

1 SB212
2 182358-1
3 By Senator Albritton
4 RFD: Transportation and Energy
5 First Read: 16-FEB-17

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8 SYNOPSIS: Under existing law, the State Oil and Gas
9 Board may enter orders requiring owners in a
10 proposed or existing drilling or production unit to
11 pool or integrate their interests and to develop
12 their interests and lands as a drilling or
13 production unit and may under certain circumstances
14 provide that, if a productive well is drilled on
15 the unit, there may be deducted from any production
16 or proceeds thereof due to a nonconsenting owner
17 who did not pay a share of drilling costs for the
18 well, a risk compensation fee equal to 150 percent
19 of that owners share of those costs but that in all
20 events a 3/16th share of production from the well
21 must be treated as royalty and shall be free from
22 any drilling costs or risk compensation fee. A risk
23 compensation fee may not be imposed unless all
24 affected parties are given notice and a public
25 hearing is held by the State Oil and Gas Board and
26 the board finds that all of the statutory
27 requirements for imposing the fee have been met.

1 This bill would clarify that although a risk
2 compensation fee may not be charged against the
3 interest of an owner who does not receive actual
4 notice of the hearing on the petition requesting
5 imposition of the fee, the fee is chargeable
6 against the interests of other nonconsenting owners
7 in the unit who were given actual notice of the
8 hearing in compliance with applicable laws.

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10 A BILL
11 TO BE ENTITLED
12 AN ACT

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14 To amend Section 9-17-13, Code of Alabama 1975, to
15 allow forced pooling or integration of drilling and production
16 units and a risk compensation fee for properly noticed owners.
17 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18 Section 1. Section 9-17-13, Code of Alabama 1975, is
19 amended to read as follows:

20 "§9-17-13.

21 "(a) When any mineral or other related interests
22 deriving from two or more separately owned tracts of land are
23 embraced within an established or a proposed drilling or
24 production unit, or when there are separately owned interests
25 in all or a part of an established or proposed drilling or
26 production unit, or any combination of such, the persons
27 owning the interests therein may validly agree to integrate or

1 pool the interests and to develop the interests and associated
2 lands as a drilling or production unit. Where, however, the
3 owners have not agreed to so integrate or pool the interests,
4 the board shall, for the prevention of waste or to avoid the
5 drilling of unnecessary wells, require the persons owning such
6 interests to do so and to develop their interests and the
7 associated lands as a drilling or production unit.

8 "(b) The board, in order to prevent waste and avoid
9 the drilling of unnecessary wells, may permit or require the
10 cycling of gas in any pool or portion thereof and is also
11 authorized to permit or require the introduction of gas or
12 other substance into an oil or gas reservoir for the purpose
13 of repressuring the reservoir, maintaining pressure or
14 carrying on enhanced recovery operations. The board may
15 require pooling or integration of all the interests in or
16 associated with the tracts, when reasonably necessary in
17 connection with cycling operations.

18 "(c) All orders requiring integration, pooling,
19 cycling, repressuring, pressure maintenance or enhanced
20 recovery operations shall be made after notice and hearing and
21 shall be upon terms and conditions that are just and
22 reasonable and which will afford to the person owning each
23 such interest associated with each tract the opportunity to
24 recover or receive his or her just and equitable share of the
25 oil and gas in the pool without unnecessary expense and will
26 prevent or minimize reasonably avoidable drainage from each
27 developed unit which is not equalized by counterdrainage. The

1 portion of the production allocated to each tract or interest
2 included in an integrated or pooled unit formed by an
3 integration or pooling order shall, when produced, be
4 considered as if it had been produced from the tract or
5 interest by a well drilled thereon; and any operations
6 conducted within or with respect to the pooled or integrated
7 unit pursuant to the pooling or integration order shall be
8 deemed for all purposes to be the conduct of operations for
9 the production of oil or gas or both from each tract or
10 interest within the unit. All orders requiring pooling or
11 integration shall, among other things, provide all of the
12 following:

13 "(1) That the actual and reasonable costs of
14 developing and operating the pooled integrated unit (including
15 a reasonable charge for supervision) and, if applicable, a
16 risk compensation fee (as hereinafter provided) shall be
17 charged to the separately owned tracts or interests in the
18 unit in the same proportion that such tracts or interests
19 share in production from the unit.

20 "(2) That such costs and fee (if any) chargeable to
21 a tract or interest shall be paid by the person or persons not
22 entitled to share in production free of development and
23 operating costs and who, in the absence of the pooling or
24 integration order, would be responsible for the expense of
25 developing and operating the tract or interest and that
26 person's or persons' interest in the separately owned tract or
27 interest shall be primarily responsible therefor.

