

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 5676

By Delegate Kimble

[Introduced February 17, 2026; referred to the
Committee on Energy and Public Works then the
Judiciary]

1 A BILL to amend and reenact §22C-9-7a of the Code of West Virginia, 1931, as amended; related
2 to what is considered a fair and reasonable voluntary pooling offer.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. OIL AND GAS CONSERVATION.

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

1 (a) *Declaration of public policy; legislative findings regarding unitization for all horizontal*
2 *wells.* —

3 The Legislature finds that horizontal drilling is a technique that effectively and efficiently
4 recovers natural resources and should be encouraged as a means of production of oil and gas and
5 it is hereby declared to be the public policy of this state and in the public interest 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 deep and shallow
8 formations;

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

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

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

16 (5) Safeguard, protect, and enforce the property rights and interests of surface owners and
17 the owners and agricultural users of other interests in the land.

18 (b) *Definitions.* — Unless the context in which used clearly requires a different meaning, as
19 used in this section:

20 (1) "Bonded operator" means a person that has posted a bond under §22-6-1 *et seq.* or
21 §22-6A-1 *et seq.* of this code; is registered as an oil and gas well operator with the West Virginia

22 Department of Environmental Protection, Office of Oil and Gas; and operates eight or more oil and
23 gas wells, as defined in §22-6-1 *et seq.* or §22-6A-1 *et seq.* of this code, in West Virginia that are
24 active, producing oil and gas wells;

25 (2) "Executive interest" and "executory interest" means the interest entitling the owner to
26 lease the oil and gas estate or amend an existing oil and gas lease. For purposes of this section,
27 the owner of the executive interest is considered to be the royalty owner and interested party for
28 purposes of notice and participation in proceedings here in this article, and all horizontal well unit
29 orders are binding on the owners of executive interests and non-executive interests in a horizontal
30 well unit. The owners of the executive interest and the associated non-executive interest owners
31 are considered to be the same interest for purposes of computing percentages pursuant to §22C-
32 9-7a(c)(2)(A) and §22C-9-7a(c)(2)(B) of this code;

33 (3) "Horizontal well unit" means an area in which horizontal drilling may occur, and that is
34 designated for the allocation of production from one or more horizontal wells drilled in the unit to oil
35 and gas tracts, or portions of the tracts, included in the unit for production of oil and gas and
36 payment of royalty and proceeds of production regardless of the tract or tracts in which the
37 horizontal well is drilled or completed, and the corresponding authorization to drill and produce oil
38 and gas from that area as a unit, notwithstanding the lack of adequate consensual rights allowing
39 pooling or unitization of oil and gas or allowing drilling horizontally across tract lines. When a
40 horizontal well unit is formed, that portion of the production allocated to each tract or portion of the
41 unit included in the horizontal well unit shall, when produced, be considered for all purposes to
42 have been actually produced from the tract by an oil and gas well drilled, completed and producing
43 on the tract;

44 (4) "Lateral" means the portion of a well bore that deviates from approximate vertical
45 orientation to approximate horizontal orientation and all wellbore beyond the initial deviation to
46 total depth or terminus of the wellbore;

47 (5) "Overriding royalty" means an interest carved out of the leasehold or out of the working

48 interest and is not included within the meaning of royalty;

49 (6) "Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to the
50 extent that the owner is not an operator as defined in §22C-9-2(a) of this code. A royalty owner
51 does not include a person whose interest is limited to: (A) A working interest in a wellbore only; (B)
52 overriding royalties; (C) non-participating royalty interests; (D) non-executive mineral interests; or
53 (E) net profits interests;

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

58 (8) "Unitization" means the combination of two or more tracts of oil and gas, or portions
59 thereof, or leases, for drilling of horizontal wells and production of oil and gas from the unit with
60 allocation of production to the net acreage of each tract included in the unit to operate as a
61 consolidated horizontal well unit;

62 (9) "Unitization consideration" means consideration provided as set forth in subsection (f)
63 of this section. Unitization consideration relates to the net acreage of the non-consenting royalty
64 owner included in a horizontal well unit;

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

68 (A) A reasonable review of the records of the clerk of the county commission for the county
69 or counties where the oil and gas is located and any immediately adjacent counties within this
70 state;

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

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

74 (D) A reasonable inquiry utilizing available internet resources that could reasonably lead to
75 the identification of the person; and

76 (E) A mailing to the last known address, if available, of the person as reflected in the
77 records of the sheriff's or assessor's office, and includes the unknown heirs, representatives,
78 successors, and assigns of the person.

79 (11) "Weighted average sales price" means a weighted average sales price obtained each
80 month for amounts received at the applicant's various delivery points to unaffiliated, third-party
81 purchasers accessible by the owner's production, without deduction of post-production, third-party
82 costs and expenses charged to or incurred by applicant and/or its affiliates other than costs and
83 expenses charged to or incurred by applicant and/or its affiliates after the first liquid trading point
84 or, if the production does not undergo processing, after delivery to the first interstate pipeline.

85 (c) *Applicability.* —

86 (1) For all horizontal wells, including shallow horizontal wells and deep horizontal wells, the
87 commission may unitize tracts, or portions of tracts, in a horizontal well unit established under this
88 section upon the filing of an application with the commission by a person that controls the
89 horizontal well unit and upon the issuance of a horizontal well unit order pursuant to this section.

