

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 2853

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HIGGINBOTHAM, FOSTER, GRAVES, J. KELLY, MAYNARD
AND KENTON

[Introduced March 02, 2021; Referred to the
Committee on Energy and Manufacturing then the
Judiciary]

1 A BILL to amend and reenact §22C-9-1, §22C-9-2, §22C-9-3, §22C-9-4, and §22C-9-5 of the
 2 Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a
 3 new section, designated §22C-9-7a, all relating to oil and gas conservation; providing for
 4 the unitization of interests in drilling units in connection with shallow horizontal oil or gas
 5 wells generally; setting forth application requirements; establishing the standard of review;
 6 providing for unitization orders for shallow horizontal drilling units; requiring notice and
 7 timeliness; providing for hearings; addressing oil and gas produced from shallow
 8 horizontal wells, vertical wells and unconventional reservoirs; providing for reunification of
 9 interests of unknown and unlocatable interest owners with surface owners in certain
 10 circumstances and providing procedures therefor; adding new definitions; and modifying
 11 existing definitions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. OIL AND GAS CONSERVATION.

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

1 (a) It is hereby declared to be the public policy of this state and in the public interest to:
 2 (1) Foster, encourage and promote exploration for and development, production,
 3 utilization and conservation of oil and gas resources;
 4 (2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas
 5 and their constituents;
 6 (3) Encourage the maximum recovery of oil and gas resources; and
 7 (4) Safeguard, protect, and enforce the correlative rights of operators and royalty owners
 8 in a pool, unit, or unconventional reservoir of oil or gas to the end that each such operator and
 9 royalty owner may obtain his or her just and equitable share of production from such pool, unit or
 10 unconventional reservoir of oil or gas.
 11 (b) The Legislature hereby determines and finds that oil and natural gas found in West
 12 Virginia in shallow sands or strata have been produced continuously for more than 100 years

13 primarily through the drilling of vertical wells and more recently by horizontal wells into
 14 unconventional reservoirs; that oil and gas deposits in such shallow sands or strata have
 15 geological and other characteristics different than those found in deeper formations and in
 16 unconventional reservoirs of all depths; and that in order to encourage the maximum recovery of
 17 oil and gas from all productive formations in this state, it is ~~not~~ in the public interest, ~~with the~~
 18 ~~exception of shallow wells utilized in a secondary recovery program~~, to enact statutory provisions
 19 ~~relating~~ establishing regulatory procedures and principles to be applied to the exploration for or
 20 production ~~from~~ of oil and gas from deep wells, shallow horizontal wells, and shallow wells utilized
 21 in a secondary recovery program as defined in §29C-9-2 of this code, ~~but that~~ and it is not in the
 22 public interest to enact statutory provisions establishing regulatory procedures and principles to
 23 be applied to the exploration for or production of oil and gas from ~~deep~~ vertical shallow wells, ~~as~~
 24 ~~defined in said section two.~~

§22C-9-2. Definitions.

1 (a) As used in this article:

2 (1) "Commission" means the Oil and Gas Conservation Commission and "commissioner"
 3 means the Oil and Gas Conservation Commissioner as provided for in section four of this article;

4 (2) "Director" means the Secretary of the Department of Environmental Protection and
 5 "chief" means the Chief of the Office of Oil and Gas;

6 (3) "Person" means any natural person, corporation, limited liability company, joint
 7 venture, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary,
 8 or other representative of any kind, and includes any government or any political subdivision or
 9 any agency thereof;

10 (4) "Operator" means any owner of the right to develop, operate and produce oil and gas
 11 from a pool or unit and to appropriate the oil and gas produced therefrom, either for that person
 12 or for that person and others; ~~in the event that~~ if there is no oil and gas lease in existence with
 13 respect to the tract in question, the owner of the oil and gas rights therein is the "operator" to the

14 extent of seven-eighths of the oil and gas in that portion of the pool underlying the tract owned by
15 such owner, and as "royalty owner" as to one-eighth interest in such oil and gas; and ~~in the event~~
16 ~~that if~~ the oil is owned separately from the gas, the owner of the substance being produced or
17 sought to be produced from the pool is ~~the "operator" as to that pool~~ or unit is the "operator" as to
18 that pool or acreage included in a unit; the term operator includes owners of a working interest in
19 a lease, but does not include owners whose interest is limited to working interest in a wellbore
20 only, overriding royalties, or net profits interests;

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

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

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

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

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

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

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

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

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

48 (14) "Waste" means and includes:

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

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

54 (C) The drilling of more shallow horizontal wells or deep wells than are reasonably required
55 to recover efficiently and economically the maximum amount of oil and gas from a pool, unit, or
56 unconventional reservoir. Waste does not include gas vented or released from any mine areas
57 as defined in §22A-1-2 of this code or from adjacent coal seams which are the subject of a current
58 permit issued under §22A-2-1 *et seq.*, of this code: *Provided*, That this exclusion does not address
59 ownership of the gas;

60 (15) "Correlative rights" means the reasonable opportunity of each person entitled thereto
61 to recover and receive without waste the oil and gas in and under his tract or tracts, or the
62 equivalent thereof; and

63 (16) "Just and equitable share of production" means, as to each person, an amount of oil
64 or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool,
65 unit or unconventional reservoir underlying the person's tract or tracts within a unit.

