

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

Senate Bill 694

BY SENATORS TARR AND NELSON

[Passed March 09, 2022; in effect 90 days from passage]

1 AN ACT to amend and reenact §22C-9-1, §22C-9-2, §22C-9-3, §22C-9-4, and §22C-9-5 of the
2 Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a
3 new section, designated §22C-9-7a, all relating to oil and gas conservation; expanding the
4 membership of the Oil and Gas Conservation Commission; expanding the jurisdiction of
5 the Oil and Gas Conservation Commission; expanding duties of the commission to include
6 unitization of shallow and deep horizontal wells; amending and providing further
7 declarations of public policy and legislative findings; defining terms; providing for
8 conditions of applicability of the statute; establishing a horizontal well unit application
9 process; requiring certain conditions be met prior to filing and approval of an application
10 including defining percentages of interests of landowners and operators to establish unit
11 control; requiring good-faith negotiations by operators; providing for hearings on
12 applications; setting out factors to be considered in the hearing and documents to be filed
13 before a hearing; providing for notice and publication at various stages of the process;
14 defining interested parties and their involvement in the hearing processes; providing for
15 standards of review and factors to be considered by the commission; providing for
16 maximum unit sizes with limited exceptions; providing for an independent third-party
17 review of certain information and reporting of the same to the commission; providing for
18 confidentiality of certain information; setting forth time frames and time limits; providing for
19 a horizontal well unit orders and required contents of the orders; defining order terms;
20 providing limitations on surface usage above non-consenting mineral owners; providing
21 for payment terms for leased mineral interest owners without unitization clauses; providing
22 for payment term options for non-leased mineral interest owners; providing payment term
23 options for non-consenting operators; allowing for modifications of the horizontal well unit
24 order under specified conditions; providing for compensation for unknown and unlocatable
25 mineral interest owners and defining the same; establishing a process using the courts for
26 surface owners to acquire the mineral interests and funds held by the operator of unknown

27 or unlocatable interest owners after a specified time period, notices, and court
28 proceedings; providing applicability of the existing and new statutory sections for deep
29 wells based on the effective date; providing a severability clause; and establishing and
30 modifying rule-making authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. OIL AND GAS CONSERVATION.

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

1 (a) It is hereby declared to be the public policy of this state and in the public interest to:
2 (1) Foster, encourage, and promote exploration for and development, production,
3 utilization, and conservation of oil and gas resources;
4 (2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas
5 and their constituents;
6 (3) Encourage the maximum recovery of oil and gas;
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, unit or unconventional reservoir of oil or
10 gas; and
11 (5) Safeguard, protect, and enforce the property rights and interests of surface owners
12 and the owners and agricultural users of other interests in the land.
13 (b) The Legislature hereby determines and finds that oil and natural gas found in West
14 Virginia in shallow sands or strata have been produced continuously for more than 100 years;
15 that oil and gas deposits in shallow sands or strata have geological and other characteristics
16 different than those found in deeper formations and unconventional reservoirs; and that in order
17 to encourage the maximum recovery of oil and gas from all productive formations in this state, it
18 is not in the public interest, with the exception of shallow wells utilized in a secondary recovery
19 program, to enact statutory provisions relating to the exploration for or production of oil and gas

20 from vertical shallow wells, but that it is in the public interest to enact statutory provisions
21 establishing regulatory procedures and principles to be applied to the exploration for or production
22 of oil and gas from deep wells, as defined in section two and oil and gas produced from horizontal
23 wells.

§22C-9-2. Definitions.