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

91 (A) With respect to the royalty interest, for shallow horizontal wells and deep horizontal
92 wells, obtained by ownership, lease, lease amendment, assignment, farmout, compliance with
93 §37B-1-1, *et seq.* of this code with respect to unknown or unlocatable interest owners defined in
94 §37B-1-3 of this code only, contract or other agreement the right, consent or agreement to pool or
95 unitize the acreage to be included in the horizontal well unit from executory interest royalty owners
96 of 75 percent or more of the net acreage in the target formation proposed to be included in the
97 horizontal well unit, as provided and determined in subdivision (3) of this subsection; and

98 (B) With respect to the operator interest:

99 (i) For shallow horizontal wells, obtained by ownership, lease, lease amendment,

100 assignment, farmout, contract or other agreement the right, consent or agreement to pool or
101 unitize as to 55 percent or more of the net acreage in the target formation proposed to be included
102 in the horizontal well unit owned, leased, or operated by operators and the applicant, collectively,
103 by ownership, lease, farmout, assignment, contract or other agreement, as provided and
104 determined in subdivision (3) of this subsection; or

105 (ii) For deep horizontal wells, obtained by ownership, lease, lease amendment,
106 assignment, farmout, compliance with §37B-1-1, *et seq.* of this code with respect to unknown or
107 unlocatable interest owners defined in §37B-1-3 of this code only, contract or other agreement the
108 right, consent or agreement to develop the acreage to be included in the horizontal well unit from
109 executory interest royalty owners of 55 percent or more of the net acreage in the target formation
110 proposed to be included in the horizontal well unit, as provided and determined in subdivision (3)
111 of this subsection;

112 (C) (i) Made good-faith offers to consent or agree to pool or unitize, and has negotiated in
113 good faith with, all known and locatable royalty owners having executory interests in the oil and
114 gas in the target formation within the acreage to be included in the proposed horizontal well unit
115 who have not previously consented or agreed to the pooling or unitization of the interests and
116 whose interests are not subject to development under §37B-1-1, *et seq.* of this code; and

117 (ii) Made good-faith offers to participate or consent or agree to the proposed horizontal well
118 unit, and has negotiated in good faith with, all known and locatable operators who have not
119 previously agreed to participate or consent or agree to pool or unitize the acreage to be included in
120 a proposed horizontal well unit.

121 (iii) An offer by an owner of a royalty or any other interest in oil or gas within an existing
122 proration unit to share on the same yardstick basis as the other owners within the existing
123 proration unit are then sharing shall be considered a fair and reasonable offer.

124 ~~(iii)~~(iv) A person who satisfies the conditions of paragraphs (A) through (C) of this
125 subdivision is referred to in this section as a person that controls the horizontal well unit.

126 (3) For purposes of determining whether a person has obtained the requisite control of the
127 proposed horizontal well unit, the commission may not include overriding royalty owners, non-
128 executive interest royalty owners or acreage owned or otherwise held by unleased unknown and
129 unlocatable interest owners whose acreage is not subject to development pursuant to §37B-1-1,
130 *et seq.* of this code, or acreage owned or otherwise held by operators who are not bonded
131 operators, unless such operators have consented or otherwise agreed to develop their operator
132 interest in the net acreage in the target formation proposed to be included in the horizontal well
133 unit. Furthermore, for purposes of determining whether a person has the requisite control of the
134 proposed horizontal well unit, the identity and rights of royalty owners and operators shall be
135 determined as of the date on which the application for a horizontal well unit is filed.

136 (4) If the applicant has not met all the provisions of this subsection, the application shall be
137 dismissed without prejudice.

138 (5) If the applicant meets all of the provisions of this subsection, the commission shall
139 authorize unitization of tracts, or portions of the tracts, as to all interests in oil and gas in the target
140 formation acreage proposed to be unitized for horizontal drilling, including interests of unknown
141 and unlocatable interest owners, for production of oil and gas from the target formation as a
142 horizontal well unit, and shall issue a horizontal well unit order in accordance with this section.

143 (d) *Application requirements.* —

144 (1) An applicant who is a person that controls the horizontal well unit proposed for a
145 horizontal well unit order and has drilled or plans to drill one or more horizontal wells in the
146 proposed horizontal well unit may file an application with the commission for a horizontal well unit
147 order. The application shall contain:

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

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

151 (C) A plat that depicts the boundaries and acreage of the proposed horizontal well unit, the

152 tracts in the horizontal well unit, the surface tax map and parcel numbers of the surface tracts
153 above the tracts to be included in the horizontal well unit in accordance with county assessor's
154 records, and the district(s) and county or counties where the proposed horizontal well unit is
155 located. The plat shall show the surface location of the vertical borehole of the horizontal well(s) to
156 be included in the proposed horizontal well unit determined by survey, the courses, and distances
157 of the surface location from two permanent points or landmarks on those tracts, the deviation from
158 vertical, and also the proposed horizontal lateral portion of each proposed horizontal well to be
159 included in the proposed horizontal well unit. The plat shall show the proposed horizontal well unit
160 name, the proposed horizontal well names, and if known, the well number of each horizontal well
161 to be drilled in the horizontal well unit. The plat shall also show the location of each permitted,
162 active oil and gas well located in the horizontal well unit, and the name of the operator of the well
163 as shown by the records of the Department of Environmental Protection, Office of Oil and Gas:
164 *Provided*, That the applicant is not required to depict or identify any abandoned or plugged well
165 that is not required to be depicted or identified on the plat required by §22-6A-5(a)(6) of this code;

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

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

170 (i) Which, if any, of them are unknown and unlocatable;

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

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

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

177 (i) Which, if any, of them are unknown and unlocatable; and

178 (ii) Which, if any of them, are bonded operators, and if a bonded operator, whether he or
179 she has consented to pooling or unitization as to the acreage proposed to be included in the
180 horizontal well unit;

