalty owners, and owners of

1 leasehold, working interest, overriding royalty interest, and other  
2 interests in the oil and gas shall be bound by the order.  
3 Unitization consideration shall be provided by the participating  
4 operators, including the applicant, to the extent of their interest  
5 in the horizontal well unit.

6 (7) With respect to interests in oil and gas as to which there  
7 is no lease in existence, the owner thereof is deemed a royalty  
8 owner to the extent of one-eighth and operator to the extent of  
9 seven eighths by virtue of subdivision four, subsection (a), section  
10 two of this article and:

11 (A) Any such owner may elect to surrender the oil and gas  
12 underlying such tract to the participating operators, including the  
13 applicant, to the extent of their interest in the horizontal well  
14 unit for consideration, which if not agreed upon, shall be just and  
15 reasonable as determined by the commission; or

16 (B) Executive interest owners may make an election for  
17 unitization consideration, and if the executive interest owner  
18 elects unitization consideration, the interests of the executive  
19 interest owner and the associated nonexecutive interest owners  
20 shall be deemed leased to the participating operators, including  
21 the applicant, to the extent of their interest in the horizontal  
22 well unit on terms which, if not agreed upon, shall be just and  
23 reasonable as determined by the commission. Thereafter, the  
24 applicant and all royalty owners and owners of leasehold, working

1 interest, overriding royalty interest, and other interests in the  
2 oil and gas shall be bound by the order, and the participating  
3 operators including the applicant, to the extent of their interest  
4 in the horizontal well unit, will be the operator of such oil and  
5 gas as to the deemed seven-eighths interest and the owner of the  
6 unleased oil and gas will be the executive interest royalty owner  
7 as to the deemed one-eighth interest.

8 (C) Owners of oil and gas interests as to which there is no  
9 lease in existence who do not elect paragraph (A) or (B) of this  
10 subdivision shall be deemed to be a royalty owner with respect to  
11 one-eighth and an operator with respect to seven eighths of their  
12 ownership interest, and may not receive unitization consideration.  
13 With respect to such seven eighths, that owner may elect Option 1,  
14 Option 2 or Option 3 as provided by subdivision (9) of this  
15 subsection.

16 (8) No unitization consideration may be required to be paid to  
17 any royalty owner who has consented or agreed to pooling or  
18 unitization by virtue of the terms contained in an oil and gas  
19 lease, pooling or unitization agreement, or other agreement which  
20 permits pooling or unitization.

21 (9) An operator may elect to consent to and participate in a  
22 horizontal well unit after an application is filed. Subject to  
23 subdivision seven of this subsection, when the commission issues a  
24 horizontal well unit order pursuant to this section, the commission

1 shall allow each non-consenting operator, who does not elect to  
2 participate in the risk and cost of drilling in the horizontal well  
3 unit to choose from the following options:

4 (A) Option 1. To surrender such interest or a portion thereof  
5 to the participating owners on a reasonable basis and for a just  
6 and reasonable consideration, which, if not agreed upon, shall be  
7 determined by the commission;

8 (B) Option 2. To participate in the drilling in the horizontal  
9 well unit on a limited or carried basis on terms and conditions  
10 which, if not agreed upon, shall be determined by the commission to  
11 be just and reasonable; or

12 (C) Option 3. To enter into a farm out agreement, sublease,  
13 or other contract to permit drilling, operation and unitization  
14 with respect to such interest for such consideration and on terms  
15 and conditions which, if not agreed upon, shall be determined by  
16 the commission to be just and reasonable.

17 (10) In the event a nonconsenting operator elects Option 2,  
18 and an owner of any operating interest in any portion of the  
19 horizontal well unit shall drill and operate, or pay the costs of  
20 drilling, completing, equipping and operating a horizontal well for  
21 the benefit of such nonparticipating owner as provided in the  
22 horizontal well unit order, then such operating owner shall be  
23 entitled to the share of production from the tracts or portions  
24 thereof subject to the horizontal well unit order accruing to the

1 interest of such nonparticipating owner, exclusive of any  
2 unitization consideration, and royalty and overriding royalty  
3 reserved in any leases, assignments thereof, or agreements relating  
4 thereto, of such tracts or portions thereof, until the market value  
5 of such nonparticipating owner's share of the production, exclusive  
6 of such unitization consideration, royalty and overriding royalty  
7 equals double the share of such costs payable by or charged to the  
8 interest of such nonparticipating owner. In the event an operator  
9 is an unknown or unlocatable owner, such operator shall be deemed  
10 to have elected Option 2.

11 (11) If a dispute arises as to the costs of drilling,  
12 completing, equipping and operating a horizontal well in a  
13 horizontal well unit formed pursuant to this section, the  
14 commission shall determine and apportion the costs, within ninety  
15 days from the date of written notification to the commission of the  
16 existence of such dispute.