1 (a) As used in this article:

2 (1) "Commission" means the Oil and Gas Conservation Commission and "commissioner"
3 means the Oil and Gas Conservation Commissioner as provided for in §22C-9-4 of this code;

4 (2) "Correlative rights" means the reasonable opportunity of each person entitled thereto
5 to recover and receive without waste the oil and gas in and under his or her tract or tracts, or the
6 equivalent thereof;

7 (3) "Deep well" means any well, other than a shallow well, deep horizontal well, or a
8 coalbed methane well, drilled to a formation below the top of the uppermost member of the
9 "Onondaga Group";

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

12 (5) "Drilling unit" or "unit" means the acreage on which one or more wells may be drilled;

13 (6) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil as that
14 term is defined in this section;

15 (7) "Horizontal drilling" means a method of drilling a well for the production of oil and gas
16 that is intended to maximize the length of wellbore that is exposed to the formation and in which
17 the wellbore is initially vertical but is eventually curved to become horizontal, or nearly horizontal,
18 to be in a particular geologic formation;

19 (8) "Horizontal well" means an oil and gas well, other than a coalbed methane well, where
20 the wellbore is initially drilled using a horizontal drilling method. A horizontal well may include
21 multiple horizontal side laterals drilled into the same formation. A horizontal well may have

22 completions into multiple formations from the same well. Multiple horizontal wells may be drilled
23 from the same well pad. A horizontal well may be either a shallow well or a deep well so long as
24 it is initially drilled using a horizontal drilling method;

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

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

31 (11) "Natural gas liquids" means the liquid hydrocarbons removed from the natural gas
32 through the process of fractionation or condensation.

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

36 (13) "Operator" means any owner of the right to develop, operate, and produce oil and gas
37 from a pool and to appropriate the oil and gas produced therefrom, either for that person or for
38 that person and others; in the event that there is no oil and gas lease in existence with respect to
39 the tract in question, for all sections in this article other than section 7a, the owner of the oil and
40 gas rights therein is the "operator" to the extent of seven eighths of the oil and gas in that portion
41 of the pool underlying the tract owned by the owner, and as "royalty owner" as to one-eighth
42 interest in the oil and gas; and in the event the oil is owned separately from the gas, the owner of
43 the substance being produced or sought to be produced from the pool or the unit is the "operator"
44 as to that pool or acreage included in a unit; the term operator includes owners of working interests
45 in a lease but does not include owners whose interest is limited to working interests in a wellbore
46 only, overriding royalties, or net profits interests;

47 (14) "Person" means any natural person, corporation, limited liability company,
48 partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representative
49 of any kind, and includes any government or any political subdivision or any agency thereof;

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

57 (16) "Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to the
58 extent that the owner is not an operator as that term is defined in this section;

59 (17) "Shallow well" means any well other than a shallow horizontal well or a coalbed
60 methane well, drilled no deeper than 100 feet below the top of the Onondaga Group: *Provided*,
61 That in no event may the Onondaga Group formation or any formation below the Onondaga Group
62 be produced, perforated or stimulated in any manner;

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

68 (19) "Vertical well" means an oil and gas well that does not utilize horizontal drilling
69 methods. A vertical well may be either a shallow well or a deep well so long as it is initially drilled
70 not using a horizontal drilling method;

71 (20) "Waste" means and includes:

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

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

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

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

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

87 (c) A person with an interest in oil and gas in a unit formed under this article who does not
88 consent to the unit shall have no liability in connection with well site preparation, drilling,
89 completion, maintenance, reclamation, plugging, and other operations with respect to wells drilled
90 in the unit: *Provided*, That this subsection shall not apply to any operator in a horizontal well unit,
91 including but not limited to any non-consenting party who elects to participate in the horizontal
92 well unit on a carried basis pursuant to §22C-9-7a of this code.

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

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

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

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

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

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

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

16 (C) Drilled laterally as a horizontal well at any depth;

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

19 (4) Free gas rights; or

20 (5) Coalbed methane wells.

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

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

25 (2) Fix prices of oil or gas.

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

31 agent of a lessor, an opportunity to qualify under §22-6-26 of this code to continue operation of
32 the well.