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

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

185 (I) The percentage of the net acreage in the proposed horizontal well unit held by bonded
186 operators and the applicant, collectively, as to which consent or agreement to pool or unitize has
187 been granted;

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

192 (K) A certification that the applicant meets the requirements of subsection (c) of this section
193 with respect to the proposed horizontal well unit, a list of the instruments granting the control and a
194 certification that the applicant has mailed a copy of the application to all known and locatable
195 interested parties by United States certified mail, return receipt requested, to their last known
196 address and to the most current address filed with the West Virginia Department of Environmental
197 Protection, Office of Oil and Gas, if any;

198 (L) A statement whether the applicant has submitted, either previously or
199 contemporaneously with the application filed pursuant to this section, an application for a well work
200 permit with the Department of Environmental Protection for one or more horizontal wells to be
201 completed within the boundaries of the proposed horizontal well unit; and

202 (M) A proposed joint operating agreement that will govern the contractual relationship
203 between the applicant and any unleased royalty owners following an election by the executive

204 interest owners to participate in the drilling in the horizontal well unit on a carried basis under
205 §22C-9-7a(f)(9) of this code.

206 (2) Upon the filing of an application for a horizontal well unit order, the commission shall
207 provide notice of a hearing to all interested parties, as defined in this section, in accordance with
208 §22C-9-5 of this code and subsection (g) of this section.

209 (e) *Standard of review.* —

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

211 (A) The ownership and control of the tracts, or portions of the tracts, in the proposed
212 horizontal well unit;

213 (B) Whether the tracts, or portions of the tracts, proposed to be made subject to a
214 horizontal well unit order are owned, in whole or in part, by unknown and unlocatable interest
215 owners;

216 (C) Information regarding the applicant's actions to locate unknown and unlocatable
217 interest owners for the tracts, or portions of the tracts, sought to be included in the horizontal well
218 unit;

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

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

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

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

229 (H) Correlative rights;

230 (I) The extent to which the application will prevent waste including the stranding of acreage
231 of oil and gas formations between units that would be uneconomical to produce;

232 (J) Whether the applicant has complied with subsection (c) of this section;

233 (K) Whether notice has been provided in accordance with this section; and

234 (L) Whether the applicant demonstrates the intent and ability to drill all the wells proposed
235 in the unit.

236 (2) The commission may not issue a horizontal well unit order pursuant to this section
237 unless it finds that the applicant has before the filing of the application met the requirements of
238 subsection (c) of this section.

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

243 (f) *Horizontal well unit orders.* —

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

245 (A) The size and boundaries of the horizontal well unit giving due regard for maximization
246 of the amount of oil and gas produced to prevent waste and protect correlative rights: *Provided,*
247 That a horizontal well unit's size may not exceed 640 acres: *Provided, however,* That the
248 commission may exceed the acreage limitation if the applicant demonstrates that the proposed
249 horizontal well unit area would be drained efficiently and economically by a larger horizontal well
250 unit: *Provided further,* That a horizontal well unit containing one or more horizontal wells may not
251 contain more than 128 net acres controlled by non-consenting royalty owners determined as of the
252 date that the application for the horizontal well unit application is filed.

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

255 (C) If there are vertical wells completed in the target formation in the horizontal well unit,

256 the area where a horizontal well may not be completed;

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

258 (E) Any unitization consideration due.

259 (2) An order authorizing unitization of tracts with unknown and unlocatable interest owners
260 shall contain a finding that identifies the persons as unknown and unlocatable.

261 (3) An order shall specify that the allocation of the percentage of production of the
262 horizontal wells drilled in the horizontal well unit to the separately owned tracts, or portions of the
263 tracts, included within the horizontal well unit shall be in the proportion that each tract's net
264 acreage within the horizontal well unit bears to the total net acreage within the horizontal well unit.

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

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

271 (6) With respect to royalty owners of leased tracts who have not consented to pooling or
272 unitization, the commission shall require that unitization consideration be paid to executive interest
273 royalty owners in an amount equal to 25 percent of the weighted average monetary bonus amount
274 on a net mineral acre basis and a production royalty percentage equal to 80 percent of the
275 weighted average production royalty percentage rounded to the nearest one tenth of one percent
276 paid to other executive interest owners of leased tracts in the unit in the same target formation:

277 *Provided*, That the weighted average calculation shall not include any fixed amounts paid to
278 royalty owners or payments made on any basis other than a net mineral acre basis. Further, the
279 royalty percentage cannot be less than the production royalty percentage in the existing lease or
280 12 and one-half percent for a flat rate lease. The applicant, all royalty owners, and owners of
281 leasehold, working interest, overriding royalty interest and other interests in the oil and gas are

282 bound by the order and the remaining lease terms, including other terms related to the payment of
283 royalties. Unitization consideration shall be paid by the participating operators, including the
284 applicant, to the extent of their interest in the horizontal well unit.

