

# **WEST VIRGINIA LEGISLATURE**

## **2019 REGULAR SESSION**

**Introduced**

### **House Bill 2055**

BY DELEGATES SPONAUGLE AND CAPUTO

[Introduced January 9, 2019; Referred  
to the Committee on Energy then the Judiciary.]

1 A BILL to amend and reenact §22-21-17 of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §22C-9-7 of said code, all relating to prohibiting drilling units from  
 3 being established without consent of all owners; prohibiting coal bed methane units from  
 4 being established without consents from all owners; and prohibiting deep oil or gas well  
 5 units from being established without consents from all owners.

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

**CHAPTER 22. ENVIRONMENTAL RESOURCES.**

**ARTICLE 21. COALBED METHANE WELLS AND UNITS.**

**§22-21-17. Review of application; hearing; pooling order; spacing; operator; elections; working interests, royalty interests, carried interests, escrow account for conflicting claims, division order.**

1 (a) Prior to the time fixed for a hearing under subsection (b) of this section, the board shall  
 2 also set a time and place for a conference between the proposed applicant to operate a coalbed  
 3 methane drilling unit and all persons to whom notice has been given under §22-21-16 (a) of this  
 4 code who have not entered into a voluntary agreement. At ~~such~~ the conference the applicant and  
 5 such other persons present or represented having an interest in the proposed unit shall be given  
 6 an opportunity to enter into voluntary agreements for the development of the unit upon reasonable  
 7 terms and conditions.

8 No order may be issued by the board as to any unit unless the applicant submits at the  
 9 hearing a verified statement setting forth the results of the conference. If agreement is reached  
 10 with all parties to the conference, the board shall find the unit is a voluntary unit and issue an  
 11 order consistent with such finding.

12 (b) The review board shall, upon request of a proposed applicant for a drilling unit or upon  
 13 request of a coal owner or operator, provide a convenient date and time for a hearing on the  
 14 application for a drilling unit, which hearing date shall be no sooner than 35 days nor more than

15 60 days of the date the request for hearing is made. The review board shall review the application  
16 and on the date specified for a hearing shall conduct a public hearing. The review board shall  
17 take evidence, making a record thereof and consider:

18 (1) The area which may be drained efficiently and economically by the proposed coalbed  
19 methane well or wells;

20 (2) The plan of development of the coal and the need for proper ventilation of any mines  
21 or degasification of any affected coal seams;

22 (3) The nature and character of any coal seam or seams which will be affected by the  
23 coalbed methane well or wells;

24 (4) The surface topography and property lines of the lands underlaid by the coal seams to  
25 be included in the unit;

26 (5) Evidence relevant to the proper boundary of the drilling unit;

27 (6) The nature and extent of ownership of each coalbed methane owner or claimant and  
28 whether conflicting claims exist;

29 (7) Whether the applicant for the drilling unit proposes to be the operator of the coalbed  
30 methane well or wells within the unit; and if so, whether such applicant has a lease or other  
31 agreement from the owners or claimants of a majority interest in the proposed drilling unit;

32 (8) Whether a disagreement exists among the coalbed methane owners or claimants over  
33 the designation of the operator for any coalbed methane wells within the unit and, if so, relevant  
34 evidence to determine which operator can properly and efficiently develop the coalbed methane  
35 within the unit for the benefit of the majority of the coalbed methane owners;

36 (9) If more than one person is interested in operating a well within the unit, the estimated  
37 cost submitted by each such person for drilling, completing, operating and marketing the coalbed  
38 methane from any proposed well or wells; and

39 (10) Any other available geological or scientific data pertaining to the pool which is  
40 proposed to be developed.

41 (c) The review board shall take into account the evidence introduced, comments received  
42 and any objections at the hearing, and if satisfied that a drilling unit should not be established,  
43 shall enter an order denying the application. If the review board is satisfied that a drilling unit  
44 should be established, it shall enter a pooling order establishing a drilling unit. ~~Such~~ The pooling  
45 order shall:

46 (1) Establish the boundary of the proposed unit, making such adjustment in the boundary  
47 as is just;

48 (2) Authorize the drilling and operation of a coalbed methane well or wells for production  
49 of coalbed methane from the pooled acreage;

50 (3) Establish minimum distances for any wells in the unit and for other wells which would  
51 drain the pooled acreage;

52 (4) Designate the operator who will be authorized to drill, complete and operate any well  
53 or wells in the unit;

54 (5) Establish a reasonable fee for the operator for operating costs, which shall include  
55 routine maintenance of the well and all accounting necessary to pay all expenses, royalties and  
56 amounts due working interest owners;

57 (6) Such other findings and provisions as are appropriate for each order.