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

1 (a) The “oil and gas conservation commission” is composed of seven members. The
2 director of the Department of Environmental Protection, and the Chief of the Office of Oil and Gas
3 are members of the commission ex officio. The remaining five members of the commission shall
4 be appointed by the Governor, by and with the advice and consent of the Senate, and may not
5 be employees of the Department of Environmental Protection. Of the five members appointed by
6 the Governor, one shall be an independent producer and at least one shall be a public member
7 not engaged in an activity under the jurisdiction of the Public Service Commission or the Federal
8 Energy Regulatory Commission. The third appointee shall possess a degree from an accredited
9 college or university in engineering or geology and must be a registered professional engineer
10 with particular knowledge and experience in the oil and gas industry and shall serve as
11 commissioner and as chair of the commission. The fourth appointee shall be an individual who
12 has substantial experience in the agricultural industry, who is engaged in the business of farming
13 in this state, and who is not and never has been, either himself or herself nor through a member
14 of his or her immediate family, engaged in the business of oil and gas other than as a royalty
15 recipient. When this member is to be appointed, the Governor shall request from the primary
16 organization representing the agriculture industry in this state a list of three nominees for the
17 member to be appointed. The fifth appointee shall be a resident owner of minerals in this state
18 who is not and never has been affiliated with an operator of oil or gas wells. The term “affiliated”,
19 as used in the immediately preceding sentence, means someone who directly, or indirectly
20 through one or more intermediaries, controls, or is controlled by, or is under common control with

21 an operator of oil and gas wells by virtue of the power to direct or cause the direction of the
22 management and policies of that operator, whether through the ownership of voting shares, by
23 contract or otherwise.

24 (b) The members of the commission appointed by the Governor shall be appointed for
25 overlapping terms of six years each, except that any initial appointments shall be for terms of two,
26 four, or six years to achieve staggered ends of terms. Each member appointed by the Governor
27 shall serve until the members successor has been appointed and qualified. Members may be
28 appointed by the Governor to serve any number of terms. The members of the commission
29 appointed by the Governor, before performing any duty hereunder, shall take and subscribe to
30 the oath required by section 5, article IV of the Constitution of West Virginia. Vacancies in the
31 membership appointed by the Governor shall be filled by appointment by the Governor for the
32 unexpired term of the member whose office is vacant and the appointment shall be made by the
33 Governor within 60 days of the occurrence of such vacancy. Any member appointed by the
34 Governor may be removed by the Governor in case of incompetency, neglect of duty, gross
35 immorality, or malfeasance in office. A commission member's appointment is terminated as a
36 matter of law if that member fails to attend three consecutive meetings. The Governor shall
37 appoint a replacement within 30 days of the termination.

38 (c) The commission shall meet at such times and places as are designated by the chair.
39 The chair may call a meeting of the commission at any time, and shall call a meeting of the
40 commission upon the written request of two members or upon the written request of the oil and
41 gas conservation commissioner or the Chief of the Office of Oil and Gas. Notification of each
42 meeting shall be given in writing to each member by the chair at least 14 calendar days in advance
43 of the meeting. Four members of the commission, at least two of whom are appointed members,
44 constitute a quorum for the transaction of any business.

45 (d) The commission shall pay each member the same compensation as is paid to
46 members of the Legislature for their interim duties as recommended by the citizens legislative

47 compensation commission and authorized by law for each day or portion thereof engaged in the
48 discharge of official duties and shall reimburse each member for actual and necessary expenses
49 incurred in the discharge of official duties.

50 (e) The commission is hereby empowered and it is the commission's duty to execute and
51 carry out, administer, and enforce the provisions of this article in the manner provided herein.
52 Subject to the provisions of §22C-9-3 of this code, the commission has jurisdiction and authority
53 over all persons and property necessary therefor. The commission is authorized to make such
54 investigation of records and facilities as the commission considers proper. In the event of a conflict
55 between the duty to prevent waste and the duty to protect correlative rights, the commission's
56 duty to prevent waste is paramount.