66 (17) “Unconventional reservoir” means any geologic formation that contains or is
67 otherwise productive of oil or natural gas that generally cannot be produced at economic flow
68 rates or in economic volumes except by wells stimulated by multiple hydraulic fracture treatments,
69 a horizontal wellbore, or by using multilateral wellbores or some other technique to expose more
70 of the formation to the wellbore.

71 (18) “Horizontal drilling” means a method of drilling a well for the production of oil and gas
72 that is intended to maximize the length of wellbore that is exposed to the formation and in which
73 the wellbore is initially vertical but is eventually curved to become horizontal, or nearly horizontal,
74 to parallel a particular geologic formation.

75 (19) “Horizontal well” means an oil and gas well, other than a coal bed methane well,
76 where the wellbore is initially drilled using a horizontal drilling method. A horizontal well may
77 include multiple horizontal side laterals drilled into the same formation. A horizontal well may have
78 completions into multiple formations from the same well. Multiple horizontal wells may be drilled
79 from the same well pad.

80 (20) “Shallow horizontal well” means a horizontal well other than a coalbed methane well,
81 drilled no deeper than 100 feet below the top of the “Onondaga Group”: *Provided*, That in no event
82 may the “Onondaga Group” formation or any formation below the “Onondaga Group” be produced
83 or stimulated in any manner.

84 (b) Unless the context clearly indicates otherwise, the use of the word “and” and the word
85 “or” are interchangeable, as, for example, “oil and gas” means oil or gas or both.”

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

1 (a) Except as provided in subsection (b) of this section, the provisions of this article shall
2 apply to all lands located in this state, however owned, including any lands owned or administered
3 by any government or any agency or subdivision thereof, over which the state has jurisdiction
4 under its police power. The provisions of this article are in addition to and not in derogation of or
5 substitution for the provisions of §22-6-1 et seq. of this code.

6 (b) This article ~~shall~~ may not apply to or affect:

7 (1) Shallow wells other than shallow horizontal wells as set forth in §22C-9-7a of this code
8 and those utilized in secondary recovery programs as set forth in in §22C-9-8 of this code and
9 those provided for in §22C-9-4 of this code;

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

12 (A) Deepened or drilled laterally subsequent to that date to a formation at or below the top
13 of the uppermost member of the "Onondaga Group"; or

14 (B) Involved in secondary recovery operations for oil under an order of the commission
15 entered pursuant to §22C-9-8 of this code;

16 (3) Gas storage operations or any well employed to inject gas into or withdraw gas from a
17 gas storage reservoir or any well employed for storage observation; or

18 (4) Free gas rights; or -

19 (5) Coalbed methane wells.

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

22 (1) Limit production or output, or prorate production of any oil or gas well, except as
23 provided in §22C-9-7(a)(6) of this code; or

24 (2) Fix prices of oil or gas.

25 (d) Nothing contained in either this chapter or §22-1-1 et seq. of this code may be
26 construed so as to require, prior to commencement of plugging operations, a lessee under a lease
27 covering a well to give or sell the well to any person owning an interest in the well, including, but
28 not limited to, a respective lessor, or agent of the lessor, nor ~~shall~~ may the lessee be required to
29 grant to a person owning an interest in the well, including, but not limited to, a respective lessor,
30 or agent of a lessor, an opportunity to qualify under §22-6-26 of this code to continue operation
31 of the well.

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

1 (a) The “oil and gas conservation commission” shall be composed of five members. The
2 director of the Department of Environmental Protection and the chief of the office of oil and gas
3 shall be members of the commission ex officio. The remaining three members of the commission
4 shall be appointed by the Governor, by and with the advice and consent of the Senate, and may
5 not be employees of the Department of Environmental Protection. Of the three members
6 appointed by the Governor, one shall be an independent producer and at least one shall be a
7 public member not engaged in an activity under the jurisdiction of the Public Service Commission
8 or the federal energy regulatory commission. The third appointee shall possess a degree from an
9 accredited college or university in petroleum engineering or geology and ~~must~~ shall be a
10 registered professional engineer with particular knowledge and experience in the oil and gas
11 industry and shall serve as commissioner and as chair of the commission.

