

Senate Bill No. 578

(By Senators Kessler (Mr. President), Palumbo, Snyder, Edgell and
Green)

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

A BILL to amend and reenact §22C-9-1, §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;

1 adding new definitions; and modifying existing definitions.

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

3 That §22C-9-1, §22C-9-2, §22C-9-3 and §22C-9-5 of the Code of
4 West Virginia, 1931, as amended, be amended and reenacted; and that
5 said code be amended by adding thereto a new section, designated
6 §22C-9-7a, all to read as follows:

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

8 **§22C-9-1. Declaration of public policy; legislative findings.**

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

11 (1) Foster, encourage and promote exploration for and
12 development, production, utilization and conservation of oil and
13 gas resources;

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

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

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

22 (b) The Legislature hereby determines and finds that oil and
23 natural gas found in West Virginia in shallow sands or strata have

1 been produced continuously for more than one hundred years; that
2 oil and gas deposits in such shallow sands or strata have
3 geological and other characteristics different than those found in
4 deeper formations; and that in order to encourage the maximum
5 recovery of oil and gas from all productive formations in this
6 state, it is not in the public interest, with the exception of
7 shallow wells utilized in a secondary recovery program and oil and
8 gas produced from horizontal wells, to enact statutory provisions
9 relating to the exploration for or production from oil and gas from
10 vertical shallow wells, as defined in section two of this article,
11 but that it is in the public interest to enact statutory provisions
12 establishing regulatory procedures and principles to be applied to
13 the exploration for or production of oil and gas from deep wells
14 and horizontal wells, as defined in ~~said~~ that section. ~~two~~

15 **§22C-9-2. Definitions.**

16 (a) As used in this article:

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

20 (2) "Director" means the Secretary of the Department of
21 Environmental Protection and "chief" means the Chief of the Office
22 of Oil and Gas;

23 (3) "Person" means any natural person, corporation,

1 partnership, receiver, trustee, executor, administrator, guardian,
2 fiduciary or other representative of any kind, and includes any
3 government or any political subdivision or any agency thereof;

4 (4) "Operator" means any owner of the right to develop,
5 operate and produce oil and gas from a pool, unit or unconventional
6 reservoir and to appropriate the oil and gas produced therefrom,
7 either for that person or for that person and others; in the event
8 that there is no oil and gas lease in existence with respect to the
9 tract in question, the owner of the oil and gas rights therein is
10 the "operator" to the extent of seven-eighths of the oil and gas in
11 that portion of the pool, unit or unconventional reservoir
12 underlying the tract owned by such owner, and as "royalty owner" as
13 to one-eighth interest in such oil and gas; and in the event the
14 oil is owned separately from the gas, the owner of the substance
15 being produced or sought to be produced from the pool, unit or
16 unconventional reservoir is the "operator" as to that pool or
17 acreage included in a unit. The term operator includes owners of
18 working interests in a lease but does not include owners whose
19 interests are limited to working interests in a wellbore only,
20 overriding royalties or net profits interests;

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

1 (6) "Independent producer" means a producer of crude oil or
2 natural gas whose allowance for depletion is determined under
3 Section 613A of the federal Internal Revenue Code in effect on July
4 1, 1997;

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

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

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

22 (10) "Well" means any shaft or hole sunk, drilled, bored or
23 dug into the earth or underground strata for the extraction of oil

1 or gas;

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

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

10 (13) "Drilling unit" means the acreage on which one well or
11 more wells may be drilled;

12 (14) "Waste" means and includes:

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

15 (B) The locating, drilling, equipping, operating or producing
16 of any oil or gas well in a manner that causes, or tends to cause,
17 a reduction in the quantity of oil or gas ultimately recoverable
18 from a pool or unit under prudent and proper operations, or that
19 causes or tends to cause unnecessary or excessive surface loss of
20 oil or gas; or

21 (C) The drilling of more horizontal wells or deep wells than
22 are reasonably required to recover efficiently and economically the
23 maximum amount of oil and gas from a pool, unit or unconventional

1 reservoir. Waste does not include gas vented or released from any
2 mine areas as defined in section two, article one, chapter
3 twenty-two-a of this code or from adjacent coal seams which are the
4 subject of a current permit issued under article two of chapter
5 twenty-two-a of this code: *Provided*, That this exclusion does not
6 address ownership of the gas;

