

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Engrossed

Committee Substitute

for

Senate Bill 576

BY SENATORS TRUMP AND BLAIR

[Originating in the Committee on Judiciary; reported
on March 24, 2017]

1 A Bill to amend and reenact §11-13A-3a of the Code of West Virginia, 1931, as amended; to
2 amend and reenact §37-7-2 of said code; and to amend said code by adding thereto a
3 new chapter, designated §37B-1-1, §37B-1-2, §37B-1-3, §37B-1-4, §37B-1-5, §37B-1-6,
4 §37B-1-7, §37B-1-8, §37B-1-9 and §37B-1-10, all relating generally to real property;
5 modifying imposition of tax on privilege of severing natural gas or oil; providing an
6 exception to waste for certain oil and gas development; providing a short title; providing
7 declarations of public policy and legislative findings; providing definitions; providing that
8 consent for the lawful use of the oil and gas mineral property by three fourths of the royalty
9 interests in oil and gas mineral property is permissible, not waste and not trespass;
10 allowing nonconsenting cotenants to elect production royalty interest or a working interest
11 share of production; providing for the joint development of multiple contiguous oil and gas
12 leases by horizontal drilling unless development is expressly prohibited by agreement;
13 limiting jointly developed leases to six hundred forty acres with a ten percent tolerance;
14 requiring any operator that elects to develop leases jointly to pay owners of the surface,
15 on a pro rata share, one well pad fee of \$100,000, as indexed to the consumer price index,
16 for each tract of land upon which any portion of the well pad sits; allowing for a net acreage
17 fractional share royalty interest, free of post-production expenses, for multiple contiguous
18 leases jointly developed; providing for timely payment of royalties and requiring specified
19 information to be remitted with such payments; requiring quarterly reporting of production
20 data to Department of Environmental Protection for horizontal wells drilled pursuant to the
21 provisions herein; providing that cotenants are not liable for damages as a result of the
22 lawful use of oil and gas mineral property; requiring surface use agreements in specified
23 circumstances and preserving common law rights; and providing for severability of
24 provisions.

Be it enacted by the Legislature of West Virginia:

1 That §11-13A-3a of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; that §37-7-2 of said code be amended and reenacted; and that said code be amended
3 by adding thereto a new chapter, designated §37B-1-1, §37B-1-2, §37B-1-3, §37B-1-4, §37B-1-
4 5, §37B-1-6, §37B-1-7, §37B-1-8, §37B-1-9 and §37B-1-10, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil; ~~Tax Commissioner to develop a uniform reporting form.~~

1 (a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the
2 business of severing natural gas or oil for sale, profit or commercial use, there is hereby levied
3 and shall be collected from every person exercising such privilege an annual privilege tax:
4 *Provided,* That effective for all taxable periods beginning on or after January 1, 2000, there is an
5 exemption from the imposition of the tax provided in this article on the following: (1) Free natural
6 gas provided to any surface owner; (2) natural gas produced from any well which produced an
7 average of less than five thousand cubic feet of natural gas per day during the calendar year
8 immediately preceding a given taxable period; (3) oil produced from any oil well which produced
9 an average of less than one-half barrel of oil per day during the calendar year immediately
10 preceding a given taxable period; and (4) for a maximum period of ten years, all natural gas or oil
11 produced from any well which has not produced marketable quantities of natural gas or oil for five
12 consecutive years immediately preceding the year in which a well is placed back into production
13 and thereafter produces marketable quantities of natural gas or oil.

14 (b) *Rate and measure of tax.* — (1) The tax imposed in subsection (a) of this section shall
15 be five percent of the gross value of the natural gas or oil produced, as shown by the gross
16 proceeds derived from the sale thereof by the producer, except as otherwise provided in this
17 article.

18 (2) On and after July 1, 2017, the rate of tax on the privilege of severing natural gas for
19 sale, profit or commercial use shall be:

20 <u>When the annualized gross value</u>	
21 <u>of natural gas per MCF is:</u>	<u>The rate of tax is:</u>
22 <u>Under \$2.50:</u>	<u>4%</u>
23 <u>At least \$2.50 but less than \$4.00:</u>	<u>5%</u>
24 <u>At least \$4.00 but less than \$6.00:</u>	<u>6%</u>
25 <u>At least \$6.00 but less than \$8.00:</u>	<u>7%</u>
26 <u>At least \$8.00 but less than \$10.00:</u>	<u>8%</u>
27 <u>At least \$10.00 and over:</u>	<u>9%</u>