285 (7) With respect to interests in oil and gas as to which there is no lease in existence:

286 (A) Executive interest owners may elect to surrender the oil and gas underlying the tract to
287 the participating operators, including the applicant, to the extent of their interest in the horizontal
288 well unit for consideration, which if not agreed upon, shall be an amount equal to the weighted
289 average amount paid, per net mineral acre, by the applicant to executive interest owners in bona
290 fide, third-party transactions for the acquisition of the oil and gas mineral estate in the same target
291 formation underlying the horizontal well unit: *Provided*, That the weighted average calculation
292 shall not include any fixed amounts paid to royalty owners or payments made on any basis other
293 than a net mineral acre basis; or

294 (B) Executive interest owners may make an election for unitization consideration, and if the
295 executive interest owner elects unitization consideration, the interests of the executive interest
296 owner and the associated nonexecutive interest owners shall be considered leased to the
297 participating operators, including the applicant, to the extent of their interest in the horizontal well
298 unit on terms which, if not agreed upon, shall consist of the following:

299 (i) A bonus payment per net mineral acre equal to the weighted average monetary bonus
300 paid, per net mineral acre, to executive interest owners by the applicant in connection with other
301 leases in the same target formation controlled by the applicant within the horizontal well unit:
302 *Provided*, That the weighted average calculation shall not include any fixed amounts paid as
303 bonus payments to executive interest owners or payments made on any basis other than a net
304 mineral acre basis; and

305 (ii) A production royalty for the natural gas, oil and natural gas liquids produced and sold
306 equal to the highest production royalty percentage in connection with other leases in the same
307 target formation controlled by the applicant within the horizontal well unit and dated within the 24

308 months preceding the application date. Executive interest owners may make a one-time election
309 prior to the issuance of a horizontal well unit order by the commission to be paid production
310 royalties for natural gas based on either: (a) An index price in effect at the beginning of each
311 calendar month, as published in an independent, third-party publication reflecting arm's-length,
312 market-based sales, for natural gas applicable to the first interstate pipeline into which the natural
313 gas is delivered, and shall not be reduced by post-production expenses; or (b) the weighted
314 average sales price.

315 Production royalties for natural gas liquids will be calculated using the sum of the proceeds
316 received at the tailgate of the processing facility for each natural gas liquid product during each
317 month divided by the volume of such natural gas liquid product that was sold during such month
318 and shall not be reduced by post-production expenses. If an executive interest owner does not
319 make the one-time election regarding the price on which royalties for natural gas shall be paid prior
320 to the issuance of a horizontal well unit order by the commission, the applicant shall determine
321 whether it will pay royalties to the executive interest owner and the associated nonexecutive
322 interest owners based on either the index price described in this subparagraph or the weighted
323 average sales price, and such determination shall be binding on the applicant, operators,
324 executive interest owners and the associated non-executive interest owners for the term of the
325 lease. The applicant and all royalty owners and owners of leasehold, working interest, overriding
326 royalty interest and other interests in the associated unleased oil and gas shall be bound by the
327 order. Nothing contained in paragraph (B) applies to any lease in this state now in existence or
328 entered into in the future, or to any award of unitization consideration made by the commission
329 other than unitization consideration awarded to an executive interest owner of an unleased tract
330 who elects to be considered leased pursuant to this paragraph; or

331 (C) Executive interest owners may make an election to participate in a horizontal well unit
332 consistent with §22C-9-7a(f)(9) and §22C-9-7a(f)(10) of this code.

333 (D) Owners of oil and gas interests as to which there is no lease in existence who do not

334 elect (A), (B) or (C) of this subdivision shall be considered to have made an election to receive
335 unitization consideration and lease their interest in the oil and gas mineral estate in the target
336 formation to the applicant pursuant to §22C-9-7a(f)(7)(B) of this code.

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

340 (9) An operator may elect to consent to and participate in a horizontal well unit after an
341 application is filed. Subject to subdivision (7) of this subsection, when the commission issues a
342 horizontal well unit order pursuant to this section, the commission shall consider each
343 nonconsenting operator, who does not elect to participate in the risk and cost of drilling in the
344 horizontal well unit through a voluntary agreement with the applicant, to participate in the drilling in
345 the horizontal well unit on a carried basis on terms and conditions which, if not agreed upon, shall
346 be consistent with the terms and conditions contained in the proposed joint operating agreement
347 submitted by the applicant in accordance with §22C-9-7a(d)(1)(M) of this code: *Provided*, That the
348 commission determines that the proposed terms and conditions of the joint operating agreement
349 are consistent with terms typically found in other similarly situated, arm's-length joint operating
350 agreements within the horizontal well unit that were entered into by the applicant for the same
351 target formation prior to the filing of the application for the horizontal well unit.

352 (10) If a non-consenting operator participates in the drilling in the horizontal well unit on a
353 carried basis under the horizontal well unit order and an owner of any operating interest in any
354 portion of the horizontal well unit drills and operates, or pays the costs of drilling, completing,
355 equipping, and operating a horizontal well for the benefit of a non-consenting operator as provided
356 in the horizontal well unit order, then the operating owner is entitled to the share of production from
357 the tracts or portions thereof subject to the horizontal well unit order accruing to the interest of the
358 non-consenting operator, exclusive of any unitization consideration, and royalty and overriding
359 royalty reserved in any leases, assignments thereof or agreements relating thereto, of the tracts or

360 portions of the tracts, until the net revenue from the non-consenting operator's share of the
361 production, exclusive of the unitization consideration, royalty and overriding royalty, equals double
362 the share of the costs payable by or charged to the interest of the non-consenting operator, as set
363 forth in the accounting procedures included within the joint operating agreement submitted by the
364 applicant in accordance with §22C-9-7a(d)(1)(M) of this code.

365 (11) If all wells proposed in a horizontal well unit approved by the commission are not
366 drilled and completed as approved in the horizontal well unit order, the applicant shall file a request
367 to modify the horizontal well unit with the commission within 60 days from the later of: Completion
368 of all drilling activities within the horizontal well unit; or the date that is five years after the most
369 recent drilling activity in the horizontal well unit occurs.