12 (b) The members of the commission appointed by the Governor shall be appointed for
13 overlapping terms of six years each, except that the original appointments shall be for terms of
14 two, four and six years, respectively. Each member appointed by the Governor shall serve until
15 the members successor has been appointed and qualified. Members may be appointed by the
16 Governor to serve any number of terms. The members of the commission appointed by the
17 Governor, before performing any duty hereunder, shall take and subscribe to the oath required
18 by section 5, article IV of the Constitution of West Virginia. Vacancies in the membership
19 appointed by the Governor shall be filled by appointment by the Governor for the unexpired term
20 of the member whose office is vacant and such appointment shall be made by the Governor within
21 60 days of the occurrence of such vacancy. Any member appointed by the Governor may be
22 removed by the Governor in case of incompetency, neglect of duty, gross immorality, or

23 malfeasance in office. A commission member's appointment shall be terminated as a matter of
24 law if that member fails to attend three consecutive meetings. The Governor shall appoint a
25 replacement within 30 days of the termination.

26 (c) The commission shall meet at such times and places as shall be designated by the
27 chair. The chair may call a meeting of the commission at any time, and shall call a meeting of the
28 commission upon the written request of two members or upon the written request of the oil and
29 gas conservation commissioner or the chief of the office of oil and gas. Notification of each
30 meeting shall be given in writing to each member by the chair at least 14 calendar days in advance
31 of the meeting. Three members of the commission, at least two of whom are appointed members,
32 shall constitute a quorum for the transaction of any business.

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

38 (e) The commission is hereby empowered and it is the commission's duty to shall execute
39 and carry out, administer and enforce the provisions of this article in the manner provided herein.
40 Subject to the provisions of §22C-9-3 of this code, the commission has jurisdiction and authority
41 over all persons and property necessary therefor. The commission is ~~authorized to~~ may make
42 such investigation of records and facilities as the commission ~~deems~~ considers proper. ~~In the~~
43 ~~event of~~ If there is a conflict between the duty to prevent waste and the duty to protect correlative
44 rights, the commission's duty to prevent waste shall be paramount.

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

47 (1) Regulate the spacing of deep wells;

48 (2) Make and enforce reasonable rules and orders reasonably necessary to prevent

49 waste, protect correlative rights, govern the practice and procedure before the commission and
50 otherwise administer the provisions of this article;

51 (3) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the
52 production of any books, records, maps, charts, diagrams, and other pertinent documents, and
53 administer oaths and affirmations to such witnesses, whenever, in the judgment of the
54 commission, it is necessary to do so for the effective discharge of the commission's duties under
55 the provisions of this article; and

56 (4) Serve as technical advisor regarding oil and gas to the Legislature, its members, and
57 committees, to the chief of office of oil and gas, to the Department of Environmental Protection
58 and to any other agency of state government having responsibility related to the oil and gas
59 industry.

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

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

63 (2) No request for hearing has been received.

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

65 (1) Propose legislative rules;

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

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

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

72 (j) The commission ~~is hereby empowered and it is the commission's duty to~~ shall execute
73 and carry out, administer, and enforce the relevant provisions of §37B-1-1 et seq. of this code
74 concerning mineral development by covenants for all wells at all depths. The commission has

75 jurisdiction and authority over all persons and property necessary therefor. The commission is
76 ~~authorized to~~ may make such investigation of records and facilities as the commission ~~deems~~
77 considers proper.

78 (k) The commissioner shall execute and carry out, administer, and enforce the relevant
79 provisions of §22-9-7a of this code concerning the development of shallow horizontal drilling units
80 and to issue unitization orders. The commission has jurisdiction and authority over all persons
81 and property necessary for this. The commission may make the investigation of records and
82 facilities as the commission considers proper.

§22C-9-5. Rules; notice requirements.

1 (a) The commission may propose rules for legislative approval in accordance with the
2 provisions of §29A-3-1 *et seq.*, of this code, to implement and make effective the provisions of
3 this article and the powers and authority conferred and the duties imposed upon the commission
4 under the provisions of this article.

5 (b) Notwithstanding the provisions of §29A-7-2 of this code, any notice required under the
6 provisions of this article shall be given at the direction of the commission by personal or
7 substituted service or by certified United States mail, addressed, postage prepaid, to the last-
8 known mailing address, if any, of the person being served, with the direction that the same be
9 delivered to addressee only, return receipt requested. In the case of providing notice upon the
10 filing of an application with the commission, the commission shall cause notice to be published
11 as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.*, of this code,
12 and the publication area for ~~such~~ the publication shall be the county or counties wherein any land
13 which may be affected by ~~such~~ the order is situate.

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

18 state the purpose of the proceeding. Each notice of a hearing ~~must~~ shall be provided no fewer
 19 than 20 days preceding the hearing date. Personal or substituted service and proof thereof may
 20 be made by an officer authorized to serve process or by an agent of the commission in the same
 21 manner as is now provided by the “West Virginia Rules of Civil Procedure for Trial Courts of
 22 Record” for service of process in civil actions in the various courts of this state.

23 A certified copy of any pooling or unitization order entered under the provisions of this
 24 article shall be presented by the commission to the clerk of the county commission of each county
 25 wherein all or any portion of the pooled or unitized tract is located, for recordation in the record
 26 book of ~~such~~ the county in which oil and gas leases are normally recorded. The recording of the
 27 order from the time noted thereon by ~~such~~ the clerk shall be notice of the order to all persons.

