

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 24-0026.01 Sarah Lozano x3858

SENATE BILL 24-185

SENATE SPONSORSHIP

Fenberg,

HOUSE SPONSORSHIP

Amabile,

Senate Committees

Agriculture & Natural Resources

House Committees

A BILL FOR AN ACT

101 CONCERNING PROTECTIONS FOR UNLEASED MINERAL INTEREST
102 OWNERS IN THE POOLING OF MINERAL INTERESTS BY THE
103 COLORADO ENERGY AND CARBON MANAGEMENT COMMISSION.

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>.)

Under current law, when 2 or more separately owned tracts are within an oil and gas drilling unit (unit) established by the Colorado energy and carbon management commission (commission), in the absence of voluntary pooling and after a reasonable offer to lease, made in good faith (offer to lease), current law allows the commission to enter an order

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.

pooling the mineral interests of those tracts (pooling order) for the development and operation of the unit if the applicant for the pooling order:

- Owns more than 45% of the mineral interests in the unit (requisite ownership); or
- Obtains the consent of the owners of more than 45% of the mineral interests in the unit (requisite consent).

The bill changes current law by:

- Requiring that a pooling order application include an affidavit that declares that the applicant has the requisite ownership or obtained the requisite consent (declaration), which affidavit must include certain leasing and well information;
- Allowing an unleased mineral interest owner (unleased owner), at least 60 days before the first noticed hearing date, to file a protest with the commission disputing the applicant's declaration (protest);
- Requiring the commission, no later than January 1, 2025, to adopt rules establishing a fair process for resolving a protest and allowing an unleased owner to review certain leasing information;
- If a unit contains the mineral interests of an unleased owner that has rejected an offer to lease, prohibiting an oil and gas operator, on and after January 1, 2025, from drilling or extracting minerals from a drilling unit owned by the unleased owner and not voluntarily pooled before a pooling order is entered by the commission;
- Prohibiting the commission from entering a pooling order that pools the mineral interests of an unleased owner if the unleased owner is a local government that has rejected an offer to lease and the minerals subject to the unleased owner's mineral interests are within the local government's geographic boundaries (local government unleased interest); and
- If a pooling order application proposes to pool a local government unleased interest and the local government has rejected an offer to lease, requiring the commission to deny the application unless the applicant amends the application to no longer pool the local government unleased interest.

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 or another form of consent for the extraction of their
5 minerals are pooled with all other mineral interests within a drilling unit
6 for the consolidated development and allocation of revenue;

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

10 (I) Own or obtain voluntary agreements with, or obtain consent
11 from, mineral interest owners that own at least forty-five percent of the
12 mineral interests to be pooled; and

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

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

21 (d) The process to obtain statutory pooling orders often does not
22 require the applicant to provide sufficient evidence that the applicant
23 either owns or has obtained voluntary agreements with, or has obtained
24 the consent of, mineral interest owners that own at least forty-five percent
25 of the mineral interests to be pooled;

26 (e) This lack of sufficient evidence can lead to a lack of public
27 confidence in the oil and gas permitting process; and

1 (f) In addition, local governments may have acquired mineral
2 interests through the expenditure of public money or as the result of a
3 voter-approved initiative and must:

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

6 (II) Comply with constitutional and statutory obligations regarding
7 public property and finances; and

8 (III) In the case of some voter-approved initiatives, conserve the
9 mineral interests and the associated land.

10 (2) Therefore, the general assembly further declares that it is the
11 policy of the general assembly and in the public interest to adjust the
12 regulatory process for applying for a statutory pooling order to ensure
13 that:

14 (a) Minerals cannot be developed by an oil and gas operator
15 without the permission of the unleased mineral interest owner or a valid
16 order from the state pooling those unleased minerals;

17 (b) A local government has the full authority to determine whether
18 to develop the local government's unleased mineral interests located
19 within its jurisdiction and which terms govern such development; and

20 (c) The record of a statutory pooling order proceeding is complete
21 and subject to review, with some reasonable limitations to protect
22 confidentiality, by any interested party.

23 **SECTION 2.** In Colorado Revised Statutes, 34-60-116, **amend**
24 (6)(b); and **add** (6)(b.5), (7)(e), (7)(f), and (9) as follows:

25 **34-60-116. Drilling units - pooling interests - rules - definition.**

26 (6) (b) (I) In the absence of voluntary pooling, the commission, upon the
27 application of a person ~~who~~ THAT owns, or has secured the consent of the

1 owners of, more than forty-five percent of the mineral interests to be
2 pooled, may enter an order pooling all interests in the drilling unit for the
3 development and operation of the drilling unit. THE APPLICATION MUST
4 INCLUDE AN AFFIDAVIT THAT DECLARES THAT THE APPLICANT OWNS, OR
5 HAS SECURED THE CONSENT OF THE OWNERS OF, MORE THAN FORTY-FIVE
6 PERCENT OF THE MINERAL INTERESTS TO BE POOLED. THE AFFIDAVIT MUST
7 IDENTIFY:

8 (A) BY RECORDING OR RECEPTION NUMBER, ANY RECORDED OIL
9 AND GAS LEASE, RECORDED MEMORANDUM OF OIL AND GAS LEASE, OR
10 RECORDED AGREEMENT THAT CONVEYS RIGHTS TO MINERALS OR PROVIDES
11 THE CONSENT OF AN APPLICABLE MINERAL INTEREST OWNER OR OWNERS
12 WITHIN THE DRILLING UNIT AND THAT THE APPLICANT IS USING TO
13 SUPPORT THE DECLARATION IN THE AFFIDAVIT; AND

14 (B) THE AMERICAN PETROLEUM INSTITUTE UNIQUE IDENTIFIER
15 NUMBER ASSIGNED BY THE COMMISSION FOR ANY OIL AND GAS WELL THAT
16 IS HOLDING OPEN A RECORDED OIL AND GAS LEASE, RECORDED
17 MEMORANDUM OF OIL AND GAS LEASE, OR RECORDED AGREEMENT
18 IDENTIFIED PURSUANT TO SUBSECTION (6)(b)(I)(A) OF THIS SECTION.

19 (I.3) IF THE APPLICANT IS RELYING ON AN UNRECORDED OIL AND
20 GAS LEASE, UNRECORDED MEMORANDUM OF OIL AND GAS LEASE, OR
21 UNRECORDED AGREEMENT TO SUPPORT THE DECLARATION IN THE
22 AFFIDAVIT, THE APPLICANT MUST DISCLOSE THAT THE APPLICANT IS
23 RELYING ON AN UNRECORDED OIL AND GAS LEASE, UNRECORDED
24 MEMORANDUM OF OIL AND GAS LEASE, OR UNRECORDED AGREEMENT IN
25 THE AFFIDAVIT.

26 (I.5) IF A PROTEST IS FILED PURSUANT TO SUBSECTION (6)(b.5)(I)
27 OF THIS SECTION, THE COMMISSION SHALL REQUIRE THE APPLICANT TO

1 PROVIDE INFORMATION ABOUT THE UNRECORDED OIL AND GAS LEASE,
2 UNRECORDED MEMORANDUM OF OIL AND GAS LEASE, OR UNRECORDED
3 AGREEMENT IN ACCORDANCE WITH SUBSECTION (6)(b.5)(III) OF THIS
4 SECTION AND THE COMMISSION'S APPLICABLE CONFIDENTIALITY
5 PROCEDURES.

6 (I.7) Mineral interests that are owned by a person ~~who~~ THAT
7 cannot be located through reasonable diligence are excluded from the
8 calculation DESCRIBED IN SUBSECTION (6)(b)(I) OF THIS SECTION.

9 (II) The pooling order ~~shall~~ MUST be made after notice and a
10 hearing and must be upon terms and conditions that are just and
11 reasonable and that afford to the owner of each tract or interest in the
12 drilling unit the opportunity to recover or receive, without unnecessary
13 expense, a just and equitable share.

14 (b.5) (I) AT LEAST SIXTY DAYS BEFORE THE FIRST HEARING DATE
15 FOR WHICH THE COMMISSION HAS PROVIDED NOTICE, AN UNLEASED
16 MINERAL INTEREST OWNER OF MINERAL INTERESTS PROPOSED TO BE
17 POOLED BY AN APPLICATION MAY FILE A PROTEST OF THE APPLICATION
18 WITH THE COMMISSION DISPUTING THE DECLARATION IN THE AFFIDAVIT
19 PROVIDED BY THE APPLICANT PURSUANT TO SUBSECTION (6)(b)(I) OF THIS
20 SECTION.

21 (II) NO LATER THAN JANUARY 1, 2025, THE COMMISSION SHALL
22 ADOPT RULES OR AMEND EXISTING RULES TO ESTABLISH A FAIR PROCESS
23 FOR RESOLVING AN UNLEASED MINERAL INTEREST OWNER'S PROTEST TO
24 AN APPLICATION DISPUTING THE DECLARATION IN THE AFFIDAVIT
25 PROVIDED BY THE APPLICANT PURSUANT TO SUBSECTION (6)(b)(I) OF THIS
26 SECTION PRIOR TO ENTERING A POOLING ORDER. THE PROCESS MUST
27 PROTECT THE INTERESTS OF AN UNLEASED MINERAL INTEREST OWNER

1 THAT HAS ARTICULATED A FACTUAL DISPUTE CONCERNING THE
2 DECLARATION IN THE AFFIDAVIT PROVIDED BY THE APPLICANT PURSUANT
3 TO SUBSECTION (6)(b)(I) OF THIS SECTION AND MAY INCLUDE A STAY OF
4 THE APPLICATION PENDING A DETERMINATION MADE BY A COURT OR
5 THROUGH ANOTHER DISPUTE RESOLUTION PROCESS.