17 (12) If the horizontal well unit approved by the commission is  
18 not fully developed as approved in the order, the applicant shall  
19 file a request to modify the horizontal well unit with the  
20 commission within sixty days from the later of: completion of all  
21 drilling activities within the horizontal well unit; or the date  
22 that is five years after the most recent drilling activity in the  
23 horizontal well unit occurs.

24 (13) Any interested party may file an application to correct

1 a clerical error in a horizontal well unit order at any time.

2 (14) The applicant may file a request to modify a horizontal  
3 well unit order at any time.

4 (15) If an operator has not drilled a well in a horizontal  
5 well unit formed by the commission within five years after the  
6 latter of either the drilling and completion of the initial  
7 horizontal well in the horizontal well unit or the drilling and  
8 completion of the most recent horizontal well within the horizontal  
9 well unit, as the case may be, an interested party may file a  
10 request to modify the horizontal well unit, and the commission may  
11 modify such horizontal well unit. Upon the modification of the  
12 horizontal well unit, the commission shall recalculate the  
13 allocation of production from the tracts in the modified horizontal  
14 well unit from and after the modification order date and the  
15 modification order shall be binding on the property subject to the  
16 horizontal well unit order, and all owners thereof, their heirs,  
17 representatives, successors and assigns for so long as the  
18 horizontal well unit order remains in effect. In the event the  
19 commission determines that any party has been overcompensated, the  
20 commission may authorize the applicant to withhold distributions to  
21 the overcompensated party and redistribute withheld moneys to the  
22 appropriate parties. The operator may set off against any amount  
23 overpaid.

24 (16) All operations, including, but not limited to, the

1 commencement, drilling, or operation of a horizontal well upon any  
2 portion of a horizontal well unit for which a unit order has been  
3 entered pursuant to this section, shall be deemed for all purposes  
4 the conduct of such operations upon each separate tract or portion  
5 thereof in the horizontal well unit. That portion of the production  
6 allocated to each tract or portion thereof included in a horizontal  
7 well unit shall, when produced, be deemed for all purposes to have  
8 been actually produced from such tract by an oil and gas well  
9 drilled, completed and producing thereon.

10 (17) Where the commission finds that the interest of one or  
11 more unknown or unlocatable owners are included in the horizontal  
12 well unit, the horizontal well unit operator shall hold the moneys  
13 payable to such owner in an account for such interest owner. The  
14 money shall be held until the unknown or unlocatable owner is  
15 located, or the money held is deemed abandoned, and then shall be  
16 paid in accordance with the provisions of the West Virginia Uniform  
17 Unclaimed Property Act.

18 (18) A horizontal well unit order under this section shall  
19 expire if a horizontal well has not been drilled in the horizontal  
20 well unit within three years of the date the order is final and  
21 nonappealable, unless the commission extends the order for good  
22 cause, and if such a well has been drilled within three years the  
23 horizontal well unit shall continue in force and effect until all  
24 the horizontal wells drilled in the horizontal well unit are

1 plugged.

2 (19) For purposes of this section, the commission shall  
3 determine what is "just and reasonable" based on relevant evidence  
4 adduced at a hearing regarding amounts paid or consideration given  
5 in arm's length transactions in the vicinity of the horizontal well  
6 unit and within a reasonable time prior to the hearing for  
7 transactions of the same nature and involving similar geologic  
8 conditions as that transaction being considered by the commission.

9 (20) So long as the order remains in effect, a horizontal well  
10 unit order is binding on the property subject to the horizontal  
11 well order and all owners thereof, and their heirs,  
12 representatives, successors and assigns.

13 (g) Notice, timelines, hearings and orders. --

14 (1) (A) For purposes of this section and the West Virginia  
15 Administrative Procedures Act, "interested parties" and "parties"  
16 means owners of the executive interest in the oil and gas in the  
17 target formation within the horizontal well unit, including the  
18 unknown or unlocatable executive interest royalty owners in the  
19 tracts, or portions thereof, to be included in the horizontal well  
20 unit subject to an application for a horizontal well unit order;  
21 owners of unleased oil and gas to be included in the horizontal  
22 well unit; operators of all target formation acreage in the  
23 horizontal well unit; and operators of all oil and gas wells  
24 located in the unit that have been drilled to or through the target



1 formation.

2 (B) Bonded operators of wells drilled to or through the target  
3 formation that are not within the horizontal well unit but are  
4 located within five hundred feet of a proposed horizontal well unit  
5 boundary has the right to submit written comments regarding the  
6 horizontal well unit application at any time before the start of  
7 any hearing regarding the application, but are not interested  
8 parties and may not participate in the hearing nor have the right  
9 to appeal the commission's decision regarding the application.