§22C-9-7a. Unitization of interests in shallow horizontal drilling units.

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

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

8 (2) Prohibit waste of oil and gas resources;

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

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

14 (b) Definitions. – The following terms will have the prescribed meanings unless the context
 15 in which a term is used clearly requires a different meaning, as used in this section:

16 (1) “Bonded operator” means a person that has posted a bond under §22-6-1 et seq., or
17 §22-6A-1 et seq., of this code and is registered as an oil and gas well operator with West Virginia
18 Department of Environmental Protection, Office of Oil and Gas;

19 (2) “Executive interest” and “executory interest” means the interest entitling the owner to
20 lease that oil and gas estate or amend an existing oil and gas lease. For purposes of this section,
21 the owner of the executive interest is considered to be the royalty owner and interested party for
22 purposes of notice and participation in proceedings here in this article, and unitization orders
23 issued pursuant to this section are binding on the owners of executive interests and nonexecutive
24 interests in a shallow horizontal drilling unit. The owners of the executive interest and the
25 associate nonexecutive interest owners are considered to be the same interest for purposes of
26 computing the percentage of net acreage required for filing an application under this section;

27 (3) “Shallow horizontal drilling unit” means a delineated area in which one or more shallow
28 horizontal wells may be drilled within or traversed by, and that is designated for the allocation of
29 production from one or more shallow horizontal wells drilled within or traversing the unit to all
30 tracts, or portions of the tracts, included in the unity for production of oil and gas and payment of
31 royalty and proceeds of production regardless of the tract or tracts upon which a horizontal well
32 has been drilled or completed, and the corresponding authorization to drill and produce oil and
33 gas from that area as a unit. With respect to wells that traverse multiple units, the applicant may
34 allocate production to the units based upon a reasonable correlation to the portion of the horizontal
35 wellbore in each unit. When a shallow horizontal unit is formed, that portion of the production
36 allocated to each tract or portion of a tract included in the shallow horizontal drilling unit shall,
37 when produced, be considered for all purposes to have been produced from the tract by an oil
38 and gas well drilled, completed, and producing on such tract. Any shallow horizontal well or
39 operations for a shallow horizontal well within a unit shall be considered a well or operations on
40 each of the tracts or portions thereof within the shallow horizontal drilling unit;

41 (4) “Lateral” means the portion of a wellbore that deviates from approximate vertical

42 orientation to approximate horizontal orientation and all wellbore beyond the initial deviation to
43 total depth or terminus of the wellbore;

44 (5) "Overriding royalty" means an interest carved out of the leasehold interest or working
45 interest in a lease and is not included within the meaning of royalty owner or royalty;

46 (6) "Royalty owner" means any owner of oil and gas in place or of an interest derived from
47 the oil and gas in place including nonparticipating royalty interests. The royalty is not carved out
48 of a leasehold interest;

49 (7) "Target formation" means the primary geologic formation from which oil or gas is
50 intended to be produced from a horizontal drilling operation and, where completions can
51 reasonably be expected to produce from formations above or below the target formation, includes
52 the formations from which production can reasonably be expected;

53 (8) "Unitization" means the combination of two or more tracts, leases, units, or portions
54 thereof, for drilling of a shallow horizontal well or wells and production of oil and gas from the unit
55 with a fractional part of the productions from the unit allocated in the proportion that the amount
56 of net acreage reasonably determined to be in each tract or lease included within the unit bears
57 to the total acreage reasonably determine to be in the unit or, if the well or wells traverse more
58 than one unit, the allocation of production may be based upon a reasonable correlation to the
59 portion of the horizontal wellbore in each unit; and

60 (9) "Unknown or unlocatable interest owner" means a royalty owner or other person vested
61 with an interest in oil and gas in the target formation to be included in a shallow horizontal drilling
62 unit, whose present identity or location cannot be determined from:

63 (A) A reasonable review of the records of the clerk of the county commission, the sheriff,
64 the assessor, and the clerk of the circuit court in the county or counties in which the interest is
65 located, and includes unknown heirs, successors, and assigns known to be alive;

66 (B) A reasonable inquiry in the vicinity of the owner's last known place of residence;

67 (C) A diligent inquiry into other known interest owners of the same tract, if any; and

68 (D) A reasonable review of available Internet resources commonly utilized by the industry.

69 (c) Applicability.-

70 (1) Tracts, or portions of tracts, may be unitized under this section by the filing of an
71 application with the commission by a bonded operator that controls the proposed shallow
72 horizontal drilling unit. The commission shall issue a unitization order if it finds that the operation
73 of the proposed shallow horizontal drilling unit is reasonably necessary to increase substantially
74 the ultimate recovery of oil and/or gas and that the value of the estimated recovery of oil or gas
75 exceeds the estimated additional cost incident to conducting the unit operation.