6 (III) THE RULES ADOPTED PURSUANT TO SUBSECTION (6)(b.5)(II)
7 OF THIS SECTION MUST INCLUDE A PROCEDURE THAT PROTECTS
8 CONFIDENTIAL INFORMATION BUT ALLOWS AN UNLEASED MINERAL
9 INTEREST OWNER THAT FILES A PROTEST TO REVIEW, AT A MINIMUM, ANY
10 UNRECORDED OIL AND GAS LEASE, UNRECORDED MEMORANDUM OF OIL
11 AND GAS LEASE, OR UNRECORDED AGREEMENT THE APPLICANT IS USING TO
12 SUPPORT THE DECLARATION IN THE AFFIDAVIT, INCLUDING THE NAMES OF
13 THE PARTIES TO THE UNRECORDED OIL AND GAS LEASE, UNRECORDED
14 MEMORANDUM OF OIL AND GAS LEASE, OR UNRECORDED AGREEMENT; THE
15 DATE OF THE UNRECORDED OIL AND GAS LEASE, UNRECORDED
16 MEMORANDUM OF OIL AND GAS LEASE, OR UNRECORDED AGREEMENT; THE
17 MINERAL ACRES SUBJECT TO THE UNRECORDED OIL AND GAS LEASE,
18 UNRECORDED MEMORANDUM OF OIL AND GAS LEASE, OR UNRECORDED
19 AGREEMENT; AND THE DURATION OF THE UNRECORDED OIL AND GAS
20 LEASE, UNRECORDED MEMORANDUM OF OIL AND GAS LEASE, OR
21 UNRECORDED AGREEMENT.

22 (7) (e) ON AND AFTER JANUARY 1, 2025, IF A DRILLING UNIT
23 CONTAINS THE MINERAL INTERESTS OF ANY UNLEASED MINERAL INTEREST
24 OWNER THAT HAS REJECTED AN OFFER TO LEASE PURSUANT TO
25 SUBSECTION (7)(d)(I) OF THIS SECTION, AN OPERATOR SHALL NOT DRILL OR
26 EXTRACT MINERALS FROM THE DRILLING UNIT BEFORE A POOLING ORDER
27 IS ENTERED BY THE COMMISSION.

1 (f) (I) NOTWITHSTANDING ANY PROVISION IN THIS SECTION TO THE
2 CONTRARY, THE COMMISSION SHALL NOT ENTER A POOLING ORDER THAT
3 POOLS THE MINERAL INTERESTS OF AN UNLEASED MINERAL INTEREST
4 OWNER IF:

5 (A) THE UNLEASED MINERAL INTEREST OWNER IS A LOCAL
6 GOVERNMENT AND THE LOCAL GOVERNMENT HAS REJECTED AN OFFER TO
7 LEASE PURSUANT TO SUBSECTION (7)(d)(I) OF THIS SECTION; AND

8 (B) THE MINERALS SUBJECT TO THE LOCAL GOVERNMENT'S
9 UNLEASED MINERAL INTERESTS ARE LOCATED WITHIN THE LOCAL
10 GOVERNMENT'S GEOGRAPHIC BOUNDARIES.

11 (II) IF A POOLING ORDER APPLICATION PROPOSES TO POOL MINERAL
12 INTERESTS DESCRIBED IN SUBSECTION (7)(f)(I) OF THIS SECTION, THE
13 COMMISSION SHALL DENY THE APPLICATION UNLESS THE APPLICANT
14 AMENDS THE APPLICATION TO NO LONGER POOL THE MINERAL INTERESTS
15 DESCRIBED IN SUBSECTION (7)(f)(I) OF THIS SECTION.

16 (III) NOTHING IN THIS SUBSECTION (7)(f) AFFECTS, LIMITS, OR
17 EXPANDS A LOCAL GOVERNMENT'S AUTHORITY TO LEASE, REFUSE TO
18 LEASE, VOLUNTARILY POOL, OR OTHERWISE DISPOSE OF THE LOCAL
19 GOVERNMENT'S UNLEASED MINERAL INTERESTS.

20 (9) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
21 REQUIRES, "LOCAL GOVERNMENT" MEANS A HOME RULE OR STATUTORY
22 COUNTY, CITY, OR CITY AND COUNTY.

23 **SECTION 3. Act subject to petition - effective date -**
24 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
25 the expiration of the ninety-day period after final adjournment of the
26 general assembly; except that, if a referendum petition is filed pursuant
27 to section 1 (3) of article V of the state constitution against this act or an

1 item, section, or part of this act within such period, then the act, item,
2 section, or part will not take effect unless approved by the people at the
3 general election to be held in November 2024 and, in such case, will take
4 effect on the date of the official declaration of the vote thereon by the
5 governor.

6 (2) This act applies to conduct occurring on or after the applicable
7 effective date of this act, including determinations of applications
8 pending on the applicable effective date of this act.