28 ~~(c) Tax in addition to other taxes. — The tax imposed by this section shall apply to all~~
29 ~~persons severing gas or oil in this state, and shall be in addition to all other taxes imposed by law.~~

30 ~~(d)(1) The Legislature finds that in addition to the production reports and financial records~~
31 ~~which must be filed by oil and gas producers with the State Tax Commissioner in order to comply~~
32 ~~with this section, oil and gas producers are required to file other production reports with other~~
33 ~~agencies, including, but not limited to, the office of oil and gas, the Public Service Commission~~
34 ~~and county assessors. The reports required to be filed are largely duplicative, the compiling of the~~
35 ~~information in different formats is unnecessarily time-consuming and costly, and the filing of one~~
36 ~~report or the sharing of information by agencies of government would reduce the cost of~~
37 ~~compliance for oil and gas producers.~~

38 ~~(2) On or before July 1, 2003, the Tax Commissioner shall design a common form that~~
39 ~~may be used for each of the reports regarding production that are required to be filed by oil and~~
40 ~~gas producers, which form shall readily permit a filing without financial information when such~~
41 ~~information is unnecessary. The commissioner shall also design such forms so as to permit filings~~
42 ~~in different formats, including, but not limited to, electronic formats.~~

43 ~~(3) Effective July 1, 2006, this subsection shall have no force or effect.~~

CHAPTER 37. WASTE BY COTENANT.

ARTICLE 7. WASTE.

§37-7-2. Waste by cotenant.

1 If a tenant in common, joint tenant or parcener ~~commit~~ commits waste, he ~~shall be or~~
2 she is liable to his or her cotenants, jointly or severally, for damages, except as provided for oil
3 and gas development in chapter thirty-seven-b of this code.

CHAPTER 37B. MINERAL DEVELOPMENT BY COTENANTS.

ARTICLE 1. DEVELOPMENT BY COTENANTS.

§37B-1-1. Short title.

1 This chapter shall be known as the Cotenancy Mineral Development Act.

§37B-1-2. Declaration of public policy; legislative findings.

1 It is 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;

7 (4) Safeguard, protect and enforce the correlative rights of operators and royalty owners
8 in a pool of oil or gas to the end that each such operator and royalty owner may obtain his or her
9 just and equitable share of production from that pool of oil or gas;

10 (5) Safeguard, protect and enforce the rights of surface owners; and

11 (6) Protect and enforce the clear provisions of contracts lawfully made.

§37B-1-3. Definitions.

1 As used in this article, and in the absence of specific contract language to the contrary:

2 “Operator” means any owner of the right to develop, operate and produce oil and gas from
3 a pool and to appropriate the oil and gas produced therefrom, either for that person or for that
4 person and others; and in the event the oil is owned separately from the gas, the owner of the
5 substance being produced or sought to be produced from the pool is the “owner” as to that pool.

6 “Person” means any individual, corporation, partnership, limited liability company,
7 association, receiver, trustee, executor, administrator, guardian, fiduciary or other representative
8 of any kind, and includes any government or any political subdivision or any agency thereof.

9 “Pool” means an underground accumulation of petroleum or gas in a single and separate
10 reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-
11 pressure system so that production of petroleum or gas from one part of the pool affects the
12 reservoir pressure throughout its extent.

13 “Post-production expense” means an expense or cost subsequent to production including,
14 but not limited to, an expense or cost related to pipelines, surface facilities, telemetry, gathering,
15 dehydration, transportation, fractionation, compression, manufacturing, processing, treating or
16 marketing of the oil or natural gas.

17 “Pro-rata share” means the allocation of revenues and costs attributable to the lawful use
18 of a mineral property that is calculated based on the proportion that the net acreage of such
19 ownership interest bears to the total net acreage of jointly developed tracts in a development or
20 production unit that includes, all or part of, that mineral property, if any.

21 “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 this section. A royalty owner does not
23 include a person whose interest is limited to a working interest in a wellbore only, overriding
24 royalties, nonparticipating royalty interests or net profit interests.

25 “Unitization” means the exploration and development of an entire geologic structure or
26 producing reservoir.

27 “Unknown and unlocatable interest owner” means a person vested with a present
28 ownership interest in the oil and gas in place in a mineral property whose present identity or
29 location cannot be determined from:

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

33 (B) Diligent inquiry in the vicinity of the owner’s last known place of residence; and

34 (C) Diligent inquiry to known interest owners in the same tract.

§37B-1-4. Waste by cotenant; lawful use; trespass; unknown or unlocatable cotenant;
election of nonconsenting cotenant.