76 (2) Before filing an application under this section, an applicant shall have obtained whether
77 by ownership, lease, lease amendment, assignment, farmout, joint venture, joint operating
78 agreement, statutory authority, including §37B-1-1 et seq., of this code, contract, or other
79 agreement the right, consent or agreement to pool or unitize the acreage to be included in the
80 shallow horizontal drilling unit from executive interest owners of 65 percent or more of the net
81 acreage proposed to be included in the shallow horizontal drilling unit (as calculated based upon
82 the surface acreage contained within the boundaries of the unit), as provided and determined in
83 subdivision (3) of this subsection. With respect to tracts over which the applicant has a partial
84 interest, the net acreage shall be determined by multiplying the applicant's percentage of control
85 to the fullest extent of that interest by the gross acreage contained in the partially controlled tract
86 within the proposed unit. By way of example, if an applicant has 50 percent control of a 10-acre
87 tract within a proposed unit, the applicant shall be treated as having five net acres for the purposes
88 of calculating the total net acreage under control. An operator who satisfies the conditions of this
89 subdivision is referred to in this section as a person that controls the shallow horizontal drilling
90 unit.

91 (3) For purposes of determining whether an applicant has obtained the requisite control of
92 the proposed shallow horizontal drilling unit, the commission may not include owners whose
93 interest is limited to only:

94 (A) Working interest limited to a wellbore only;

95 (B) Overriding royalty interests;

96 (C) Nonparticipating royalty interests;

97 (D) Nonexecutive mineral interests;

98 (E) Net profit interests; or

99 (F) Acreage held under lease or other agreement by operators who are not bonded
100 operators. Furthermore, for purposes of determining whether an applicant has the requisite
101 control of the proposed shallow horizontal unit, the identity and rights of executive interest owners
102 and bonded operators shall be determined as of the date on which the application is filed.

103 (d) Application requirements.

104 (1) The application shall contain:

105 (A) A cover letter requesting unitization along with an administrative application fee set by
106 the commission;

107 (B) An affidavit attesting that the applicant has obtained by ownership, lease, lease
108 amendment, assignment, farmout, joint venture, joint operating agreement, statutory authority,
109 contract, or other agreement the right, consent, or agreement to pool or unitize the acreage to be
110 included in the shallow horizontal drilling unit from executive interest owners of 65 percent or more
111 of the net acreage proposed to be included in the shallow horizontal unit of the land overlying the
112 pool that is the subject of the unitization application;

113 (C) A summary of the request for unitization that includes the following information:

114 (i) A statement describing the reasons why unitization is necessary;

115 (ii) A description of the plan for development of the unit;

116 (iii) An identification of the geologic formation(s) to be developed;

117 (iv) An identification of the amount of surface acreage included in the unit and how the
118 acreage was determined;

119 (v) A statement describing how unitization is expected to increase the ultimate recovery

120 of oil and/or gas in excess of the estimated additional cost incident to conducting unit operations;

121 (vi) A designated contact person for the applicant for communication purposes with the
122 commission;

123 (vii) A plat map of the unit;

124 (viii) A list identifying all executive interest owners in the proposed unit, leased or unleased;

125 (ix) A list identifying all executive interest owners in the proposed unit who are unleased
126 and who have not been otherwise included in the calculation of whether the applicant has requisite
127 control of the proposed shallow horizontal drilling unit including the corresponding surface tax
128 parcel identification number and acreage;

129 (x) A list identifying the committed working interest owners in the proposed unit including
130 the corresponding surface tax parcel identification number (if any) and net acreage;

131 (xi) A list identifying the uncommitted working interest owners in the proposed unit
132 including the corresponding surface tax parcel identification number and net acreage; and

133 (xii) A list identifying all unleased executive interest owners whose tracts the applicant is
134 entitled to develop by statutory authority, including §37B-1-1 et seq., of this code.

135 (D) A mailing list containing only the names and addresses of all executive interest owners
136 within the proposed unit and all working interest owners proposed unit.

137 (E) A legible map(s) that shows the following:

138 (i) The boundary of the proposed unit area;

139 (ii) The total acreage of the proposed unit area;

140 (iii) The proposed location of the well pad(s) and wells to be drilled within or traversing the
141 unit area;

142 (iv) The tracts of land within the unit area that are fully leased to the applicant or which the
143 applicant is eligible to develop pursuant to §37B-1-1 et seq., of this code;

144 (v) The tracts of land within the unit area that are all or partially unleased and the applicant
145 is not eligible to develop pursuant to §37B-1-1 et seq., of this code;

146 (vi) The tracts of land within the unit area that are leased to other operators, including an
147 identification of the operators;

148 (vii) Identification of each surface tract within the unit area by tax parcel identification
149 number of a size that is legible; and

150 (viii) The scale.

151 (F) An affidavit attesting to attempts to lease the unleased executive owners or obtain
152 lease modifications to permit pooling or unitization and attempts to commit working interest
153 owners.

154 (G) An affidavit attesting that the applicant attempted to identify and locate all executive
155 interest owners and their current addresses in accordance with subdivision (9) of subsection (b)
156 of this section.