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

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

373 (14) If an operator has not drilled and completed a well in a horizontal well unit formed by
374 the commission within three years after the latter of either the drilling and completion of the initial
375 horizontal well in the horizontal well unit or the drilling and completion of the most recent horizontal
376 well within the horizontal well unit, as the case may be, an interested party may file a request to
377 modify the horizontal well unit, and the commission may modify the horizontal well unit. Upon the
378 modification of the horizontal well unit, the commission shall recalculate the allocation of
379 production from the tracts in the modified horizontal well unit from and after the modification order
380 date and the modification order shall be binding on the property subject to the horizontal well unit
381 order, and all owners thereof, their heirs, representatives, successors, and assigns for so long as
382 the horizontal well unit order remains in effect. Following the entry of a modified horizontal well unit
383 order containing the commission's recalculation of the allocation of production from the tracts in
384 the modified horizontal well unit order, the applicant and all other operators shall have no liability
385 whatsoever to pay royalty in any manner other than that set forth in the modified horizontal well

386 unit order.

387 (15) All operations, including, but not limited to, the commencement, drilling, or operation
388 of a horizontal well upon any portion of a horizontal well unit for which a unit order has been
389 entered pursuant to this section, shall be considered for all purposes the conduct of the operations
390 upon each separate tract or portion of the tract in the horizontal well unit. That portion of the
391 production allocated to each tract or portion of the tract included in a horizontal well unit shall,
392 when produced, be considered for all purposes to have been actually produced from the tract by
393 an oil and gas well drilled, completed, and producing on the tract.

394 (16) Subject to the provisions of subsection (o) of this section, where the commission finds
395 that the interest of one or more unknown and unlocatable interest owners are included in the
396 horizontal well unit, the horizontal well unit operator shall deposit the moneys payable to unknown
397 and unlocatable interest owners into an escrow account bearing a market rate of interest to be
398 held, administered, and disbursed in accordance with an order of the commission and this section.

399 (17) A horizontal well unit order under this section shall expire if a horizontal well has not
400 been drilled in the horizontal well unit within three years of the date the order is final and is
401 nonappealable, unless the commission extends the order for good cause, and if a well has been
402 drilled within three years the horizontal well unit shall continue in force and effect until the last
403 producing horizontal well in the horizontal well unit is no longer capable of producing oil and gas.

404 (18) So long as the order remains in effect, a horizontal well unit order shall be binding on
405 the property subject to the horizontal well order and all owners of the property and their heirs,
406 representatives, successors, and assigns.

407 (g) *Notice, timelines, hearings, and orders.* —

408 (1)(A) For purposes of this section and the West Virginia Administrative Procedures Act,
409 "interested parties" and "parties" mean owners of the executive interest in the oil and gas in the
410 target formation within the horizontal well unit, including the unknown and unlocatable interest
411 owner of the executive interest in the tracts, or portions of the tracts, to be included in the

412 horizontal well unit subject to an application for a horizontal well unit order; owners of unleased oil
413 and gas to be included in the horizontal well unit; operators of all target formation acreage in the
414 horizontal well unit; and operators of all oil and gas wells located in the unit that have been drilled
415 to or through the target formation.

416 (B) Bonded operators of wells drilled to or through the target formation that are not within
417 the horizontal well unit but are located within 500 feet of a proposed horizontal well unit boundary
418 and executive interest owners owning an interest in the target formation that is not located within
419 the horizontal well unit but is located within 500 feet of a proposed horizontal well unit boundary
420 may submit written comments regarding the horizontal well unit application at any time before the
421 start of any hearing regarding the application, but are not interested parties and may not
422 participate in the hearing nor have the right to appeal the commission's decision regarding the
423 application.

424 (2) Each notice issued in accordance with this section shall describe the area for which a
425 horizontal well unit order is proposed in recognizable, narrative terms and contain such other
426 information as is essential to the giving of proper notice, including the time and date and place of a
427 hearing. As soon as practicable the commission shall establish a website. Within three business
428 days of the filing of an application under this section, the commission shall publish on its website a
429 copy of: (i) The horizontal well unit application notice required to be published pursuant to this
430 section and section five of this article; and (ii) the proposed horizontal well unit plat filed with the
431 application, both identified as a horizontal well unit application and indexed by county and district
432 where the majority of the acreage to be included in the proposed horizontal well unit is located, so
433 that the plat and notice of the application are readily accessible. Timely publication on the website
434 for a period of 10 business days shall be notice to all operators.

435 (3) Upon request of any interested party or the commission, the commission shall conduct
436 a hearing and receive evidence regarding the application. All interested parties may participate in
437 any hearing. If a hearing has been held regarding an application, the order shall be a final order. If

438 no hearing has been requested by the commission or an interested party within 15 days after
439 notice of the application is posted on the commission website in accordance with subdivision (2) of
440 this subsection, the commission may issue a proposed order and provide a copy of the proposed
441 order, together with notice of the right to appeal to the commission and request a hearing, to all
442 interested parties. Any interested party aggrieved by the proposed order may appeal the proposed
443 order to the commission and request a hearing. Notice of appeal and request for hearing shall be
444 made within 15 days of entry of the proposed order. If no appeal and request for hearing have been
445 received within 15 days, the proposed order shall become final. If a hearing is requested, the
446 hearing shall commence within 45 days of issuance of the initial notice. The commission may,
447 upon written request, extend the date for the hearing: *Provided*, That the hearing must be
448 convened within 45 days of the initial notice issued by the commission. The commission shall,
449 within 20 days of the hearing, enter an order authorizing the unit, dismiss the application, or for
450 good cause continue the process.