10 (2) Each notice issued in accordance with this section shall  
11 describe the area for which a horizontal well unit order is  
12 proposed in recognizable, narrative terms and contain such other  
13 information as is essential to the giving of proper notice,  
14 including the time and date and place of a hearing. As soon as  
15 practicable the commission shall establish a web site. Within  
16 three business days of the filing of an application under this  
17 section, the commission shall publish on its website a copy of: (A)  
18 The horizontal well unit application notice required to be  
19 published pursuant to this section and section five of this  
20 article; and (B) the proposed horizontal well unit plat filed with  
21 the application, both identified as a horizontal well unit  
22 application and indexed by county and district where the majority  
23 of the acreage to be included in the proposed horizontal well unit  
24 is located, so that the plat and notice of the application are

1 readily accessible. Timely publication on the web-site for a period  
2 of ten business days is notice to all operators.

3 (3) Upon request of any interested party or the commission,  
4 the commission shall conduct a hearing and receive evidence  
5 regarding the application. All interested parties may participate  
6 in any hearing. If a hearing has been held regarding an  
7 application, the order shall be a final order. If no hearing has  
8 been requested by the commission or an interested party within  
9 fifteen days after notice of the application is posted on the  
10 commission website in accordance with subdivision two of this  
11 subsection, the commission may issue a proposed order and provide  
12 a copy of the proposed order, together with notice of the right to  
13 appeal to the commission and request a hearing, to all interested  
14 parties. Any interested party aggrieved by the proposed order may  
15 appeal the proposed order to the commission and request a hearing.  
16 Notice of appeal and request for hearing shall be made within  
17 fifteen days of entry of the proposed order. If no appeal and  
18 request for hearing has been received within fifteen days, the  
19 proposed order becomes final. If a hearing is requested, the  
20 hearing shall commence within forty five days of issuance of the  
21 initial notice. The commission may, upon written request, extend  
22 the date for the hearing: *Provided*, That the hearing must be  
23 convened within forty five days of the initial notice issued by the  
24 commission. The commission shall, within twenty days of the

1 hearing, enter an order authorizing the unit, dismiss the  
2 application, or for good cause, continue the process.

3 (4) An order establishing a horizontal well drilling unit or  
4 dismissing an application is a final order. Any interested party  
5 aggrieved by the order may seek judicial review pursuant to section  
6 eleven of this article. Notice of appeal shall be made in  
7 accordance with section eleven of this article within fifteen days  
8 of entry of the order. If no appeal has been received within  
9 fifteen days, the order becomes final.

10 (h) Unit order does not grant surface rights. -- A horizontal  
11 well unit order under this section does not grant or otherwise  
12 affect surface use rights.

13 (i) Commission approval required for certain additional  
14 drilling. -- After the filing of an application for a horizontal  
15 well unit order, no well may be drilled or completed to or through  
16 the target formation of the proposed horizontal well unit unless  
17 authorized by the commission.

18 (j) Contemporaneous permit applications authorized. --  
19 Notwithstanding anything to the contrary in article six-a, chapter  
20 twenty-two of this code, upon the filing of an application for a  
21 horizontal well unit order pursuant to this section, an applicant  
22 is entitled to file an application for a well work permit under  
23 article six-a, chapter twenty-two of this code for any proposed  
24 development within the horizontal well unit for which the unit

1 order is sought.

2 (k) A party may appear in person. -- At any hearing an  
3 interested party may represent themselves or be represented by an  
4 attorney.

5 (l) Conflict resolution. -- After the effective date of this  
6 section, all applications requesting unitization for horizontal  
7 wells shall be filed pursuant to this section. Deep well  
8 horizontal unit applications filed before the effective date of  
9 this section shall continue to proceed under and be governed by the  
10 provisions of section seven of this article. With respect to  
11 horizontal well unit applications filed after the effective date of  
12 this section, if this section conflicts with section seven of this  
13 article, the provisions of this section shall prevail. When  
14 considering an application pursuant to this section, rules  
15 regarding deep wells promulgated before the effective date of this  
16 section do not apply. The commission may modify any special field  
17 rules, spacing orders, and deep well units in connection with  
18 horizontal well unit orders under this section to protect  
19 correlative rights, prevent waste, or ensure that operators and  
20 royalty owners receive their just and equitable share of  
21 production.

NOTE: The purpose of this bill is to provide for the unitization of interests in drilling units in connection with horizontal oil and gas wells. The bill makes findings. The bill

declares policy. The bill sets forth application requirements. The bill establishes the standard of review. The bill provides for unit orders. The bill requires notice and timeliness. The bill provides for hearings. The bill provides a standard of review. The bill addressing oil and gas produced from horizontal wells, vertical wells and unconventional reservoirs. The bill provides for conflict resolution. The bill adds new definitions and modifies existing definitions.

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

§22C-9-7a is new; therefore, it has been completely underscored.