

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

INTRODUCED

LLS NO. 23-0539.01 Jennifer Berman x3286

SENATE BILL 23-201

SENATE SPONSORSHIP

Jaquez Lewis,

HOUSE SPONSORSHIP

Boesenecker and Weissman,

Senate Committees

Agriculture & Natural Resources

House Committees

A BILL FOR AN ACT

101 **CONCERNING PROTECTIONS FOR PROPERTY OWNERS IN THE POOLING**
102 **OF OIL AND GAS MINERALS ON MULTIPLE SEPARATELY OWNED**
103 **TRACTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The Colorado oil and gas conservation commission (commission) may enter an order combining the ownership interests of 2 or more owners of mineral interests located on separate tracts (drilling unit) to authorize the drilling of an oil and gas well on the drilling unit (pooling order). Under certain circumstances and after notice and a hearing, the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.*

commission may enter a pooling order for a drilling unit, which order includes an owner of mineral interests that does not consent to the drilling for oil and gas on the mineral owner's tract (forced pooling order).

The bill changes the commission's process for entering a forced pooling order by:

- Requiring an applicant for a forced pooling order to prove that owners of more than 45% of the mineral interests to be pooled consent to pooling by submitting to the commission a third-party expert's title report or title opinion;
- Requiring the commission to determine if the minerals in the drilling unit may be extracted without disturbing a nonconsenting mineral interest owner's mineral rights and, if so, requiring the commission to include in the forced pooling order a condition that the nonconsenting mineral interest owner's mineral rights not be disturbed. Alternatively, if the commission determines that the minerals cannot be extracted without disturbing the nonconsenting mineral interest owner's mineral rights, the commission is required to make explicit findings of that determination.
- Requiring that a forced pooling order be issued in a manner that protects and minimizes adverse impacts on public health, safety, and welfare; the environment; and wildlife resources and that protects against adverse environmental impacts on any air, water, soil, or biological resources resulting from oil and gas operations;
- Reducing the amount of production costs that consenting mineral interest owners in a drilling unit may recover from a nonconsenting mineral interest owner in the drilling unit; and
- Prohibiting the commission from entering a forced pooling order that includes an unleased, nonconsenting mineral owner that is a local government or a school district, including a charter school or an institute charter school.

Additionally, the bill requires that the commission issue a pooling order before any minerals that are subject to the pooling order are extracted or any well is drilled to access the minerals. The bill also authorizes a nonconsenting owner to audit or cause to be audited certain records of the oil and gas operator no more frequently than every 3 years but before any costs are recovered from the drilling unit.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1. Legislative declaration.** (1) The general assembly

1 finds and declares that:

2 (a) Statutory pooling, or "forced pooling", is a process by which
3 mineral interests that belong to mineral owners that did not sign a
4 voluntary lease for the extraction of their minerals are pooled with all
5 other mineral interests within a drilling and spacing unit for the
6 consolidated development and allocation of revenue;

7 (b) In order to apply for a forced pooling application with the
8 Colorado oil and gas conservation commission under current law, an oil
9 and gas operator must:

10 (I) Obtain voluntary agreements with mineral interest owners that
11 own at least forty-five percent of the mineral interests to be pooled; and

12 (II) Exercise diligence in trying to locate mineral interest owners
13 and tender a reasonable, good faith offer to any nonconsenting mineral
14 interest owner that has not previously indicated an interest in entering into
15 a voluntary lease;

16 (c) Forced pooling was first established in 1951, as part of the
17 originally enacted "Colorado Oil and Gas Act", as a way to minimize
18 inefficiencies in mineral extraction and to protect the correlative rights of
19 neighboring mineral interest owners;

20 (d) Mineral extraction has changed considerably in some
21 oil-and-gas-producing basins since the establishment of the "Colorado Oil
22 and Gas Act". Rather than drilling into a transitory subsurface pool of oil
23 or gas that does not stay within established property lines, modern
24 hydraulic fracturing and horizontal drilling can extract minerals that are
25 tightly embedded in rock formations that may only be extracted by
26 fracturing the rock with high-pressure liquids and capturing the liquid or
27 gaseous minerals as they escape from their formerly stationary positions.

1 Unlike accessing a transitory pool of oil or gas through a vertical
2 wellbore, hydraulic fracturing provides little opportunity for minerals to
3 migrate or be mistakenly accessed.

4 (e) The original reasons for the establishment of forced pooling,
5 therefore, are not as valid as they were in 1951 when it was first
6 established. By establishing particular drilling and spacing units and
7 engineering wellbores to avoid certain areas, an oil and gas operator is
8 now able to extract targeted minerals without disturbing other minerals.