157 (H) A proposed joint operating agreement for working interest elections.

158 (I) A proposed lease for unleased royalty owner elections.

159 (J) Any additional information that the applicant determines is beneficial for the
160 commission to consider in support of their request.

161 (2) Upon the filing of an application for a unitization order, the commission shall provide
162 notice of the application to all interested parties, as defined in this section, in accordance with
163 §22C-9-5 of this code and subsection (g) of this section.

164 (e) Standard of review.--

165 (1) The commission shall evaluate the application and shall issue a unitization order if it
166 determines that the:

167 (A) applicant controls the proposed shallow horizontal drilling unit;

168 (B) operation of the proposed shallow horizontal drilling unit is reasonably necessary to
169 increase substantially the ultimate recovery of oil and/or gas; and

170 (C) value of the estimated recovery of oil or gas exceeds the estimated additional cost
171 incident to conducting unit operations.

172 (2) The commission may not change the operator of an existing well drilled in the proposed
173 shallow horizontal drilling unit, or a well actually being drilled within the proposed shallow
174 horizontal drilling unit as of the date the application is filed under this section and shall consider
175 and protect the interests of owners of the well when issuing a unitization order.

176 (f) Unitization Orders.--

177 (1) A unitization order under this section shall specify:

178 (A) The size and boundaries of the shallow horizontal drilling unit;

179 (B) The number of horizontal wells which may be drilled in or may traverse the shallow
180 horizontal drilling unit;

181 (C) Any areas where horizontal wells may not be completed; and

182 (D) The target formation or target formations to which the shallow horizontal drilling unit
183 applies.

184 (2) A unitization order authorizing unitization of tracts with unknown or unlocatable
185 executive interest and/or royalty owners shall contain a finding that identifies those persons as
186 unknown or unlocatable.

187 (3) A unitization order shall specify that the allocation of the percentage of production of
188 the shallow horizontal wells drilled in or traversing the shallow horizontal drilling unit to the
189 separately owned tracts, or portions of the tracts, included within the unit shall be in the proportion
190 that each tract's net surface acreage within the unit bears to the total surface acreage within the
191 shallow horizontal drilling unit.

192 (4) A unitization order shall authorize and perfect unitization and pooling of all interests in
193 the target formation as to the tracts, or portions of the tracts, included in the shallow horizontal
194 drilling unit and operations conducted in accordance with a unitization order shall in no way be
195 considered an act of trespass or waste.

196 (5) With respect to tracts or undivided interests therein for which there is no lease in
197 existence (other than interests which the applicant has statutory authority to develop including

198 under §37B-1-1 et seq., of this code or interests owned by unknown or unlocatable interest
199 owners), the executive interest owner shall make one of the following elections with respect to its
200 undivided interest:

201 (A) Lease the undivided interest in the oil and gas in the target formation to the applicant
202 and receive a production royalty of 12.5 percent. The lease terms shall be upon the terms
203 proposed by the operator in the form of a lease provided by the applicant with the application:
204 *Provided*, That the commission finds the proposed lease terms to be just and reasonable to the
205 parties based upon terms typically found in the other similarly situated arm's length leases within
206 the shallow horizontal drilling unit and entered into within a reasonable time prior to the
207 application;

208 (B) Participate in the shallow horizontal drilling unit by paying its proportionate share of
209 costs associated with, and receive its proportionate share of production from, the shallow
210 horizontal drilling unit as set out in an operating agreement. The operating agreement terms shall
211 be upon the terms proposed by the applicant in the form of operating agreement provided with
212 the application: *Provided*, That the commission finds the proposed operating agreement terms to
213 be just and reasonable to the parties based upon terms typically found in similarly situated arm's
214 length transactions, in the vicinity of the shallow horizontal drilling unit, and within a reasonable
215 time prior to the application. If an owner elects to participate under this subsection (6)(B), in the
216 shallow horizontal drilling unit by paying its proportionate share of costs associated with the unit
217 and then fails to make appropriate payments when billed, the applicant shall notify the commission
218 who shall promptly modify the unitization order so that the noncontributing owner shall be deemed
219 to have participated in the unit on a carried basis as described in subsection (6)(C) of this section
220 but at an amount three times the share of the costs payable by or charged to the interest of the
221 nonparticipating owner; or

222 (C) Participate in the shallow horizontal drilling unit on a carried basis. If an executive
223 interest owner elects this option, and an owner of any operating interest in any portion of the

224 shallow horizontal drilling unit drills and operates, or pays the costs of drilling, completing,
225 equipping, and operating a horizontal well within the shallow horizontal drilling unit for the benefit
226 of the nonparticipating owner as provided in the unitization order, then the operating owner is
227 entitled to the share of production from the tracts or portions thereof, subject to the unitization
228 order for that shallow horizontal drilling unit accruing to the interest of the nonparticipating owner,
229 exclusive of any royalty and overriding royalty reserved in any leases, assignments thereof or
230 agreements relating thereto, of the tracts or portions of tracts, until the market value of the
231 nonparticipating owner's share of production, exclusive of royalty and overriding royalty, equals
232 double the share of the costs payable by or charged to the interest of the nonparticipating owner
233 as more fully described in the applicable operating agreement. Election rights shall be exercised
234 in writing on or before the hearing on the application or may be exercised in person at the hearing.
235 Owners who do not make an election in writing to the applicant within 15 days of the unitization
236 order being entered shall be considered to have elected to lease according to subsection §22C-
237 9-7a(f)(5)(A) of this code.