1 "(3) That, if any nonconsenting owner shall fail or
2 refuse to pay the costs and/or fee (if any) chargeable to his
3 or her tract or interest, the costs and/or fee shall be
4 recoverable solely out of the production allocable to the
5 tract or interest, provided, however, that this limitation
6 shall not apply to a nonconsenting owner who has furnished the
7 operator with a notarized statement agreeing to pay his or her
8 proportionate share of the drilling and completion costs for a
9 unit well as hereinafter provided.

10 "(4) That, when the full amount of any charge made
11 against a separately owned tract or interest is not paid when
12 due by the person or persons primarily responsible therefor,
13 as provided above, then 13/16ths (or if said tract or interest
14 is leased, the working interest fraction or percent if it is
15 greater) of the oil and gas production allocated to the
16 separately owned tract or interest may be appropriated by the
17 operator and marketed and sold for the payment of the charge,
18 but that a 3/16ths part (or the actual landowner royalty if it
19 is less) of the unit production allocated to each separately
20 owned tract or interest shall in all events be regarded as
21 royalty and shall, if there be no reasonable question as to
22 good and merchantable title, be distributed to and among, or
23 the proceeds thereof paid to, the person or persons owning
24 royalty or unleased mineral interests (as the case may be) in
25 the tract or interest free and clear of the development and
26 operating costs and of any risk compensation fee and free and
27 clear of any lien for the payment of the costs and fee.

1 "(5) That any person owning any overriding royalty,
2 oil and gas payment, royalty in excess of 3/16ths of
3 production, or other interests, who is not primarily
4 responsible for payment of the development and operating costs
5 or risk compensation fee (if any), shall, to the extent of any
6 payment or deduction therefor from his or her share, be
7 subrogated to all the rights of the operator with respect to
8 the interest or interests primarily responsible for the
9 payment.

10 "Additionally, if the operator, or the operator
11 together with the consenting owners, shall own a majority in
12 interest of the drilling and operating rights in the
13 integrated or pooled unit, and the operator has made a good
14 faith effort to (i) negotiate with each nonconsenting owner to
15 have the owner's interest voluntarily integrated or pooled
16 into the unit, (ii) notify each nonconsenting owner of record
17 of the names of all owners of drilling rights who have agreed
18 to integrate or pool any interests in the unit, (iii)
19 ascertain the address of each nonconsenting owner, (iv) give
20 each nonconsenting owner written notice of the proposed
21 operation, specifying the work to be performed, the proposed
22 location, proposed depth, objective formation and the
23 estimated cost of the proposed operation, and (v) to offer
24 each nonconsenting owner the opportunity to lease or farm out
25 on reasonable terms or participate in the cost and risk of
26 developing and operating the unit well involved on reasonable
27 terms, then the pooling or integration order shall, if the

1 operator so requests, also provide that, if any nonconsenting
2 owner (a) does not pay his or her proportionate share of the
3 drilling and completion costs for any unit well within 30 days
4 after commencement of actual drilling operations, or prior to
5 reaching total depth, whichever is earlier, or at such other
6 time as may be contracted between the parties, or,
7 alternatively, (b) does not, on or before commencement of
8 actual drilling operations, provide the operator with a
9 notarized statement agreeing to pay the costs, then there
10 shall be charged to the tract or interest of the nonconsenting
11 owner a risk compensation fee equal to 150 percent of the
12 tract's or interest's share of the actual and reasonable costs
13 of drilling, reworking (prior to initial commercial
14 production), testing, plugging back, deepening (but not below
15 that depth specified in the permit for the well), and
16 completing (through the wellhead) said well; provided,
17 however, that no risk compensation fee shall be chargeable
18 against the tract or interest of any nonconsenting owner who
19 owned of record a tract or interest in the unit prior to the
20 time notice was given unless, at the pooling or integration
21 hearing, it is shown, by a United States mail certified mail
22 return receipt card or by other evidence deemed sufficient by
23 the board, that the nonconsenting owner was given actual
24 notice of the pooling or integration hearing and unless it is
25 also shown that the notice given to the owner specifically
26 stated that the operator was requesting that the board impose
27 a risk compensation fee in accordance with the provisions of

1 this section. Provided, further, that, if after diligent
2 search and inquiry, the operator is unable to locate and give
3 the required notice to any nonconsenting owner, the risk
4 compensation fee shall not be imposed as to the interest of
5 that nonconsenting owner, however, the operator may request
6 that a risk compensation fee be imposed as to the interests of
7 all other nonconsenting owners in the unit who received the
8 required notice in accordance with this section. In the event
9 that a nonconsenting owner who has provided the operator with
10 a notarized statement agreeing to pay his or her proportionate
11 share of the drilling and completion costs for a unit well
12 does not fully pay the costs within 30 days after commencement
13 of actual drilling operations or prior to reaching total
14 depth, whichever is earlier, or on or before such other time
15 as may be contracted between the parties, then any unpaid
16 balance of the costs shall bear interest at the rate of one
17 and one-half percent per month, and the nonconsenting owner
18 shall be personally liable for the unpaid balance together
19 with interest thereon and also for any attorney's fees, court
20 costs, or other expenses incurred by the operator in
21 attempting to collect the unpaid balance and interest thereon;
22 and, additionally, the operator shall have the right, if the
23 well is a producer, to appropriate, market, and sell the
24 nonconsenting owner's share of production for the payment of
25 the amounts due by that owner. The value of any production
26 appropriated by the operator under the authority of any
27 integration or pooling order shall be calculated at the market