58 (d) The operator designated in ~~such~~ the order shall be responsible for drilling, completing,  
59 equipping, operating, plugging and abandoning the well, shall market all production therefrom,  
60 shall collect all proceeds therefor and shall distribute ~~such~~ the proceeds in accordance with the  
61 division order issued by the review board.

62 (e) Upon issuance of the pooling order, the coalbed methane owners or any lessee of any  
63 such owners or any claimants thereto may make one of the following elections within 30 days  
64 after issuance of the order:

65 (1) An election to sell or lease its interest to the operator on such terms as the parties may  
66 agree, or if unable to agree, upon such terms as are set forth by the board in its order;

67 (2) An election to become a working interest owner by participating in the risk and cost of  
68 the well; or

69 (3) An election to participate in the operation of the well as a carried interest owner.

70 Any entity which does not make an election within ~~said~~ the 30 days prescribed herein shall  
71 be ~~deemed~~ considered to have elected to sell or lease under subdivision (1) of this subsection.

72 (f) The working interest in the well shall include: (i) The right to participate in decisions  
73 regarding expenditures in excess of operating costs, taxes, any royalties in excess of one-eighth,  
74 and other costs and expenses allowed in the pooling order; and (ii) the obligation to pay for all  
75 expenditures. The working interest shall exist in: (i) All well operators and owners who participate  
76 in the risk and cost of drilling and completing the well; and (ii) carried interest owners after  
77 recoupment provided in subsection (h) of this section. The working interest owners' net revenue  
78 share shall be seven eighths of the proceeds of sales of coalbed methane at the wellhead after  
79 deduction of operating costs, taxes, any royalties in excess of one-eighth and other costs and  
80 expenses allowed in a pooling order. Unless the working interest owners otherwise agree, the  
81 working interest owners shall share in all costs and decisions in proportion to their ownership  
82 interest in the unit. If any working interest owner deposits or contributes amounts in the escrow  
83 account which exceed actual costs, such owner shall be entitled to a refund; and if amounts  
84 deposited or contributed are less than actual costs, ~~such~~ the owner shall make a deposit or  
85 contribution for the deficiency.

86 (g) The royalty interest in a well shall include the right to receive one eighth of the gross  
87 proceeds resulting from the sale of methane at the wellhead and ~~such~~ the interest shall exist in  
88 the coalbed methane owners: *Provided*, That any coalbed methane owner who in good faith has  
89 entered a lease or other contract prior to receiving notice of an application to form the drilling unit  
90 as provided herein ~~shall be~~ is entitled to ~~such~~ the owner's fractional interest in the royalty  
91 calculated at a rate provided for in such contract. Each such owner ~~shall be~~ is entitled to share in  
92 the royalty in proportion to his or her fractional interest in the unit.

93 (h) Where a coalbed methane owner elects to become a carried interest owner, ~~such the~~  
94 owner ~~shall be~~ is entitled to his or her proportionate share of the working interest after the other  
95 working interest owners have recouped 300 percent of the reasonable capital costs of the well or  
96 wells, including drilling, completing, equipping, plugging and abandoning and any further costs of  
97 reworking or other improvements of a capital nature.

98 (i) Each pooling order issued shall provide for the establishment of an escrow account into  
99 which the payment of costs and proceeds attributable to any conflicting interests shall be  
100 deposited and held for the interest of the claimants as follows:

101 (1) Each participating working interest owner, except for the operator, shall deposit in the  
102 escrow account its proportionate share of the costs allocable to the ownership interest claimed  
103 by ~~such the~~ the working interest owner.

104 (2) The operator shall deposit in the escrow account all proceeds attributable to the  
105 conflicting interests of any coalbed methane owners who lease, or are ~~deemed~~ considered to  
106 have leased, their interest, plus all proceeds in excess of operational expenses, as allowed in the  
107 pooling order, attributable to the conflicting working and carried interest owners.

108 (j) After each coalbed methane owner has made, or has been ~~deemed~~ considered to have  
109 made, an election under subsection (e) of this section, the review board shall enter a division  
110 order which shall set out the net revenue interest of each working interest owner, including each  
111 carried interest owner and the royalty interest of each coalbed methane owner. Thereafter  
112 payments shall be made to working interest owners, carried interest owners and royalty interest  
113 owners in accordance with the division order, except that payments attributable to conflicting  
114 claims shall be deposited in the escrow account. The fractional interest of each owner shall be  
115 expressed as a decimal carried to the sixth place.