57 (f) Without limiting the commission's general authority, the commission has specific
58 authority to:

59 (1) Regulate the spacing of deep wells;

60 (2) Issue horizontal well unit orders;

61 (3) Make and enforce reasonable rules and orders reasonably necessary to prevent
62 waste, protect correlative rights, govern the practice and procedure before the commission and
63 otherwise administer the provisions of this article;

64 (4) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the
65 production of any books, records, maps, charts, diagrams, and other pertinent documents, and
66 administer oaths and affirmations to the witnesses, whenever, in the judgment of the commission,
67 it is necessary to do so for the effective discharge of the commission's duties under the provisions
68 of this article; and

69 (5) Serve as technical advisor regarding oil and gas to the Legislature, its members and
70 committees, to the Chief of Office of Oil and Gas, to the Department of Environmental Protection
71 and to any other agency of state government having responsibility related to the oil and gas
72 industry.

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

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

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

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

78 (1) Propose legislative rules;

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

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

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

85 (j) The commission is hereby empowered and it is the commission's duty to execute and
86 carry out, administer, and enforce the relevant provisions of §37B-1-1 *et seq.* of this code
87 concerning mineral development by cotenants for all wells at all depths and §22-11B-1 *et seq.* of
88 this code concerning underground carbon dioxide sequestration storage facilities at all depths.
89 The commission has jurisdiction and authority over all persons and property necessary therefor.
90 The commission is authorized to make such investigation of records and facilities as the
91 commission deems proper.

§22C-9-5. Rules; notice requirements.

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

5 (b) Notwithstanding the provisions of §29A-7-2 of this code, any notice required under the
6 provisions of this article shall be given at the direction of the commission by personal or

7 substituted service or by certified United States mail, addressed, postage prepaid, to the last-
8 known mailing address, if any, of the person being served, with the direction that the same be
9 delivered to addressee only, return receipt requested. In the case of providing notice upon the
10 filing of an application with the commission, the commission shall, within 14 days of the filing of
11 an application, submit for publication notice of the application notice to be published as a Class II
12 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the
13 publication area for the publication shall be the county or counties wherein any land which may
14 be affected by the order is situate.

15 In addition, the commission shall mail a copy of the notice to all other persons who have
16 specified to the commission an address to which all such notices may be mailed. The notice shall
17 issue in the name of the state, shall be signed by the one of the commission members, shall
18 specify the style and number of the proceeding, the time and place of any hearing and shall briefly
19 state the purpose of the proceeding. Each notice of a hearing must be provided no fewer than 20
20 days preceding the hearing date. Personal or substituted service and proof thereof may be made
21 by an officer authorized to serve process or by an agent of the commission in the same manner
22 as is now provided by the West Virginia Rules of Civil Procedure for service of process in civil
23 actions in the various courts of this state.

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

§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
5 and 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
10 and 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
13 of 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
17 and 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,
19 as 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
23 and gas wells, as defined in §22-6-1 *et seq.* or §22-6A-1 *et seq.* of this code, in West Virginia that
24 are 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
35 oil 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
41 the unit included in the horizontal well unit shall, when produced, be considered for all purposes
42 to have been actually produced from the tract by an oil and gas well drilled, completed and
43 producing 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;
52 (B) overriding royalties; (C) non-participating royalty interests; (D) non-executive mineral interests;
53 or (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
67 be 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
75 to 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-
82 party costs and expenses charged to or incurred by applicant and/or its affiliates other than costs
83 and expenses charged to or incurred by applicant and/or its affiliates after the first liquid trading
84 point 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,
87 the commission may unitize tracts, or portions of tracts, in a horizontal well unit established under
88 this 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
95 or unitize the acreage to be included in the horizontal well unit from executory interest royalty
96 owners of 75 percent or more of the net acreage in the target formation proposed to be included
97 in the 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
108 the right, consent or agreement to develop the acreage to be included in the horizontal well unit
109 from executory interest royalty owners of 55 percent or more of the net acreage in the target
110 formation proposed to be included in the horizontal well unit, as provided and determined in
111 subdivision (3) 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
118 well 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
120 in a proposed horizontal well unit.

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

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

131 proposed horizontal well unit, the identity and rights of royalty owners and operators shall be
132 determined as of the date on which the application for a horizontal well unit is filed.