1 price in the field (after deduction for taxes and for
2 cleansing, transportation, compression, and processing costs)
3 at the time such production is received by the operator or
4 placed to his or her credit. Unless the pooling or integration
5 order (or an amendment thereto) shall specify otherwise or
6 unless the affected parties shall agree otherwise, production
7 from any pooled or integrated unit formed by a pooling or
8 integration order shall be allocated to each separately owned
9 tract or interest in the unit in the proportion that the
10 acreage of each tract or interest bears to the total acreage
11 of the unit; and under the circumstances allocation of
12 production on this basis shall be considered as a just and
13 reasonable allocation which will afford to each person owning
14 each tract or interest within the unit the opportunity to
15 recover or receive his or her just and equitable share of the
16 oil and gas produced from the unit. Nothing herein or in any
17 order issued pursuant hereto shall be construed to subject any
18 nonconsenting owner who is subject to a risk compensation fee,
19 as hereinabove provided, to any personal liability for any
20 damages caused by or resulting from any negligent act or other
21 tort committed by the operator or by any consenting owner in
22 the course of developing and operating a pooled or integrated
23 unit; nor shall anything herein or in any order issued
24 pursuant hereto prevent the operator and any other owner or
25 owners in the unit from entering into any agreement that
26 contains provisions respecting the pooling, integration, or
27 development of their tracts or interests in the pooled or

1 integrated unit that differ from the above provisions or from
2 the provisions contained in any pooling or integration order.
3 As used herein, the term "operator" shall mean the person
4 designated by the board to be in charge of developing and
5 operating a drilling or production unit; the term
6 "nonconsenting owner" shall mean an owner who owns a tract or
7 interest in a drilling or production unit and who has not, on
8 or before the date a pooling or integration order is entered
9 with respect to such unit, reached an agreement with the
10 operator relative to the terms and conditions which will
11 govern the manner in which his or her said tract or interest
12 shall be developed and operated; the term "consenting owner"
13 shall mean an owner who has so reached such an agreement with
14 the operator; the term "owner" shall mean a person who, if a
15 pooling or integration order had not been entered, would be an
16 owner as that term is defined elsewhere in this article; the
17 terms "costs of developing" and "development costs" shall
18 include, among other things, the costs of drilling, equipping,
19 reworking, testing, plugging back, deepening, and completing
20 the initial unit well and any subsequent unit well but shall
21 not include any costs incurred in connection with the
22 acquisition of any oil and gas leases covering tracts or
23 interests in the unit; and the term "actual and reasonable
24 costs" means actual expenditures not in excess of what are
25 reasonable.

26 "Subsection (c) shall apply only to unitization of
27 interests within a drilling unit and shall not apply to

1 fieldwide or poolwide units, which are authorized and governed
2 under the provisions of Article 3 of this chapter.

3 "(d) Should the owners of separate tracts or
4 interests embraced within a drilling or production unit fail
5 to agree upon the integration or pooling of the tracts or
6 interests associated with the tracts and the drilling of a
7 well on that unit, and should it be established that the board
8 is without authority to require integration or pooling as
9 provided for in this section, then subject to all other
10 applicable provisions of this article, the owner of the
11 interest or interests associated with each tract embraced
12 within the drilling or production unit may drill on his or her
13 tract; but the allowable production from that tract or
14 interest shall be such proportion of the allowable production
15 for the full drilling or production unit as the area of the
16 separately owned tract associated with the separately owned
17 interest bears to the full drilling or production unit.

18 "(e) Agreements made in the interest of conservation
19 of oil or gas, or both, or for the prevention of waste,
20 between and among owners or operators, or both, owning
21 separate interests in the same oil or gas pool, or in any area
22 that appears from geological or other data to be underlain by
23 a common accumulation of oil or gas, or both, and agreements
24 between and among the owners or operators, or both, and
25 royalty owners therein of the pool or area or any part thereof
26 as a unit for establishing and carrying out a plan for the
27 cooperative development and operation thereof, when the

1 agreements are approved by the board, are hereby authorized
2 and shall not be held or construed to violate any of the
3 statutes of this state relating to trusts, monopolies, or
4 contracts and combinations in restraint of trade."

5 Section 2. This act shall become effective
6 immediately following its passage and approval by the
7 Governor, or its otherwise becoming law.