116 (k) Upon resolution of conflicting claims either by voluntary agreement of the parties or a  
117 final judicial determination, the review board shall enter a revised division order in accordance  
118 with such agreement or determination and all amounts in escrow shall be distributed as follows:

119 (1) Each legally entitled working interest owner shall receive its proportionate share of the  
120 proceeds attributable to the conflicting ownership interests;

121 (2) Each legally entitled carried interest owner shall receive its proportionate share of the  
122 proceeds attributable to the conflicting ownership interests, after recoupment of amounts provided  
123 in subsection (h) of this section;

124 (3) Each legally entitled entity leasing, or deemed to have leased, its coalbed methane  
125 shall receive a share of the royalty proceeds attributable to the conflicting interests; and

126 (4) The operator shall receive the costs contributed to the escrow account by each legally  
127 entitled participating working interest owner.

128 (l) The review board shall enact rules for the administration and protection of funds  
129 delivered to escrow accounts.

130 (m) No provision of this section or article ~~shall~~ may obviate the requirement that the coal  
131 owner's consent and agreement be obtained prior to the issuance of a permit as required under  
132 section seven of this article. Effective July 1, 2019, no order establishing a drilling unit may be  
133 entered without a voluntary agreement from all ownership interests in the unit.

**CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS,  
AUTHORITIES, COMMISSIONS AND COMPACTS.**

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

**§22C-9-7. Drilling units and the pooling of interests in drilling units in connection with deep  
oil or gas wells.**

1 (a) Drilling units.

2 (1) After one discovery deep well has been drilled establishing a pool, an application to  
3 establish drilling units may be filed with the commission by the operator of ~~such~~ the discovery  
4 deep well or by the operator of any lands directly and immediately affected by the drilling of such  
5 discovery deep well, or subsequent deep wells in said pool. Each application shall contain such

6 information as prescribed by reasonable rules proposed by the commission in accordance with  
7 the ~~provisions of~~ §22C-9-5 of this code.

8 (2) Upon the filing of an application to establish drilling units, the commission shall provide  
9 notice to all interested parties in accordance with this subsection. If the application does not  
10 conform to the existing rules of the commission, then the commission shall set a hearing and  
11 provide notice to all interested parties. If the application conforms to the rules of the commission,  
12 the commission shall provide notice of the filing of the application to all interested parties. Each  
13 notice shall describe the area for which a spacing order is to be entered in recognizable, narrative  
14 terms; contain such other information as is essential to the giving of proper notice, including the  
15 time and date and place of a hearing, if any; include a statement that any party has a right to a  
16 hearing before the commission; and include a statement that any request for hearing must be  
17 filed with the commission within 15 days of receipt of notice. If no request for hearing has been  
18 received within the 15 days following receipt of the notice, the commission may proceed to  
19 process the application. If a request for hearing has been received by the commission, then the  
20 commission shall set a hearing and provide notice to all interested parties.

21 (3) The commission shall determine the area to be included in such spacing order and the  
22 acreage to be contained by each drilling unit, the shape thereof, and the minimum distance from  
23 the outside boundary of the unit at which a deep well may be drilled thereon. The commission  
24 shall consider:

25 (A) The surface topography and property lines of the lands underlaid by the pool to be  
26 included in ~~such~~ the order;

27 (B) The plan of deep well spacing then being employed or proposed in such pool for ~~such~~  
28 the lands;

29 (C) The depth at which production from said pool has been found;

30 (D) The nature and character of the producing formation or formations, and whether the  
31 substance produced or sought to be produced is gas or oil or both;

32 (E) The maximum area which may be drained efficiently and economically by one deep  
33 well; and

34 (F) Any other available geological or scientific data pertaining to said pool which may be  
35 of probative value to the commission in determining the proper deep well drilling units therefor.

36 If the commission determines that drilling units should be established, the commission  
37 shall enter an order establishing drilling units of a specified and approximately uniform size and  
38 shape for each pool subject to the provisions of this section.

39 (4) When it is determined that an oil or gas pool underlies an area for which a spacing  
40 order is to be entered, the commission shall include in ~~such~~ the order all lands determined or  
41 believed to be underlaid by such pool and exclude all other lands.