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

11 (16) "Just and equitable share of production" means, as to
12 each person, an amount of oil or gas or both substantially equal to
13 the amount of recoverable oil and gas in that part of a pool, unit
14 or unconventional reservoir underlying the person's tract or
15 tracts;

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

23 (18) "Horizontal drilling" means a method of drilling a well

1 for the production of oil and gas that is intended to maximize the
2 length of wellbore that is exposed to the formation and in which
3 the wellbore is initially vertical but is eventually curved to
4 become horizontal, or nearly horizontal, to parallel a particular
5 geologic formation; and

6 (19) "Horizontal well" means an oil and gas well, other than
7 a coalbed methane well, where the wellbore is initially drilled
8 using a horizontal drilling method. A horizontal well may include
9 multiple horizontal side laterals drilled into the same formation.
10 A horizontal well may have completions into multiple formations
11 from the same well. Multiple horizontal wells may be drilled from
12 the same well pad.

13 (b) Unless the context clearly indicates otherwise, the use of
14 the word "and" and the word "or" are interchangeable, as, for
15 example, "oil and gas" means oil or gas or both.

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

21 **§22C-9-3. Application of article; exclusions.**

22 (a) Except as provided in subsection (b) of this section, the
23 provisions of this article shall apply to all lands located in this

1 state, however owned, including any lands owned or administered by
2 any government or any agency or subdivision thereof, over which the
3 state has jurisdiction under its police power. The provisions of
4 this article are in addition to and not in derogation of or
5 substitution for the provisions of article six or six-a, chapter
6 twenty-two of this code.

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

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

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

14 (A) Deepened or drilled laterally subsequent to that date to
15 produce from a formation at or below the top of the uppermost
16 member of the "Onondaga Group"; ~~or~~

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

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

21 (3) Gas storage operations or any well employed to inject gas
22 into or withdraw gas from a gas storage reservoir or any well
23 employed for storage observation; ~~or~~

1 (4) Free gas rights; or

2 (5) Coalbed methane wells.

3 (c) The provisions of this article ~~shall~~ may not be construed
4 to grant to the commissioner or the commission authority or power
5 to:

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

9 (2) Fix prices of oil or gas.

10 (d) Nothing contained in either this chapter or chapter
11 twenty-two of this code may be construed so as to require, prior to
12 commencement of plugging operations, a lessee under a lease
13 covering a well to give or sell the well to any person owning an
14 interest in the well, including, but not limited to, a respective
15 lessor, or agent of the lessor, nor shall the lessee be required to
16 grant to a person owning an interest in the well, including, but
17 not limited to, a respective lessor, or agent of a lessor, an
18 opportunity to qualify under section twenty-six, article six,
19 chapter twenty-two of this code to continue operation of the well.

20 **§22C-9-5. Rules; notice requirements.**

21 (a) The commission may propose rules for legislative approval
22 in accordance with the provisions of article three, chapter
23 twenty-nine-a of this code, to implement and make effective the

1 provisions of this article and the powers and authority conferred
2 and the duties imposed upon the commission under the provisions of
3 this article.

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

18 In addition, the commission shall mail a copy of such notice
19 to all other persons who have specified to the commission an
20 address to which all such notices may be mailed. The notice shall
21 issue in the name of the state, shall be signed by the one of the
22 commission members, shall specify the style and number of the
23 proceeding, the time and place of any hearing and shall briefly

1 state the purpose of the proceeding. Each notice of a hearing must
2 be provided no fewer than twenty days preceding the hearing date.
3 Personal or substituted service and proof thereof may be made by an
4 officer authorized to serve process or by an agent of the
5 commission in the same manner as is now provided by the "West
6 Virginia Rules of Civil Procedure for Trial Courts of Record" for
7 service of process in civil actions in the various courts of this
8 state.

9 A certified copy of any pooling or unit order entered under
10 the provisions of this article shall be presented by the commission
11 to the clerk of the county commission of each county wherein all or
12 any portion of the pooled or unit tract is located, for recordation
13 in the record book of such county in which oil and gas leases are
14 normally recorded. The recording of the order from the time noted
15 thereon by such clerk shall be notice of the order to all persons.