9 (f) In addition, local governments and school districts may have
10 acquired mineral interests through the expenditure of public money and
11 must:

12 (I) Be responsive to their constituents and residents for the
13 responsible disposition of the mineral interests; and

14 (II) Comply with constitutional and statutory obligations regarding
15 public property and finances; and

16 (g) Therefore, it is the policy of the general assembly, and is in the
17 public interest, to allow:

18 (I) An individual mineral interest owner more control over
19 whether to lease the mineral interest owner's minerals and, if leased,
20 under what terms;

21 (II) A local government or school district to decide whether it is
22 in the best interests of its constituents and residents to lease minerals and,
23 if leased, under what terms; and

24 (III) Any mineral interest owner to have bargaining power that is
25 similar to that of the oil and gas operator when negotiating a voluntary
26 mineral lease.

27 **SECTION 2.** In Colorado Revised Statutes, 34-60-103, **add**

1 (10.3) as follows:

2 **34-60-103. Definitions.** As used in this article 60, unless the
3 context otherwise requires:

4 (10.3) (a) "SCHOOL DISTRICT" MEANS A SCHOOL DISTRICT
5 ORGANIZED PURSUANT TO ARTICLE 30 OF TITLE 22.

6 (b) "SCHOOL DISTRICT" INCLUDES:

7 (I) A CHARTER SCHOOL, AS DEFINED IN SECTION 22-30.5-103 (2);

8 (II) AN INSTITUTE CHARTER SCHOOL, AS DEFINED IN SECTION
9 22-30.5-502 (6); AND

10 (III) A SCHOOL OPERATED BY A TRIBAL GOVERNMENT.

11 **SECTION 3.** In Colorado Revised Statutes, 34-60-116, **amend**
12 (6)(b), (7)(a)(I), (7)(b) introductory portion, (7)(b)(II), and (8); and **add**
13 (7)(a.5), (7)(e), and (7)(f) as follows:

14 **34-60-116. Drilling units - pooling interests - audit.**

15 (6) (b) (I) In the absence of voluntary pooling, the commission, upon the
16 application of a person who SUBMITS TO THE COMMISSION A TITLE REPORT
17 OR TITLE OPINION FROM A THIRD-PARTY EXPERT CONCLUDING THAT THE
18 PERSON owns, or has secured the consent of the owners of, more than
19 forty-five percent of the mineral interests to be pooled, may enter an order
20 pooling all interests in the drilling unit for the development and operation
21 of the drilling unit. Mineral interests that are owned by a person who
22 cannot be located through reasonable diligence are excluded from the
23 calculation.

24 (I.5) (A) IF THE DRILLING UNIT INCLUDES MINERAL INTERESTS OF
25 A NONCONSENTING MINERAL INTEREST OWNER, THE COMMISSION SHALL
26 DETERMINE IF THE MINERALS IN THE DRILLING UNIT MAY BE EXTRACTED
27 WITHOUT DISTURBING THE NONCONSENTING MINERAL INTEREST OWNER'S

1 MINERAL RIGHTS AND, IF SO, SHALL INCLUDE IN THE POOLING ORDER A
2 CONDITION THAT THE NONCONSENTING MINERAL INTEREST OWNER'S
3 MINERAL RIGHTS NOT BE DISTURBED.

4 (B) IF THE COMMISSION DETERMINES THAT THE MINERALS IN THE
5 DRILLING UNIT MAY ONLY BE EXTRACTED BY DISTURBING THE
6 NONCONSENTING MINERAL INTEREST OWNER'S MINERAL RIGHTS, THE
7 COMMISSION SHALL MAKE FINDINGS OF THAT DETERMINATION ON THE
8 RECORD AND SHALL INDICATE THE EVIDENCE UPON WHICH THE
9 COMMISSION RELIES FOR THAT DETERMINATION. THE OPERATOR HAS THE
10 BURDEN TO DEMONSTRATE TO THE COMMISSION'S SATISFACTION THAT THE
11 OPERATOR CAN ONLY EXTRACT THE MINERALS IN THE DRILLING UNIT BY
12 DISTURBING THE NONCONSENTING MINERAL INTEREST OWNER'S MINERAL
13 RIGHTS.

14 (C) THIS SUBSECTION (6)(b)(I.5) DOES NOT APPLY TO A
15 NONCONSENTING MINERAL INTEREST OWNER THAT IS A LOCAL
16 GOVERNMENT OR A SCHOOL DISTRICT.

17 (II) The pooling order:

18 (A) Shall be made after notice and a hearing and BEFORE
19 EXTRACTION OF THE MINERALS SUBJECT TO THE ORDER;

20 (B) IS SUBJECT TO SECTION 34-60-106 (2.5); AND

21 (C) Must be upon terms and conditions that are just and
22 reasonable and that afford to the owner of each tract or interest in the
23 drilling unit the opportunity to recover or receive, without unnecessary
24 expense, a just and equitable share.