451 (4) At least 10 days prior to a hearing to consider an application for a horizontal well unit
452 order, the applicant shall file with an independent, third-party attorney, or accountant selected by
453 the chair of the commission a summary of:

454 (A) The prevailing economic terms of the leases within the proposed horizontal well unit
455 relating to the target formation where the applicant is the operator, including the bonus payment
456 per net mineral acre and production royalty rate, including whether the production royalty is
457 subject to reduction for post-production expenses; and

458 (B) The prevailing amounts paid to the executive interest royalty owners, per net mineral
459 acre, for the modification of leases relating to the target formation within the proposed unit where
460 the applicant is the operator to allow the lessee to unitize the leased tract with other tracts for
461 purposes of drilling horizontal wells.

462 (C) The independent, third party selected by the chair of the commission shall review the
463 economic information filed by the applicant to determine its accuracy and, upon completion of his

464 or her review, shall submit a report to the commission specifying the following information for
465 inclusion by the commission in the horizontal well unit order:

466 (i) The weighted average monetary bonus paid, per net mineral acre, to executive interest
467 owners by the applicant in connection with other leases in the same target formation controlled by
468 the applicant within the horizontal well unit, as provided in §22C-9-7a(f)(6) and §22C-9-
469 7a(f)(7)(B)(ii) of this code;

470 (ii) The weighted average production and highest royalty percentage, calculated on a net
471 mineral acre basis, of the leases in the same target formation controlled by the applicant within the
472 horizontal well unit, as provided in §22C-9-7a(f)(6) of this code; and

473 (iii) The highest production royalty percentage in the unit in connection with other leases in
474 the same target formation controlled by the applicant within the horizontal well until and dated
475 within the 24 months preceding the application date, as provided in §22C-9-7a(f)(7)(B)(ii) of this
476 code.

477 (D) The reasonable fees and expenses of the independent, third party selected by the chair
478 of the commission to review the information filed by the applicant and render his or her report to the
479 commission pursuant to this subsection shall be paid by the applicant.

480 (E) When filing information with the independent third party selected by the chair of the
481 commission, the applicant may mark the summary of the prevailing economic terms of leases and
482 amounts paid for lease modifications, and any associated documents or information, as
483 "CONFIDENTIAL" to the extent that the documents contain confidential, commercial information.
484 Any information marked "CONFIDENTIAL" may only be used by the independent third-party
485 selected by the chair of the commission for the purpose of performing his or her review and
486 preparation and submission of his or her report to the commission, and by the court for the purpose
487 of any appeal pursuant to §22C-9-7a(g)(5) of this code. All information marked "CONFIDENTIAL"
488 pursuant to this subdivision shall retain that character in any court of competent jurisdiction on
489 appeal, and the applicant may file a motion with the court seeking to have the documents sealed

490 and withheld from the public record throughout the appeal from a final order of the commission
491 pertaining to a horizontal well unit order. Furthermore, any information marked "CONFIDENTIAL"
492 pursuant to this subdivision is exempt from disclosure under §29B-1-1 *et seq.* of this code.

493 (5) An order establishing a horizontal well drilling unit or dismissing an application shall be
494 a final order. Any interested party aggrieved by the order may seek judicial review pursuant to
495 section eleven of this article. Notice of appeal shall be made in accordance with §22C-9-11 of this
496 code within 15 days of entry of the order. If no appeal has been received within 15 days, the order
497 shall become final.

498 (h) *Unit order does not grant surface rights.* — A horizontal well unit order under this
499 section does not grant or otherwise affect surface use rights: *Provided*, That without limiting the
500 foregoing, in no event shall drilling be initiated upon, or other surface disturbance occur upon, the
501 surface of or above a tract of minerals that was forced into the unit pursuant to this section without
502 the owner's consent.

503 (i) *Commission approval required for certain additional drilling.* — After the filing of an
504 application for a horizontal well unit order, no well may be drilled or completed to or through the
505 target formation of the proposed horizontal well unit unless authorized by the commission.

506 (j) *Contemporaneous permit applications authorized.*— Notwithstanding anything to the
507 contrary in §22-6A-1 *et seq.* of this code, upon the filing of an application for a horizontal well unit
508 order pursuant to this section, an applicant may file an application for a well work permit under
509 §22-6A-1 *et seq.* of this code for any proposed development within the horizontal well unit for
510 which the unit order is sought.

511 (k) *A party may appear in person.* — At any hearing an interested party may represent
512 themselves or be represented by an attorney-at-law.

513 (l) No provision of this section alters the common law of this state regarding the deduction
514 of post-production expenses for the purpose of calculating royalty.

515 (m) *Conflict resolution.* — After the effective date of this section, all applications requesting

516 unitization for horizontal wells shall be filed pursuant to this section. Deep well horizontal unit
517 applications filed before the effective date of this section shall continue to proceed under and be
518 governed by the provisions of section seven of this article. With respect to horizontal well unit
519 applications filed after the effective date of this section, if this section conflicts with section seven
520 of this article, the provisions of this section shall prevail. When considering an application pursuant
521 to this section, rules regarding deep wells promulgated before the effective date of this section
522 shall not apply.

523 (n) *Unknown and unlocatable interest owners.* — Notwithstanding the existence of
524 unknown and unlocatable interest owners, a horizontal well unit order may be entered and
525 development, drilling, and production may occur in the horizontal well unit. Unknown and
526 unlocatable interest owners of oil and gas in place not subject to lease shall be considered to have
527 made an election to receive unitization consideration and lease their interest in the oil and gas
528 mineral estate in the target formation to the applicant pursuant to §22C-9-7a(f)(7)(B) of this code.
529 Unknown and unlocatable interest owners of working interest in property subject to lease before
530 an application for a horizontal well unit is filed pursuant to this section shall be considered to have
531 elected to participate in the drilling in the horizontal well unit on a carried basis pursuant to §22C-9-
532 7a(f)(9) and §22c-9-7a(f)(10) of this code.