238 (6) An uncommitted, bonded operator may elect the option set forth in §22C-9-7a(f)(5)(B)
239 or (C) of this code. If the uncommitted, bonded operator does not make an election in writing to
240 the applicant within 15 days of the unitization order being entered, shall be deemed to have
241 elected to participate in the shallow horizontal drilling unit on a carried basis per §22C-9-
242 7a(f)(5)(C) of this code. An uncommitted operator that is not bonded shall be considered to have
243 elected to participate in the shallow horizontal drilling unit on a carried basis per §22C-9-
244 7a(f)(5)(C) of this code.

245 (7) If after the unitization order has become final and unappealable, the applicant
246 determines that it is not going to fully develop the unit as approved in the order or if the applicant
247 determines that it wishes to drill additional wells within the same unit boundary, then the applicant
248 shall file a notice with the commission explaining the anticipated changes in development. Upon
249 review of this notice and other information which it may reasonably request, the commission shall

250 enter a modified unitization order.

251 (8) Any interested party may file an application to correct a clerical error in a unitization
252 order at any time.

253 (9) The applicant may file a request to modify a unitization order at any time. Any request
254 to increase the size of a shallow horizontal well unit shall be filed in the same manner as the initial
255 application with the exhibits required under §22C-9-7a(d)(1) of this code modified to include any
256 new tracts and executive interest and working interest owners. Following the submission of a
257 request for a modified unitization order, the commission shall proceed in the manner specified in
258 §22C-9-7a(g) of this code: *Provided*, That in regard to giving notice to interested parties, the
259 notice shall be limited to new parties listed on the modified exhibits and bonded operators of all
260 oil and gas wells located in the proposed new area of the unit that have been drilled to or through
261 the target formation.

262 (10) All operations, including, but not limited to, the commencement, drilling, or operation
263 of a horizontal well upon any portion of a shallow horizontal drilling unit for which a unitization
264 order has been entered pursuant to this section, shall be considered for all purposes the conduct
265 of the operations upon each separate tract or portion of the tract in the unit. That portion of the
266 production allocated to each tract or portion of the tract included in a unit, when produced, shall
267 be considered for all purposes to have been produced from the tract by an oil and gas well drilled,
268 completed, and producing on the tract.

269 (11) Where the commission finds that the interests of one or more unknown or unlocatable
270 interest owners are included in the shallow horizontal drilling unit (other than interests which the
271 applicant has statutory authority to develop including under §37B-1-1 *et seq.*, of this code, the
272 undivided interest in the oil and gas in the target formation shall be considered to be leased to the
273 applicant and the owner(s) thereof shall receive a production royalty of 12.5 percent. The lease
274 terms shall be upon the terms proposed by the operator in the form of lease provided by the
275 applicant with the application: *Provided*, That the commission finds the proposed lease terms to

276 be just and reasonable to the parties based upon terms typically found in the other similarly
277 situated arm's length leases within the shallow horizontal drilling unit and entered into within a
278 reasonable time prior to the application.

279 (12) A unitization order under this section shall expire if a horizontal well has not been
280 drilled in the shallow horizontal drilling unit within three years of the date the order is final and
281 nonappealable, unless the commission extends the order for good cause including, but not limited
282 to, force majeure, and if a well has been drilled within three years the shallow horizontal drilling
283 unit shall continue in force and effect until the last producing horizontal well in the unit is no longer
284 capable of producing oil and gas.

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

286 (1) For purposes of this section, "interested parties" and "parties" means owners of the
287 executive interest in the oil and gas in the target formation within the shallow horizontal drilling
288 unit; bonded operators of all target formation acreage in the unit; and bonded operators of all oil
289 and gas wells located in the unit that have been drilled to or through the target formation.

290 (2) Each notice issued in accordance with this section shall describe the area for which a
291 unitization order is proposed in recognizable, narrative terms and contain such other information
292 as is essential to the giving of proper notice, including the time and date and place of a hearing
293 and shall specify the election rights of the party along with the applicable deadline to exercise
294 those rights.