25 (7) (a) Each pooling order must:

26 (I) CONSISTENT WITH SUBSECTION (7)(a.5) OF THIS SECTION, make
27 provision for the drilling of one or more wells on the drilling unit, ~~if not~~

1 ~~already drilled~~, for the operation of the wells, and for the payment of the
2 reasonable actual cost of the wells, including a reasonable charge for
3 supervision and storage. Except as provided in subsection (7)(c) of this
4 section, as to each nonconsenting owner who refuses to agree to bear a
5 proportionate share of the costs and risks of drilling and operating the
6 wells, the order must provide for reimbursement to the consenting owners
7 who pay the costs of the nonconsenting owner's proportionate share of the
8 costs and risks out of, and only out of, production from the unit
9 representing the NONCONSENTING owner's interest, excluding royalty or
10 other interest not obligated to pay any part of the cost ~~thereof~~ OF
11 PRODUCTION FROM THE UNIT, if and to the extent that the royalty is
12 consistent with the lease terms prevailing in the area and is not designed
13 to avoid the recovery of costs provided for in subsection (7)(b) of this
14 section. In the event of any dispute as to the costs, the commission shall
15 determine the proper costs as specified in subsection (7)(b) of this
16 section.

17 (a.5) THE COMMISSION SHALL ISSUE A POOLING ORDER BEFORE
18 EITHER OF THE FOLLOWING ACTIONS OCCUR WITH RESPECT TO THE
19 MINERALS THAT ARE THE SUBJECT OF THE POOLING ORDER:

20 (I) EXTRACTING ANY MINERALS FROM AN EXISTING WELL; OR

21 (II) DRILLING A NEW WELL TO ACCESS THE MINERALS.

22 (b) Upon the determination of the commission, proper costs
23 recovered by the consenting owners of a drilling unit from the
24 nonconsenting owner's share of production from such a unit ~~shall~~ MUST
25 be as follows:

26 (II) ~~Two~~ ONE hundred percent of that portion of the costs and
27 expenses of staking, well site preparation, obtaining rights-of-way,

1 rigging up, drilling, reworking, deepening or plugging back, testing, and
2 completing the well, after deducting any cash contributions received by
3 the consenting owners, and ~~two~~ ONE hundred percent of that portion of
4 the cost of equipment in the well, including the wellhead connections.

5 (e) THE COMMISSION SHALL NOT ENTER AN ORDER POOLING AN
6 UNLEASED, NONCONSENTING MINERAL INTEREST OWNER UNDER
7 SUBSECTION (6) OF THIS SECTION IF THE MINERAL INTEREST OWNER IS A:

8 (I) LOCAL GOVERNMENT; OR

9 (II) SCHOOL DISTRICT.

10 (f) NOTHING IN THIS SUBSECTION (7) AFFECTS, LIMITS, OR EXPANDS
11 A LOCAL GOVERNMENT'S AUTHORITY TO LEASE, REFUSE TO LEASE, POOL,
12 OR OTHERWISE DISPOSE OF THE LOCAL GOVERNMENT'S MINERAL
13 INTERESTS.

14 (8) (a) The operator of wells under a pooling order in which there
15 is a nonconsenting owner shall furnish the nonconsenting owner with a
16 monthly statement of all costs incurred, together with the quantity of oil
17 or gas produced, and the amount of proceeds realized from the sale of
18 production during the preceding month.

19 (b) NO MORE FREQUENTLY THAN EVERY THREE YEARS BEFORE ANY
20 COST RECOVERY PURSUANT TO SUBSECTION (7) OF THIS SECTION, A
21 NONCONSENTING OWNER THAT IS SUBJECT TO A POOLING ORDER MAY
22 AUDIT OR CAUSE TO BE AUDITED THE BOOKS, ACCOUNTS, CONTRACTS,
23 RECORDS, AND DATA OF THE OPERATOR WITH RESPECT TO THE
24 DEVELOPMENT, PRODUCTION, SAVINGS, TRANSPORTATION, SALE, AND
25 MARKETING OF THE OIL, GAS, OR ASSOCIATED PRODUCTS THAT DERIVE
26 FROM, OR ARE ATTRIBUTABLE TO, THE NONCONSENTING OWNER'S MINERAL
27 INTERESTS. ANY AUDIT CONDUCTED PURSUANT TO THIS SUBSECTION (8)(b)

1 SHALL BE CONDUCTED IN ACCORDANCE WITH THE CURRENT PROTOCOLS OF
2 THE COUNCIL OF PETROLEUM ACCOUNTANTS SOCIETIES, OR ITS
3 SUCCESSOR ORGANIZATION.

4 (c) If the consenting owners recover the costs specified in
5 subsection (7) of this section, the nonconsenting owner shall own the
6 same interest in the wells and the production therefrom, and be liable for
7 the further costs of the operation, as if the owner had participated in the
8 initial drilling operations.

9 **SECTION 4. Applicability.** This act applies to conduct occurring
10 on or after the effective date of this act, including determinations of
11 applications pending on the effective date.

12 **SECTION 5. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, or safety.