533 (o) *Opportunity of surface owners to acquire interests of unknown and unlocatable interest*
534 *owners in oil and gas underlying horizontal well unit.* —

535 (1) When the interests of unknown and unlocatable interest owners' property is included in
536 a horizontal well unit, if the applicant has not filed a proceeding pursuant to §55-12A-1 *et seq.* of
537 this code (entitled Lease and Conveyance of Mineral Interests Owned by Missing or Unknown
538 Owners or Abandoning Owners) with respect to the interest of an unknown and unlocatable
539 interest owner in the horizontal well unit, and taxes on the unknown and unlocatable interest
540 owners' property are not delinquent, then, after a horizontal well unit order is entered by the
541 commission, the applicant shall inform the parties paying taxes on the surface overlying that

542 portion of the oil and gas included in the horizontal well unit that the surface owner(s) (TSO) may
543 acquire the underlying interest of the unknown and unlocatable interest owners in the horizontal
544 well unit in a proceeding pursuant to this subsection and that information about the interest may be
545 obtained from the applicant. Upon written request to the applicant by any TSO, the applicant shall,
546 to the extent practicable under the circumstances, furnish the requesting TSO the following
547 information: *Provided*, That applicant is not required to provide confidential, trade secret, attorney
548 client communications or attorney work product:

549 (A) An identification of the last known owner, and information in the possession of the
550 applicant regarding the last known identity and address of, the interest believed to be held by
551 unknown and unlocatable interest owners.

552 (B) The efforts to locate unknown and unlocatable interest owners.

553 (C) Such other information known to the applicant which might be helpful in identifying or
554 locating the present owners thereof.

555 (D) A copy of the most recent recorded instrument embracing the interest of the unknown
556 and unlocatable interest owners as necessary to show the vesting of title to the minerals in the last
557 record owner of the title to the minerals.

558 (E) The acreage of the tract and the net acreage of the unknown or unlocatable mineral
559 owner or owners in the tract.

560 (F) The amount of money at any point to which the surface owners would be entitled upon
561 written request.

562 (2) When an unknown and unlocatable interest in oil and gas is included in a horizontal well
563 unit an owner of the surface overlying the interest may file a verified petition with respect to all the
564 interests of unknown and unlocatable interest owners included in a horizontal well unit and
565 underlying the surface owner's property. The circuit court in which the majority of the property
566 subject to the petition authorized by this subsection is located has jurisdiction of the proceeding.
567 The petition shall refer to this subsection and identify the oil and gas property subject to the

568 petition. The prayer in any such petition shall be for the court to order, in the case of any defendant
569 or heir, successor, or assign of any defendant who does not appear to claim ownership of the
570 defendant's interest for five years after the date the unit order is filed, a conveyance of the
571 defendants' oil and gas mineral interest under this subsection, subject to the horizontal well unit
572 order and lease terms approved by the commission, to the petitioners.

573 (3) In any proceeding authorized in this subsection the circuit court in which the petition is
574 filed shall consider the property subject to the petition leased to the participating operators in the
575 horizontal well unit on the terms determined by the commission.

576 (4) The person filing a petition under this subsection shall join as defendants to the action
577 all unknown and unlocatable interest owners having record title to the particular oil and gas
578 minerals subject to the petition, and the unknown heirs, successors, and assigns of all such
579 owners not known to be alive. All persons not in being who might have some contingent or future
580 interest therein, and all persons whether in being or not in being, having any interest, present,
581 future or contingent, in the mineral interests subject to the petition, shall be fully bound by the
582 proceedings under this subsection.

583 (5) Any other owner of an overlying surface tract shall be joined as a petitioner in the
584 proceeding. Any other person purporting to be the unknown and unlocatable interest owner, or any
585 heir, successor, or assign of an unknown and unlocatable interest owner, may appear as a matter
586 of right at any time prior to the entry of judgment confirming the deed authorized by this
587 subsection, for the purpose of establishing his or her title to a mineral interest subject to the
588 petition. If the appearing unknown and unlocatable interest owner's claim is established to the
589 satisfaction of the court, the court shall dismiss the action as to the appearing owner's interest
590 without cost, fees, or damages: *Provided*, That if the appearance of the formerly unknown and
591 unlocatable interest owner was as a result of the filing of the petition by the surface owner pursuant
592 to this subsection, then the court may order the petitioner's reasonable proportionate attorneys'
593 fees and costs to be paid to the petitioner out of the amounts payable to the formerly unknown and

594 unlocatable interest owner.

595 (6) The court may appoint a special commissioner at any time to deliver a deed to the
596 petitioners in the form provided herein five years after first production reported to the state occurs
597 or one year after the first publication service of a petition under this subsection is made, whichever
598 is later. The special commissioner shall be an attorney duly admitted to practice before the West
599 Virginia Supreme Court of Appeals and in good standing, but may not be required to give bond. If
600 the petitioners do not agree as to the interest each is to acquire by the deed contemplated herein,
601 or the division of any moneys associated therewith, the court shall equitably determine the
602 interests of the petitioners.