1 (a) If after a reasonable effort to negotiate by the operator with all royalty owners in an oil
2 and gas mineral property, tenants in common, joint tenants or coparceners representing three
3 fourths of the royalty interest in the oil and gas mineral property consent to a lawful use of the
4 mineral property, then that use is permissible, is not waste and is not trespass. In that case, the
5 consenting cotenants and their lessees, operators, agents, contractors or assigns are not liable
6 for damages if they pay nonconsenting cotenants in accordance with subdivision (1) of this
7 subsection, and reserve the amounts specified in subdivision (2) of this subsection in a trust
8 account held for the benefit of unknown or unlocatable interest owners in a state or federally
9 insured financial institution.

10 (1) A nonconsenting cotenant is entitled to receive, based on his or her election, either:

11 (A) A production royalty, free of post-production expenses, equal to the highest royalty
12 percentage paid to his or her consenting cotenants in the same mineral property, and a lease
13 bonus payment equal to the average amount paid to such consenting cotenants calculated on net
14 mineral acre basis; or

15 (B) To participate in the development and receive his or her pro-rata share of the revenue
16 and cost equal to his or her share of production attributable to the tract or tracts being developed

17 according to the interest of such nonconsenting cotenant, exclusive of any royalty or overriding
18 royalty reserved in any lease, assignments thereof or agreements relating thereto, after the
19 market value of such nonconsenting cotenant's share of production, exclusive of such royalty and
20 overriding royalty, equals double the share of such costs payable or charged to the interest of
21 such nonconsenting cotenant.

22 A nonconsenting cotenant shall have forty-five days following the operator's written
23 delivery of its best and final lease offer in which to make his or her election for either a production
24 royalty or a revenue share, as specified in paragraph (A) or paragraph (B) of this subdivision. If
25 the nonconsenting cotenant fails to deliver a written election to the operator prior to the expiration
26 of such 45-day period, he or she shall be deemed to have made the election set forth in paragraph
27 (A), subdivision (1) of this subsection.

28 (2) Unknown and unlocatable interest owners shall be deemed to have made the election
29 set forth in paragraph (A), subdivision (1) of this subsection.

§37B-1-5. Joint development of minerals; surface damage.

1 Where an operator or operators have the right to develop multiple contiguous oil and gas
2 leases, the operator may develop these leases jointly by horizontal drilling unless the
3 development is expressly prohibited by the terms of a lease or agreement. In addition to the
4 surface damages payable pursuant to section three, article six-b, chapter twenty-two of this code
5 and any surface damages owed under common law, any operator that elects to develop leases
6 jointly pursuant to this section shall pay to the owners of the surface, on a pro rata share, one well
7 pad fee of \$100,000, as indexed to the consumer price index, for each tract of land upon which
8 any portion of the well pad sits.

§37B-1-6. Royalties for jointly developed minerals.

1 (a) In determining the royalty where multiple contiguous leases are developed under
2 section five of this chapter, in the absence of specific agreement language to the contrary, the
3 production shall be allocated to each lease in the proportion that the net acreage of each lease

4 bears to the total net acreage of the jointly developed tracts.

5 (b) In the absence of specific agreement language to the contrary, the royalty for all royalty
6 owners of the acreage jointly developed under section five of this chapter shall not be reduced for
7 post-production expenses incurred by the operator. Nothing in this subsection is intended to
8 impact royalties due for wells drilled prior to the effective date of this chapter.

9 (c) Where multiple contiguous leases are jointly developed under section five of this
10 chapter, the size of any drainage or production unit shall not exceed six hundred forty acres, with
11 a ten percent tolerance.

§37B-1-7. Information reporting.

12 (a) The developing cotenant, his or her lessees, operators, agents, contractors or assigns
13 shall provide the following information to all cotenants receiving production royalties resulting from
14 the development of mineral property pursuant to this chapter:

15 (1) A name, number or combination of name and number that identifies the lease,
16 property, unit or well or wells for which payment is being made and the county in which the lease,
17 property or well is located;

18 (2) Month and year of gas production;

19 (3) Total barrels of crude oil or number of MCF, MMBTU or DTH of gas or volume of
20 natural gas liquids produced and sold;

21 (4) Price received per unit of oil or natural gas produced;

22 (5) Total amount of severance and other production taxes associated with the volume of
23 oil, natural gas or natural gas liquids produced, and other deductions provided under the terms of
24 the governing lease;

25 (6) Net value of total proceeds from the sale of oil, natural gas or natural gas liquids from
26 the property less taxes and deductions set forth in subdivision (5) of this subsection;