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

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

140 (d) *Application requirements.* —

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

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

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

148 (C) A plat that depicts the boundaries and acreage of the proposed horizontal well unit,
149 the tracts in the horizontal well unit, the surface tax map and parcel numbers of the surface tracts
150 above the tracts to be included in the horizontal well unit in accordance with county assessor's
151 records, and the district(s) and county or counties where the proposed horizontal well unit is
152 located. The plat shall show the surface location of the vertical borehole of the horizontal well(s)
153 to be included in the proposed horizontal well unit determined by survey, the courses, and
154 distances of the surface location from two permanent points or landmarks on those tracts, the
155 deviation from vertical, and also the proposed horizontal lateral portion of each proposed
156 horizontal well to be included in the proposed horizontal well unit. The plat shall show the

157 proposed horizontal well unit name, the proposed horizontal well names, and if known, the well
158 number of each horizontal well to be drilled in the horizontal well unit. The plat shall also show
159 the location of each permitted, active oil and gas well located in the horizontal well unit, and the
160 name of the operator of the well as shown by the records of the Department of Environmental
161 Protection, Office of Oil and Gas: *Provided*, That the applicant is not required to depict or identify
162 any abandoned or plugged well that is not required to be depicted or identified on the plat required
163 by §22-6A-5(a)(6) of this code;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

200 (M) A proposed joint operating agreement that will govern the contractual relationship
201 between the applicant and any unleased royalty owners following an election by the executive
202 interest owners to participate in the drilling in the horizontal well unit on a carried basis under
203 §22C-9-7a(f)(9) of this code.

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

207 (e) *Standard of review.* —

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

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

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

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

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

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

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

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

227 (H) Correlative rights;

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

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

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

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

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

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

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

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

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

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

253 (C) If there are vertical wells completed in the target formation in the horizontal well unit,
254 the area where a horizontal well may not be completed;

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

256 (E) Any unitization consideration due.

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

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

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

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

270 (6) With respect to royalty owners of leased tracts who have not consented to pooling or
271 unitization, the commission shall require that unitization consideration be paid to executive
272 interest royalty owners in an amount equal to 25 percent of the weighted average monetary bonus
273 amount on a net mineral acre basis and a production royalty percentage equal to 80 percent of
274 the weighted average production royalty percentage rounded to the nearest one tenth of one
275 percent paid to other executive interest owners of leased tracts in the unit in the same target
276 formation: *Provided*, That the weighted average calculation shall not include any fixed amounts
277 paid to royalty owners or payments made on any basis other than a net mineral acre basis.
278 Further, the royalty percentage cannot be less than the production royalty percentage in the
279 existing lease or 12 and one-half percent for a flat rate lease. The applicant, all royalty owners,
280 and owners of leasehold, working interest, overriding royalty interest and other interests in the oil
281 and gas are bound by the order and the remaining lease terms, including other terms related to
282 the payment of royalties. Unitization consideration shall be paid by the participating operators,
283 including the applicant, to the extent of their interest in the horizontal well unit.

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

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

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

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

304 (ii) A production royalty for the natural gas, oil and natural gas liquids produced and sold
305 equal to the highest production royalty percentage in connection with other leases in the same
306 target formation controlled by the applicant within the horizontal well unit and dated within the 24
307 months preceding the application date. Executive interest owners may make a one-time election
308 prior to the issuance of a horizontal well unit order by the commission to be paid production
309 royalties for natural gas based on either: (a) An index price in effect at the beginning of each
310 calendar month, as published in an independent, third-party publication reflecting arm's-length,

311 market-based sales, for natural gas applicable to the first interstate pipeline into which the natural
312 gas is delivered, and shall not be reduced by post-production expenses; or (b) the weighted
313 average sales price.

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

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

332 (D) Owners of oil and gas interests as to which there is no lease in existence who do not
333 elect (A), (B) or (C) of this subdivision shall be considered to have made an election to receive
334 unitization consideration and lease their interest in the oil and gas mineral estate in the target
335 formation to the applicant pursuant to §22C-9-7a(f)(7)(B) of this code.