16 **§22C-9-7a. Unitization of interests in horizontal well drilling**
17 **units.**

18 (a) *Declaration of public policy; legislative findings*
19 *regarding unitization for all horizontal wells.* -- The Legislature
20 finds that horizontal drilling is a technique that effectively and
21 efficiently recovers natural resources and should be encouraged as
22 a means of production of oil and gas, and it is hereby declared to
23 be the public policy of this state and in the public interest to:

1 (1) Foster, encourage and promote exploration for and
2 development, production, utilization and conservation of oil and
3 gas resources by horizontal drilling in deep and shallow
4 formations;

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

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

8 (4) Safeguard, protect and enforce the correlative rights of
9 operators and royalty owners of oil and gas in a horizontal well
10 unit to the end that each such operator and royalty owner may
11 obtain his or her just and equitable share of production from that
12 pool, horizontal well unit or unconventional reservoir of oil or
13 gas.

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

16 (1) "Bonded operator" means a person that: (A) Has posted a
17 bond under article six or six-a, chapter twenty-two of this code.
18 (B) is registered as an oil and gas well operator with the West
19 Virginia Department of Environmental Protection, Office of Oil and
20 Gas; and (C) operates eight or more oil and gas wells, as defined
21 in articles six and six-a, chapter twenty-two of this code, in West
22 Virginia that are active, producing oil and gas wells.

23 (2) "Executive interest" and "executory interest" means the

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

12 (3) "Horizontal well unit" means an area in which horizontal
13 drilling may occur, and that is designated for the allocation of
14 production from one or more horizontal wells drilled in the unit to
15 all oil and gas tracts, or portions thereof, included in the unit
16 for production of oil and gas and payment of royalty and proceeds
17 of production regardless of the tract or tracts in which the
18 horizontal well is drilled or completed, and the corresponding
19 authorization to drill and produce oil and gas from such area as a
20 unit, notwithstanding the lack of adequate consensual rights
21 allowing pooling or unitization of oil and gas or allowing drilling
22 horizontally across tract lines. When a horizontal well unit is
23 formed, that portion of the production allocated to each tract or

1 portion thereof included in the horizontal well unit shall, when
2 produced, be deemed for all purposes to have been actually produced
3 from such tract by an oil and gas well drilled, completed and
4 producing thereon.

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

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

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

18 (7) "Target formation" means the primary geologic formation
19 from which oil or gas is intended to be produced from a horizontal
20 drilling operation, and, where completions can reasonably be
21 expected to produce from formations above or below the target
22 formation, shall also include the formations from which production
23 can reasonably be expected.

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

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

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

15 (A) A reasonable review of the records of the clerk of the
16 county commission for the county or counties where the oil and gas
17 is located;

18 (B) Diligent inquiry to known interest owners in the same
19 tract;

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

23 (D) A mailing to the last known address, if available, of such

1 person as reflected in the records of said sheriff's or assessor's
2 office, and includes the unknown heirs, representatives, successors
3 and assigns of such person.

4 (c) *Applicability.* --

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

12 (2) Before filing an application under this section, an
13 applicant must have:

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

22 (B) With respect to the operator interest, obtained by
23 ownership, lease, lease amendment, assignment, farmout, contract,

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

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

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

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

23 (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

1 or plans to drill one or more horizontal wells in the proposed
2 horizontal well unit may file an application with the commission
3 for a horizontal well unit order. The application shall contain:

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

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

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

1 located in the horizontal well unit, and the name of the operator
2 of such well as shown by the records of the Department of
3 Environmental Protection, Office of Oil and Gas: *Provided*, That the
4 applicant may not be required to depict or identify any abandoned
5 or plugged well;

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

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

12 (I) Which, if any, of them are unknown and unlocatable;

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

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

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

21 (I) Which, if any, of them are unknown and unlocatable; and

22 (ii) Which, if any of them, are bonded operators, and if a
23 bonded operator, whether he or she has consented to pooling or

1 unitization as to the acreage proposed to be included in the
2 horizontal well unit;

3 (G) Information regarding the applicant's actions to identify
4 and locate unknown and unlocatable owners of target formation
5 acreage to be included in the horizontal well unit;

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

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

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

19 (K) A certification that the applicant meets the requirements
20 of subsection (c) of this section with respect to the proposed
21 horizontal well unit, a list of the instruments granting such
22 control, and a certification that the applicant has mailed a copy
23 of the application to all known and locatable interested parties by

1 United States certified mail, return receipt requested, to their
2 last known address and to the most current address filed with the
3 West Virginia Department of Environmental Protection and the Office
4 of Oil and Gas; and

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

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

15 (e) *Standard of review.* --

16 (1) The commission shall evaluate the application and shall
17 consider:

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

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

23 (C) Information regarding the applicant's actions to locate

1 unknown and unlocatable interest owners for the tracts, or portions
2 thereof, sought to be included in the horizontal well unit;

3 (D) The percentage of executory interest royalty owner target
4 formation acreage to be included in the horizontal well unit as to
5 which consent or agreement for pooling or unitization has been
6 granted;

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

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

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

15 (H) Correlative rights;

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

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

19 (K) Whether notice has been provided in accordance with this
20 section.