27 (7) Interest owner's interest, expressed as a decimal or fraction, in production from the
28 unit or well reported pursuant to subdivision (1) of this subsection;

29 (8) Interest owner's ratable share of the total value of the proceeds of the sale of oil,
30 natural gas or natural gas liquids prior to the deduction of taxes and other deductions set forth in
31 subdivision (5) of this subsection;

32 (9) Interest owner's ratable share of the proceeds from the sale of oil, natural gas or
33 natural gas liquids less the interest owner's ratable share of taxes and other deductions set forth
34 in subdivision (5) of this subsection; and

35 (10) Contact information of the producer of the oil, natural gas or natural gas liquids,
36 including a mailing address and telephone number.

37 (b) Notwithstanding any of the other provisions of this article, proceeds from production of
38 oil, natural gas or natural gas liquids may be accumulated by the developing cotenant, his or her
39 lessees, operators, agents, contractors or assigns until such time as proceeds attributable to any
40 cotenant exceeds \$100 before making a remittance: *Provided*, That in any event, regardless of
41 the amount of money accumulated, the developing cotenant, his or her lessees, operators,
42 agents, contractors or assigns shall remit proceeds attributable to his or her cotenants not less
43 than once annually. All accumulated proceeds shall be paid to the person entitled thereto
44 immediately, or as soon as practicable thereafter, upon cessation of production of oil, natural gas
45 or natural gas liquids at a particular well or upon relinquishment or transfer of the payment
46 responsibility to another party.

47 (c) All production royalties due and owing to a royalty owner shall be tendered in a timely
48 manner which shall not exceed one hundred eighty days from the date that a sale of oil, natural
49 gas or natural gas liquids is realized, unless such failure to remit is due to lack of record title in
50 the royalty owner. Failure to remit timely payment shall result in a mandatory additional payment
51 of an interest penalty to be set at the prime rate plus an additional two percent until such payment
52 is made to be compounded semiannually. The prime rate shall be the rate published on the day
53 of the sale of oil, natural gas or natural gas liquids in the *Wall Street Journal* reflecting the base
54 rate on corporate loans posted by at least seventy-five percent of the nation's thirty largest banks.

55 (d) A quarterly report of the volume of oil or natural gas produced from any horizontal well
56 drilled pursuant to this article shall be filed with the Chief of the Office of Oil and Gas on a form
57 prescribed by the Secretary of the West Virginia Department of Environmental Protection. All
58 reported data shall be made available to the public through the Office of Oil and Gas' website
59 within a reasonable time after such data is collected. The secretary has the express authority
60 pursuant to this article, as well as pursuant to the powers enumerated in section two, article six,
61 chapter twenty-two of this code to promulgate rules and to amend the current rules to require
62 timely quarterly reporting of production data as well as to establish a process for collecting such
63 data.

§37B-1-8. Limitation of liability of nonconsenting cotenant.

1 A nonconsenting cotenant shall have no liability for bodily injury, property damage or
2 environmental claims, arising out of site preparation, mineral extraction, maintenance,
3 reclamation and other operations with respect to minerals produced from the cotenant's property.

§37B-1-9. Surface use.

1 (a) With respect to any tract of mineral property where an interest in the oil and gas in
2 place is owned by a nonconsenting cotenant and is developed pursuant to section four of this
3 article, in no event shall drilling be initiated upon, or other surface disturbance occur on, the
4 surface of or above such tract of minerals without the surface owner's consent regardless of
5 whether such surface owner possesses any actual ownership in the mineral interest: *Provided,*
6 That this subsection shall not require surface owner consent for tracts of mineral property
7 otherwise subject to an existing surface use agreement or other valid contractual arrangement in
8 which the owner of the surface has granted rights to the operator to use the surface in conjunction
9 with oil and gas operations.

10 (b) Except as specifically described in subsection (a) of this section, nothing contained in
11 this chapter is intended to alter in any way, and this chapter shall not diminish or increase, the
12 rights of the owners of the surface overlying the minerals developed in this state. Further, except

13 as specifically described in subsection (a) of this section, in enacting this chapter in 2017, it is the
14 intention of the Legislature to leave unchanged the common law of this state as it relates to the
15 mineral owner's right to utilize the surface for the extraction of minerals.

§37B-1-10. Severability.

1 The provisions of this chapter are severable and accordingly, if any part of this chapter is
2 adjudged to be unconstitutional or invalid, that determination does not affect the continuing validity
3 of the remaining provisions of this chapter.