

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2158

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FLUHARTY, PUSHKIN AND HICKS

[Introduced February 8, 2017; 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:

1 That §22-21-17 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted; and that §22C-9-7 of said code be amended and reenacted, all to read as follows:

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 subsection (a), section
 4 sixteen of this article who have not entered into a voluntary agreement. At such conference the
 5 applicant and such other persons present or represented having an interest in the proposed unit
 6 shall be given an opportunity to enter into voluntary agreements for the development of the unit
 7 upon reasonable 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 thirty-five days nor more
15 than sixty days of the date the request for hearing is made. The review board shall review the
16 application and on the date specified for a hearing shall conduct a public hearing. The review
17 board shall 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 pooling order
45 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 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 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 thirty 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 thirty days prescribed herein shall
71 be deemed 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 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 interest shall exist in the
88 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 entitled to such owner's fractional interest in the royalty calculated at

91 a rate provided for in such contract. Each such owner shall be entitled to share in the royalty in
92 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
94 owner shall be entitled to his or her proportionate share of the working interest after the other
95 working interest owners have recouped three hundred percent of the reasonable capital costs of
96 the well or wells, including drilling, completing, equipping, plugging and abandoning and any
97 further costs of 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 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 to have leased,
106 their interest, plus all proceeds in excess of operational expenses, as allowed in the pooling order,
107 attributable to the conflicting working and carried interest owners.

108 (j) After each coalbed methane owner has made, or has been deemed to have made, an
109 election under subsection (e) of this section, the review board shall enter a division order which
110 shall set out the net revenue interest of each working interest owner, including each carried
111 interest owner and the royalty interest of each coalbed methane owner. Thereafter payments shall
112 be made to working interest owners, carried interest owners and royalty interest owners in
113 accordance with the division order, except that payments attributable to conflicting claims shall
114 be deposited in the escrow account. The fractional interest of each owner shall be expressed as
115 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 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, 2017, 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 discovery deep

4 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 section five of this article.

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 fifteen days of receipt of notice. If no request for hearing has been
18 received within the fifteen 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 order;

27 (B) The plan of deep well spacing then being employed or proposed in such pool for such
28 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 order all lands determined or believed
41 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 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 drilling unit
60 shall not produce or receive more than his or her just and equitable share of the production from
61 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 pool, and may be modified by the commission from time to time,
64 to include additional lands determined to be underlaid by such pool or to exclude lands determined
65 not to be underlaid by such pool. An order establishing drilling units may be modified by the
66 commission to permit the drilling of additional deep wells on a reasonably uniform pattern at a
67 uniform minimum distance from the nearest unit boundary as provided above. Any order
68 modifying a prior order shall be made only after application by an interested operator and notice
69 and hearing as prescribed herein for the original order: *Provided*, That drilling units established
70 by order shall not exceed one hundred sixty acres for an oil well or six hundred forty acres for a
71 gas well: *Provided, however*, That the commission may exceed the acreage limitation by ten
72 percent if the applicant demonstrates that the area would be drained efficiently and economically
73 by a larger 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 forty-five 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 to be integrated without the necessity of a
84 subsequent order integrating the royalty interests: Provided, That effective July 1, 2017, no order
85 establishing a drilling unit can 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 fifteen days
93 of entry of the order. If no appeal and request for hearing has been received within fifteen days,
94 the 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 drilling be initiated on the tract of an unleased owner without the
107 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 for all purposes the conduct of such operations upon each separately owned tract in
111 the drilling unit by the several owners thereof. That portion of the production allocated to a
112 separately owned tract included in a drilling unit shall, when produced, be deemed for all purposes
113 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 be permitted
125 upon or within any tract of land unless the operator shall have first obtained the written consent
126 and easement therefor, duly acknowledged and placed on record in the office of the county clerk,
127 for valuable consideration of all owners of the surface of such tract of land, which consent shall
128 describe with reasonable certainty, the location upon such tract, of the location of such proposed
129 deep well, a certified copy of which consent and easement shall be submitted by the operator to
130 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 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 operating owner shall be entitled to the share of
144 production from the tracts or portions thereof pooled accruing to the interest of such
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 nonparticipating owner's share of the production, exclusive of such royalty,
149 overriding royalty or one eighth of production, equals double the share of such costs payable by
150 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 ninety days from the
153 date of written notification to the commission of the existence of such dispute.

154 (8) The commission shall, within forty-five days after the filing of an application, enter an
155 order, 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.