21 (2) The commission may not issue a horizontal well unit order
22 pursuant to this section unless it finds that the applicant has
23 before the filing of the application met the requirements of

1 subsection (c) of this section.

2 (3) The commission may not change the operator of an existing
3 well drilled in the proposed horizontal well unit, or a well
4 actually being drilled within the proposed horizontal well unit as
5 of the date the application is filed under this section, and shall
6 consider and protect the interests of owners of such well when
7 issuing a horizontal well unit order.

8 (f) *Horizontal Well Unit Orders.* --

9 (1) A horizontal well unit order under this section shall
10 specify:

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

19 (B) The horizontal wells which may be drilled in the
20 horizontal well unit, and whether the horizontal wells to be
21 drilled are shallow or deep;

22 (C) In the event there are vertical wells completed in the
23 target formation in the horizontal well unit, the area where a

1 horizontal well may not be completed;

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

4 (E) Any unitization consideration due.

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

8 (3) An order shall specify that the allocation of the
9 percentage of production of the horizontal wells drilled in the
10 horizontal well unit to the separately owned tracts, or portions
11 thereof, included within the horizontal well unit shall be in the
12 proportion that each tract's net acreage within the horizontal well
13 unit bears to the total net acreage within the horizontal well
14 unit.

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

18 (5) If the applicant is a person that controls the horizontal
19 well unit proposed for a horizontal well unit order under this
20 section, the commission shall form a horizontal well unit pursuant
21 to this section and authorize the drilling and operation of one or
22 more horizontal wells in the unit for the production of oil or gas
23 from the target formation from any tract within the horizontal well

1 unit.

2 (6) With respect to royalty owners of leased tracts who have
3 not consented to pooling or unitization, the commission may require
4 that unitization consideration be provided to executive interest
5 royalty owners equivalent to just and reasonable consideration for
6 the modification of rights under a lease. Further, if an award of
7 unitization consideration differs from the rights under a lease or
8 other contract, the applicant, all royalty owners, and owners of
9 leasehold, working interest, overriding royalty interest, and other
10 interests in the oil and gas shall be bound by the order.
11 Unitization consideration shall be provided by the participating
12 operators, including the applicant, to the extent of their interest
13 in the horizontal well unit.

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

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

1 (B) Executive interest owners may make an election for
2 unitization consideration, and if the executive interest owner
3 elects unitization consideration, the interests of the executive
4 interest owner and the associated nonexecutive interest owners
5 shall be deemed leased to the participating operators, including
6 the applicant, to the extent of their interest in the horizontal
7 well unit on terms which, if not agreed upon, shall be just and
8 reasonable as determined by the commission. Thereafter, the
9 applicant and all royalty owners and owners of leasehold, working
10 interest, overriding royalty interest, and other interests in the
11 oil and gas shall be bound by the order, and the participating
12 operators including the applicant, to the extent of their interest
13 in the horizontal well unit, will be the operator of such oil and
14 gas as to the deemed seven-eighths interest and the owner of the
15 unleased oil and gas will be the executive interest royalty owner
16 as to the deemed one-eighth interest.

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

1 subsection.

2 (8) No unitization consideration may be required to be paid to
3 any royalty owner who has consented or agreed to pooling or
4 unitization by virtue of the terms contained in an oil and gas
5 lease, pooling or unitization agreement, or other agreement which
6 permits pooling or unitization.

7 (9) An operator may elect to consent to and participate in a
8 horizontal well unit after an application is filed. Subject to
9 subdivision seven of this subsection, when the commission issues a
10 horizontal well unit order pursuant to this section, the commission
11 shall allow each nonconsenting operator, who does not elect to
12 participate in the risk and cost of drilling in the horizontal well
13 unit to choose from the following options:

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

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

22 (C) Option 3. To enter into a farm out agreement, sublease,
23 or other contract to permit drilling, operation and unitization

1 with respect to such interest for such consideration and on terms
2 and conditions which, if not agreed upon, shall be determined by
3 the commission to be just and reasonable.