295 (3) As soon as practicable the commission shall establish a website. Upon the filing of the
296 application, the commission shall have 60 days to review the application to determine if it contains
297 all required documents and exhibits. If the commission reasonably determines that the application
298 is incomplete, it shall advise the applicant promptly of the insufficiency and the applicant shall
299 then have up to 30 days to supplement the application with the required information. The
300 commission shall have an additional 15 days from the date of the submission of the additional
301 information to review the additional information. Once the commission determines that the

302 application is complete, the commission shall then set a hearing date for the application which
303 shall be within 30 to 60 days of the date the commission accepts the application as complete and
304 the commission shall issue notice of this to all interested parties. Within three business days of
305 the determination that the application is complete, the commission shall also publish on its website
306 a copy of:

307 (i) The shallow horizontal drilling unit application notice required to be published pursuant
308 to this section and §22C-9-5 of this code; and

309 (ii) The proposed unit plat filed with the application, both identified as a unit application
310 and indexed by county and district where the majority of the acreage to be included in the
311 proposed shallow horizontal drilling unit is located, so that the plat and notice of the application
312 are readily accessible. At the hearing, the commission shall receive evidence regarding the
313 application. All interested parties may participate in the hearing. The commission shall, within 30
314 days after the hearing, enter an order authorizing the unit, dismissing the application, or continuing
315 the process: *Provided, That a continuance may not be for more than 30 days. Any order*
316 authorizing the unit or dismissing the application shall be a final order for purposes of this section.

317 (4) A unitization order or an order dismissing an application shall be a final order. Any
318 interested party aggrieved by an order may seek judicial review in the Circuit Court of Kanawha
319 County pursuant to §22C-9-11 of this code. Notice of appeal shall be made in accordance with
320 §22C-9-11 of this code within 15 days of entry of the order. If no appeal has been received within
321 15 days, the order shall become unappealable.

322 (h) *Unitization order does not grant surface rights.* -- A unitization order under this section
323 does not grant or otherwise affect surface use rights and nothing in this section alters the common
324 law of West Virginia regarding the implied rights of the owner and/or lessee of the severed mineral
325 estate to use the overlying surface to develop the minerals.

326 (i) *Commission approval required for certain additional drilling.* -- After the filing of an
327 application for a unitization order, no well may be drilled or completed to or within the target

328 formation of the proposed shallow horizontal drilling unit unless authorized by the commission.

329 (j) Contemporaneous permit applications authorized. -- Notwithstanding anything to the
330 contrary in §22-6A-1 et seq., of this code, upon the filing of an application for a unitization order
331 pursuant to this section, an applicant may file an application for a well work permit under article
332 §22-6A-1 et seq., of this code for any proposed development within the shallow horizontal drilling
333 unit for which the unitization order is sought.

334 (k) A party may appear in person. – In filing the application and at any hearing the applicant
335 or any interested party may represent themselves or be represented by an attorney-at-law.

336 (l) No provision of this section alters the common law of this state regarding the deduction
337 of postproduction expenses for the purpose of calculating royalty.

338 (m) Unknown and Unlocatable Interest Owners. -- Notwithstanding the existence of
339 unknown or unlocatable interest owners, a unitization order may be entered and development,
340 drilling and production may occur in the shallow horizontal drilling unit. Unknown and unlocatable
341 executive interest owners not subject to lease shall be considered to have leased to the applicant
342 on terms determined by the commission in accordance with §22C-9-7a(f)(11) of this code and an
343 applicant may not be required to file a proceeding under §55-12A-1 et seq., of this code (entitled
344 Lease and Conveyance of Mineral Interests Owned by Missing or Unknown Owners or
345 Abandoning Owners).

346 (n) Opportunity of Surface Owners to Acquire Interests of Unknown and Unlocatable
347 Interest Owners in Oil and Gas Underlying Shallow Horizontal Drilling Unit.-- After 7 years from
348 the date of the first report to the Treasurer, a surface owner may file an action to quiet title to the
349 interests of all unknown and unlocatable interest owners of the oil and natural gas estate
350 underlying their surface tract. To the extent relevant and practical, this action shall follow the
351 provisions of §55-12A-1 et seq. of this code. Upon presentation of sufficient proof, a surface owner
352 shall be entitled to receive a special commissioner's deed transferring title to the interest of any
353 or all unknown or unlocatable interest owners in an oil and natural gas estate which underlies

354 their surface tract. The surface owner shall only be entitled to their proportionate share of all future
355 proceeds and is not entitled to any of the accrued funds which have been remitted to the Treasurer
356 prior to the execution of the special commissioner's deed. The unknown or unlocatable interest
357 owners are not entitled to any amounts paid to the grantees of the special commissioner's deed
358 after delivery of said deed.

359 (o) If any part of this section is adjudged to be unconstitutional or invalid, the invalidation
360 shall not affect the validity of the remaining parts of this section; and to this end, the provisions of
361 this section are hereby declared to be severable.

NOTE: The purpose of this bill is to provide for the unitization of interests in drilling units in connection with shallow horizontal oil or gas wells. The bill sets forth application requirements. The bill establishes the standard of review. The bill provides for unitization orders. The bill requires notice and timeliness. The bill provides for hearings. The bill addresses oil and gas produced from shallow horizontal wells. The bill adds new definitions. The bill modifies existing definitions.

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