603 (7) In any action under this subsection, if personal service of process is possible, it shall be
604 made as provided by the West Virginia Rules of Civil Procedure. In addition, immediately upon the
605 filing of the petition, the petitioner shall: (1) Publish a Class II legal advertisement in compliance
606 with the provisions of §59-3-1 *et seq.* of this code, and in the county wherein any part of the oil and
607 gas mineral estate described in the petition lies and any immediately adjacent counties; and (2) no
608 later than the first day of publication, file a lis pendens notice in the county clerk's office of the
609 county where the petition is filed and the county wherein the larger part of the oil and gas mineral
610 estate described in the petition lies. Both the advertisement and the lis pendens notice shall set
611 forth: (1) The names of the petitioner and the defendants, as they are known to be by the exercise
612 of reasonable diligence by the petitioner, and their last known addresses; (2) the date and record
613 data of the instrument or other conveyance which immediately created the oil and gas mineral
614 interest; (3) an adequate description of the land as contained therein; (4) the source of title of the
615 last known owners of the oil and gas mineral interests; and (5) a statement that the action is
616 brought for the purpose of authorizing payments from a horizontal well unit, and thereafter, in the
617 case of any defendant or heir, successor, or assign of any defendant who does not appear to claim
618 ownership of the defendant's interest within five years after the date of the court ordering a
619 conveyance of the defendant's oil and gas mineral interest under this subsection, subject to the

620 lease terms determined by the commission and horizontal well unit order, to the owners of the
 621 surface overlying the oil and gas mineral interest. In addition, the petitioner shall send notice by
 622 certified mail, return receipt requested, to the last known address, if there is one, of all named
 623 defendants. In addition, the court may order advertisement elsewhere or by additional means if
 624 there is reason to believe that additional advertisement might result in identifying and locating the
 625 unknown and unlocatable interest owners.

626 (8) Upon a finding by the court of the present ownership of the petitioners of the surface
 627 estate, the court shall order the special commissioner to convey to the proven surface owners,
 628 subject to the horizontal well unit order and lease terms approved by the commission, the mineral
 629 interest specified in the petition authorized herein, by a deed substantially in the form as follows:

630 This deed, made the ____ day of _____, 20____, between
 631 _____, special commissioner, grantor and
 632 _____, grantee,

633 Witnesseth, that whereas, grantor, in pursuance of the authority vested in him or her by an
 634 order of the circuit court of _____ county, West Virginia, entered on the ____ day of
 635 _____, 20____, in civil action no. _____ therein pending, to convey the mineral
 636 interest more particularly described below to the grantee,

637 Now, therefore, this deed witnesseth: That grantor grants unto grantee, subject to the
 638 provisions of the horizontal well unit order of the Oil and Gas Conservation Commission in
 639 _____ and lease terms provided therein, and further subject to all other liens and
 640 encumbrances of record, that certain oil and gas mineral interest in _____ County,
 641 West Virginia, more particularly described in the cited order of the circuit court as follows: (here
 642 insert the description in the order).

643 Witness the following signature.
 644 _____
 645 Special Commissioner

646 (9) Prior to the delivery of the special commissioner's deed, no deed from owners of the
647 surface to another party shall sever any benefits from this subsection from ownership of the
648 surface. A deed doing so is void and unenforceable.

649 (10) After the date of the special commissioner's deed authorized herein, the surface
650 owner grantee is entitled to receive all proceeds due and payable under a horizontal well unit order
651 attributable to the mineral interests specified in the special commissioner's deed accruing before
652 and after the date of the special commissioner's deed.

653 (11) The applicant may not be joined as a party, but shall be served with copies of all
654 pleadings and other papers filed in the proceeding, and may intervene at any time. A surface
655 owner must provide a copy of the recorded special commissioner deed to the applicant and any
656 other necessary information reasonably requested by the applicant before the applicant or any
657 other operator has an obligation to provide payment to the surface owner.

658 (12) Payment by the applicant shall relieve the participating operators of all liability
659 whatsoever that the participating operators may have had to any unknown and unlocatable
660 interest owners, their heirs, successors, and assigns with respect to the payment and all
661 operations in the horizontal well unit, all operations therein and all production from the operations.

662 (13) If a surface owner does not file a petition pursuant to this subsection within six years of
663 the date notice is given to a TSO as provided herein, amounts payable with respect to the
664 unknown and unlocatable interest owners' interests included in a horizontal well unit shall be paid
665 to the Oil and Gas Reclamation Fund established pursuant to §22-6-29 of this code, and the
666 payment shall relieve the participating operators of all liability of the participating operators with
667 respect to the horizontal well unit and all operations therein and production therefrom to any
668 unknown and unlocatable interest owners, their heirs, successors, and assigns and to any owners
669 of surface overlying the unknown and unlocatable interest owners' interest, their heirs,
670 successors, and assigns, with respect to the payment.

671 (14) After the recording of the special commissioner's deed, no action may be brought by

672 any unknown and unlocatable interest owner or any heir, successor, or assign thereof either to
673 recover any past or future proceeds accrued or to be accrued from the property subject to the
674 deed, or to recover any right, title or interest in and to the mineral interest subject to the deed.

675 (15) If any unknown and unlocatable interest owner or heir, successor, or assign thereof
676 appears in the proceeding in circuit court, the unknown and unlocatable interest owner, if he or she
677 establishes his or her claim to the satisfaction of the circuit court, shall only be entitled to receive
678 amounts payable in connection with the horizontal well unit or production therefrom after the date
679 of appearance in the proceeding. Further, the participating operators and the petitioning surface
680 owners shall have no liability to the unknown and unlocatable interest owner or their heirs,
681 successors, or assigns for any amount paid with respect to the unknown and unlocatable interest
682 or the horizontal well unit or production therefrom paid in accordance with this subsection.

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

NOTE: The purpose of this bill is to include a mineral owner or investor on the Oil and Gas Conservation Committee and to clarify what constitutes a reasonable voluntary pooling offer.

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