4 (10) In the event a nonconsenting operator elects Option 2,
5 and an owner of any operating interest in any portion of the
6 horizontal well unit shall drill and operate, or pay the costs of
7 drilling, completing, equipping and operating a horizontal well for
8 the benefit of such nonparticipating owner as provided in the
9 horizontal well unit order, then such operating owner shall be
10 entitled to the share of production from the tracts or portions
11 thereof subject to the horizontal well unit order accruing to the
12 interest of such nonparticipating owner, exclusive of any
13 unitization consideration, and royalty and overriding royalty
14 reserved in any leases, assignments thereof, or agreements relating
15 thereto, of such tracts or portions thereof, until the market value
16 of such nonparticipating owner's share of the production, exclusive
17 of such unitization consideration, royalty and overriding royalty
18 equals double the share of such costs payable by or charged to the
19 interest of such nonparticipating owner. In the event an operator
20 is an unknown or unlocatable owner, such operator shall be deemed
21 to have elected Option 2.

22 (11) If a dispute arises as to the costs of drilling,
23 completing, equipping and operating a horizontal well in a

1 horizontal well unit formed pursuant to this section, the
2 commission shall determine and apportion the costs, within ninety
3 days from the date of written notification to the commission of the
4 existence of such dispute.

5 (12) If the horizontal well unit approved by the commission is
6 not fully developed as approved in the order, the applicant shall
7 file a request to modify the horizontal well unit with the
8 commission within sixty days from the later of: completion of all
9 drilling activities within the horizontal well unit; or the date
10 that is five years after the most recent drilling activity in the
11 horizontal well unit occurs.

12 (13) Any interested party may file an application to correct
13 a clerical error in a horizontal well unit order at any time.

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

16 (15) If an operator has not drilled a well in a horizontal
17 well unit formed by the commission within five years after the
18 latter of either the drilling and completion of the initial
19 horizontal well in the horizontal well unit or the drilling and
20 completion of the most recent horizontal well within the horizontal
21 well unit, as the case may be, an interested party may file a
22 request to modify the horizontal well unit, and the commission may
23 modify such horizontal well unit. Upon the modification of the

1 horizontal well unit, the commission shall recalculate the
2 allocation of production from the tracts in the modified horizontal
3 well unit from and after the modification order date and the
4 modification order shall be binding on the property subject to the
5 horizontal well unit order, and all owners thereof, their heirs,
6 representatives, successors and assigns for so long as the
7 horizontal well unit order remains in effect. In the event the
8 commission determines that any party has been overcompensated, the
9 commission may authorize the applicant to withhold distributions to
10 the overcompensated party and redistribute withheld moneys to the
11 appropriate parties. The operator may set off against any amount
12 overpaid.

13 (16) All operations, including, but not limited to, the
14 commencement, drilling, or operation of a horizontal well upon any
15 portion of a horizontal well unit for which a unit order has been
16 entered pursuant to this section, shall be deemed for all purposes
17 the conduct of such operations upon each separate tract or portion
18 thereof in the horizontal well unit. That portion of the production
19 allocated to each tract or portion thereof included in a horizontal
20 well unit shall, when produced, be deemed for all purposes to have
21 been actually produced from such tract by an oil and gas well
22 drilled, completed and producing thereon.

23 (17) Where the commission finds that the interest of one or

1 more unknown or unlocatable owners are included in the horizontal
2 well unit, the horizontal well unit operator shall hold the moneys
3 payable to such owner in an account for such interest owner. The
4 money shall be held until the unknown or unlocatable owner is
5 located, or the money held is deemed abandoned, and then shall be
6 paid in accordance with the provisions of the West Virginia Uniform
7 Unclaimed Property Act.

8 (18) A horizontal well unit order under this section shall
9 expire if a horizontal well has not been drilled in the horizontal
10 well unit within three years of the date the order is final and
11 nonappealable, unless the commission extends the order for good
12 cause, and if such a well has been drilled within three years the
13 horizontal well unit shall continue in force and effect until all
14 the horizontal wells drilled in the horizontal well unit are
15 plugged.

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

23 (20) So long as the order remains in effect, a horizontal well

1 unit order is binding on the property subject to the horizontal
2 well order and all owners thereof, and their heirs,
3 representatives, successors and assigns.