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

339 (9) An operator may elect to consent to and participate in a horizontal well unit after an
340 application is filed. Subject to subdivision (7) of this subsection, when the commission issues a
341 horizontal well unit order pursuant to this section, the commission shall consider each
342 nonconsenting operator, who does not elect to participate in the risk and cost of drilling in the
343 horizontal well unit through a voluntary agreement with the applicant, to participate in the drilling
344 in the horizontal well unit on a carried basis on terms and conditions which, if not agreed upon,
345 shall be consistent with the terms and conditions contained in the proposed joint operating
346 agreement submitted by the applicant in accordance with §22C-9-7a(d)(1)(M) of this code:
347 *Provided*, That the commission determines that the proposed terms and conditions of the joint
348 operating agreement are consistent with terms typically found in other similarly situated, arm's-
349 length joint operating agreements within the horizontal well unit that were entered into by the
350 applicant for the same target formation prior to the filing of the application for the horizontal well
351 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
357 from the tracts or portions thereof subject to the horizontal well unit order accruing to the interest
358 of the non-consenting operator, exclusive of any unitization consideration, and royalty and
359 overriding royalty reserved in any leases, assignments thereof or agreements relating thereto, of
360 the tracts or portions of the tracts, until the net revenue from the non-consenting operator's share
361 of the production, exclusive of the unitization consideration, royalty and overriding royalty, equals

362 double the share of the costs payable by or charged to the interest of the non-consenting operator,
363 as set forth in the accounting procedures included within the joint operating agreement submitted
364 by the 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
367 request to modify the horizontal well unit with the commission within 60 days from the later of:
368 Completion of all drilling activities within the horizontal well unit; or the date that is five years after
369 the most 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
383 unit order containing the commission's recalculation of the allocation of production from the tracts
384 in 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

413 oil and gas to be included in the horizontal well unit; operators of all target formation acreage in
414 the horizontal well unit; and operators of all oil and gas wells located in the unit that have been
415 drilled 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
427 a 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
429 a 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,
433 so that the plat and notice of the application are readily accessible. Timely publication on the
434 website 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.
438 If 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)
440 of this subsection, the commission may issue a proposed order and provide a copy of the
441 proposed order, together with notice of the right to appeal to the commission and request a
442 hearing, to all interested parties. Any interested party aggrieved by the proposed order may
443 appeal the proposed order to the commission and request a hearing. Notice of appeal and request
444 for hearing shall be made within 15 days of entry of the proposed order. If no appeal and request
445 for hearing have been received within 15 days, the proposed order shall become final. If a hearing
446 is requested, the hearing shall commence within 45 days of issuance of the initial notice. The
447 commission may, upon written request, extend the date for the hearing: *Provided*, That the
448 hearing must be convened within 45 days of the initial notice issued by the commission. The
449 commission shall, within 20 days of the hearing, enter an order authorizing the unit, dismiss the
450 application, or for 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
468 by 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
472 the 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
474 in 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
478 chair of the commission to review the information filed by the applicant and render his or her report
479 to the 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
487 purpose of any appeal pursuant to §22C-9-7a(g)(5) of this code. All information marked
488 "CONFIDENTIAL" pursuant to this subdivision shall retain that character in any court of competent
489 jurisdiction on appeal, and the applicant may file a motion with the court seeking to have the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

594 attorneys' fees and costs to be paid to the petitioner out of the amounts payable to the formerly
595 unknown and unlocatable interest owner.

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

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

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

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

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

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

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

644 Witness the following signature.

645 _____

646 Special Commissioner

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

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

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

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

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

672 (14) After the recording of the special commissioner's deed, no action may be brought by
673 any unknown and unlocatable interest owner or any heir, successor, or assign thereof either to
674 recover any past or future proceeds accrued or to be accrued from the property subject to the
675 deed, or to recover any right, title or interest in and to the mineral interest subject to the deed.

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, Senate Committee

.....
Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2022.

.....
Governor