42 (5) No drilling unit established by the commission shall be smaller than the maximum area  
43 which can be drained efficiently and economically by one deep well: *Provided*, That if there is not  
44 sufficient evidence from which to determine the area which can be drained efficiently and  
45 economically by one deep well, the commission may enter an order establishing temporary drilling  
46 units for the orderly development of the pool pending the obtaining of information necessary to  
47 determine the ultimate spacing for ~~such~~ the pool.

48 (6) An order establishing drilling units shall specify the minimum distance from the nearest  
49 outside boundary of the drilling unit at which a deep well may be drilled. The minimum distance  
50 provided shall be the same in all drilling units established under said order with necessary  
51 exceptions for deep wells drilled or being drilled at the time of the filing of the application. If the  
52 commission finds that a deep well to be drilled at or more than the specified minimum distance  
53 from the boundary of a drilling unit would not be likely to produce in paying quantities or will  
54 encounter surface conditions which would substantially add to the burden or hazard of drilling  
55 such deep well, or that a location within the area permitted by the order is prohibited by the lawful  
56 order of any state agency or court, the commission is authorized after notice and hearing to make  
57 an order permitting the deep well to be drilled at a location within the minimum distance prescribed

58 by the spacing order. In granting exceptions to the spacing order, the commission may restrict  
59 the production from any such deep well so that each person entitled thereto in ~~such~~ the drilling  
60 unit ~~shall~~ may not produce or receive more than his or her just and equitable share of the  
61 production from such pool.

62 (7) An order establishing drilling units for a pool shall cover all lands determined or  
63 believed to be underlaid by ~~such~~ the pool, and may be modified by the commission from time to  
64 time, to include additional lands determined to be underlaid by ~~such~~ the pool or to exclude lands  
65 determined not to be underlaid by ~~such~~ the pool. An order establishing drilling units may be  
66 modified by the commission to permit the drilling of additional deep wells on a reasonably uniform  
67 pattern at a uniform minimum distance from the nearest unit boundary as provided above. Any  
68 order modifying a prior order ~~shall~~ may be made only after application by an interested operator  
69 and notice and hearing as prescribed herein for the original order: *Provided*, That drilling units  
70 established by order ~~shall~~ may not exceed 160 acres for an oil well or 640 acres for a gas well:  
71 *Provided, however*, That the commission may exceed the acreage limitation by 10 percent if the  
72 applicant demonstrates that the area would be drained efficiently and economically by a larger  
73 drilling unit.

74 (8) After the date an application to establish drilling units has been filed with the  
75 commission, no additional deep well shall be commenced for production from the pool until the  
76 order establishing drilling units has been made, unless the commencement of the deep well is  
77 authorized by order of the commission.

78 (9) The commission shall, within 45 days after the filing of an application to establish  
79 drilling units for a pool subject to the provisions of this section, enter an order establishing such  
80 drilling units, dismiss the application, or for good cause, continue the application process.

81 (10) As part of the order establishing a drilling unit, the commission shall prescribe just  
82 and reasonable terms and conditions upon which the royalty interests in the unit shall, in the  
83 absence of voluntary agreement, be ~~deemed~~ considered to be integrated without the necessity of

84 a subsequent order integrating the royalty interests: Provided, That effective July 1, 2019, no  
85 order establishing a drilling unit may be entered without a voluntary agreement from all ownership  
86 interests in the unit.

87 (11) If a hearing has been held on an application submitted pursuant to this subsection,  
88 the order shall be a final order. If no hearing has been held, the commission shall issue a proposed  
89 order and shall provide a copy of the proposed order, together with notice of the right to appeal  
90 and request a hearing, to all interested parties. Any party aggrieved by the proposed order may  
91 appeal the proposed order to the full commission and request a hearing. Notice of appeal and  
92 request for hearing shall be made in accordance with section ten of this article within 15 days of  
93 entry of the order. If no appeal and request for hearing has been received within 15 days, the  
94 proposed order shall become final.

95 (b) Pooling of interests in drilling units.

96 (1) When two or more separately owned tracts are embraced within a drilling unit, or when  
97 there are separately owned interests in all or a part of a drilling unit, the interested persons may  
98 pool their tracts or interests for the development and operation of the drilling unit. In the absence  
99 of voluntary pooling and upon application of any operator having an interest in the drilling unit, the  
100 commission shall set a hearing and provide notice to all interested parties. Each notice shall  
101 describe the area for which an order is to be entered in recognizable, narrative terms; contain  
102 such other information as is essential to the giving of proper notice, including the time and date  
103 and place of a hearing. After the hearing, the commission shall enter an order pooling all tracts or  
104 interests in the drilling unit for the development and operation thereof and for sharing production  
105 therefrom. Each such pooling order shall be upon terms and conditions which are just and  
106 reasonable and in no event ~~shall~~ may drilling be initiated on the tract of an unleased owner without  
107 the owners written consent.