4 (g) *Notice, timelines, hearings and orders.* --

5 (1) (A) For purposes of this section and the West Virginia
6 Administrative Procedures Act, "interested parties" and "parties"
7 means owners of the executive interest in the oil and gas in the
8 target formation within the horizontal well unit, including the
9 unknown or unlocatable executive interest royalty owners in the
10 tracts, or portions thereof, to be included in the horizontal well
11 unit subject to an application for a horizontal well unit order;
12 owners of unleased oil and gas to be included in the horizontal
13 well unit; operators of all target formation acreage in the
14 horizontal well unit; and operators of all oil and gas wells
15 located in the unit that have been drilled to or through the target
16 formation.

17 (B) Bonded operators of wells drilled to or through the target
18 formation that are not within the horizontal well unit but are
19 located within five hundred feet of a proposed horizontal well unit
20 boundary has the right to submit written comments regarding the
21 horizontal well unit application at any time before the start of
22 any hearing regarding the application, but are not interested
23 parties and may not participate in the hearing nor have the right

1 to appeal the commission's decision regarding the application.

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

19 (3) Upon request of any interested party or the commission,
20 the commission shall conduct a hearing and receive evidence
21 regarding the application. All interested parties may participate
22 in any hearing. If a hearing has been held regarding an
23 application, the order shall be a final order. If no hearing has

1 been requested by the commission or an interested party within
2 fifteen days after notice of the application is posted on the
3 commission website in accordance with subdivision two of this
4 subsection, the commission may issue a proposed order and provide
5 a copy of the proposed order, together with notice of the right to
6 appeal to the commission and request a hearing, to all interested
7 parties. Any interested party aggrieved by the proposed order may
8 appeal the proposed order to the commission and request a hearing.
9 Notice of appeal and request for hearing shall be made within
10 fifteen days of entry of the proposed order. If no appeal and
11 request for hearing has been received within fifteen days, the
12 proposed order shall become final. If a hearing is requested, the
13 hearing shall commence within forty five days of issuance of the
14 initial notice. The commission may, upon written request, extend
15 the date for the hearing: *Provided*, That the hearing must be
16 convened within forty-five days of the initial notice issued by the
17 commission. The commission shall, within twenty days of the
18 hearing, enter an order authorizing the unit, dismiss the
19 application, or for good cause, continue the process.

20 (4) An order establishing a horizontal well drilling unit or
21 dismissing an application is a final order. Any interested party
22 aggrieved by the order may seek judicial review pursuant to section
23 eleven of this article. Notice of appeal shall be made in

1 accordance with section eleven of this article within fifteen days
2 of entry of the order. If no appeal has been received within
3 fifteen days, the order shall become final.

4 (h) *Unit order does not grant surface rights.* -- A horizontal
5 well unit order under this section does not grant or otherwise
6 affect surface use rights.

7 (I) *Commission approval required for certain additional*
8 *drilling.* -- After the filing of an application for a horizontal
9 well unit order, no well may be drilled or completed to or through
10 the target formation of the proposed horizontal well unit unless
11 authorized by the commission.

12 (j) *Contemporaneous permit applications authorized.* --
13 Notwithstanding anything to the contrary in article six-a, chapter
14 twenty-two of this code, upon the filing of an application for a
15 horizontal well unit order pursuant to this section, an applicant
16 shall be entitled to file an application for a well work permit
17 under article six-a, chapter twenty-two of this code for any
18 proposed development within the horizontal well unit for which the
19 unit order is sought.

20 (k) *A party may appear in person.* -- At any hearing an
21 interested party may represent themselves or be represented by an
22 attorney.

23 (l) *Conflict resolution.* -- After the effective date of this

1 section, all applications requesting unitization for horizontal
2 wells shall be filed pursuant to this section. Deep well
3 horizontal unit applications filed before the effective date of
4 this section shall continue to proceed under and be governed by the
5 provisions of section seven of this article. With respect to
6 horizontal well unit applications filed after the effective date of
7 this section, if this section conflicts with section seven of this
8 article, the provisions of this section shall prevail. When
9 considering an application pursuant to this section, rules
10 regarding deep wells promulgated before the effective date of this
11 section does not apply. The commission may modify any special
12 field rules, spacing orders, and deep well units in connection with
13 horizontal well unit orders under this section to protect
14 correlative rights, prevent waste, or ensure that operators and
15 royalty owners receive their just and equitable share of
16 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, strike-throughs and underscoring have been omitted.