108 (2) All operations, including, but not limited to, the commencement, drilling or operation of  
109 a deep well, upon any portion of a drilling unit for which a pooling order has been entered, shall

110 be ~~deemed~~ consider for all purposes the conduct of such operations upon each separately owned  
111 tract in the drilling unit by the several owners thereof. That portion of the production allocated to  
112 a separately owned tract included in a drilling unit shall, when produced, be ~~deemed~~ considered  
113 for all purposes to have been actually produced from such tract by a deep well drilled thereon.

114 (3) Any pooling order under the provisions of this subsection (b) shall authorize the drilling  
115 and operation of a deep well for the production of oil or gas from the pooled acreage; shall  
116 designate the operator to drill and operate such deep well; shall prescribe the time and manner  
117 in which all owners of operating interests in the pooled tracts or portions of tracts may elect to  
118 participate therein; shall provide that all reasonable costs and expenses of drilling, completing,  
119 equipping, operating, plugging and abandoning such deep well shall be borne, and all production  
120 therefrom shared, by all owners of operating interests in proportion to the net oil or gas acreage  
121 in the pooled tracts owned or under lease to each owner; and shall make provisions for payment  
122 of all reasonable costs thereof, including a reasonable charge for supervision and for interest on  
123 past-due accounts, by all those who elect to participate therein.

124 (4) No drilling or operation of a deep well for the production of oil or gas ~~shall~~ may be  
125 permitted upon or within any tract of land unless the operator ~~shall have~~ has first obtained the  
126 written consent and easement therefor, duly acknowledged and placed on record in the office of  
127 the county clerk, for valuable consideration of all owners of the surface of ~~such~~ the tract of land,  
128 which consent shall describe with reasonable certainty, the location upon such tract, of the  
129 location of ~~such~~ the proposed deep well, a certified copy of which consent and easement shall be  
130 submitted by the operator to the commission.

131 (5) Upon request, any such pooling order shall provide just and equitable alternatives  
132 whereby an owner of an operating interest who does not elect to participate in the risk and cost  
133 of the drilling of a deep well may elect:

134 (A) Option 1. To surrender such interest or a portion thereof to the participating owners on  
135 a reasonable basis and for a reasonable consideration, which, if not agreed upon, shall be

136 determined by the commission; or

137 (B) Option 2. To participate in the drilling of the deep well on a limited or carried basis on  
138 terms and conditions which, if not agreed upon, shall be determined by the commission to be just  
139 and reasonable.

140 (6) ~~In the event~~ If a nonparticipating owner elects Option 2, and an owner of any operating  
141 interest in any portion of the pooled tract shall drill and operate, or pay the costs of drilling,  
142 completing, equipping and operating a deep well for the benefit of such nonparticipating owner  
143 as provided in the pooling order, then ~~such~~ the operating owner shall be entitled to the share of  
144 production from the tracts or portions thereof pooled accruing to the interest of ~~such~~ the  
145 nonparticipating owner, exclusive of any royalty or overriding royalty reserved in any leases,  
146 assignments thereof or agreements relating thereto, of such tracts or portions thereof, or exclusive  
147 of one eighth of the production attributable to all unleased tracts or portions thereof, until the  
148 market value of ~~such~~ the nonparticipating owner's share of the production, exclusive of ~~such~~ the  
149 royalty, overriding royalty or one eighth of production, equals double the share of ~~such~~ the costs  
150 payable by or charged to the interest of such nonparticipating owner.

151 (7) If a dispute shall arise as to the costs of drilling, completing, equipping and operating  
152 a deep well, the commission shall determine and apportion the costs, within 90 days from the  
153 date of written notification to the commission of the existence of such dispute.

154 (8) The commission shall, within 45 days after the filing of an application, enter an order,  
155 dismiss the application, or for good cause, continue the application process.

NOTE: The purpose of this bill is to prohibit drilling units from being established without consent of all owners. The bill prohibits coal bed methane units from being established without consents from all owners. The bill prohibits deep oil or gas well units from being established without consents from all owners.

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