

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

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 24-0026.01 Sarah Lozano x3858

SENATE BILL 24-185

SENATE SPONSORSHIP

Fenberg, Bridges, Coleman, Hinrichsen, Jaquez Lewis, Marchman, Michaelson Jenet, Priola

HOUSE SPONSORSHIP

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Appropriations

House Committees

Agriculture, Water & Natural Resources
Appropriations

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,**
104 **AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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

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.

HOUSE
2nd Reading Unamended
May 6, 2024

SENATE
3rd Reading Unamended
April 17, 2024

SENATE
Amended 2nd Reading
April 16, 2024

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 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 **SECTION 1. Legislative declaration.** (1) The general assembly
2 finds and declares that:

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

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

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

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

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19 part of the originally enacted "Colorado Oil and Gas Act", as a way to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

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

27 (e) This lack of sufficient evidence can lead to a lack of public

1 confidence in the oil and gas permitting process; and

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

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

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

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

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

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

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

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

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

26 **34-60-116. Drilling units - pooling interests - definition.**

27 (6) (b) (I) In the absence of voluntary pooling, the commission, upon the

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

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

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

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

27 (I.5) IF A PROTEST IS FILED PURSUANT TO SUBSECTION (6)(b.5)(I)

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

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

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

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

22 (II) THE COMMISSION SHALL RESOLVE AN UNLEASED MINERAL
23 INTEREST OWNER'S BONA FIDE PROTEST TO AN APPLICATION DISPUTING
24 THE DECLARATION IN THE AFFIDAVIT PROVIDED BY THE APPLICANT
25 PURSUANT TO SUBSECTION (6)(b)(I) OF THIS SECTION PRIOR TO ENTERING
26 A POOLING ORDER. THE RESOLUTION PROCESS MUST PROTECT THE
27 INTERESTS OF AN UNLEASED MINERAL INTEREST OWNER THAT HAS

1 ARTICULATED A BONA FIDE 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.

5 (III) THE COMMISSION SHALL ALLOW AN UNLEASED MINERAL
6 INTEREST OWNER THAT FILES A BONA FIDE PROTEST TO REVIEW, IN A
7 MANNER THAT PROTECTS CONFIDENTIAL INFORMATION, ANY UNRECORDED
8 OIL AND GAS LEASE, UNRECORDED MEMORANDUM OF OIL AND GAS LEASE,
9 OR UNRECORDED AGREEMENT THE APPLICANT IS USING TO SUPPORT THE
10 DECLARATION IN THE AFFIDAVIT, INCLUDING THE NAMES OF THE PARTIES
11 TO THE UNRECORDED OIL AND GAS LEASE, UNRECORDED MEMORANDUM
12 OF OIL AND GAS LEASE, OR UNRECORDED AGREEMENT; THE DATE OF THE
13 UNRECORDED OIL AND GAS LEASE, UNRECORDED MEMORANDUM OF OIL
14 AND GAS LEASE, OR UNRECORDED AGREEMENT; THE MINERAL ACRES
15 SUBJECT TO THE UNRECORDED OIL AND GAS LEASE, UNRECORDED
16 MEMORANDUM OF OIL AND GAS LEASE, OR UNRECORDED AGREEMENT; AND
17 THE DURATION OF THE UNRECORDED OIL AND GAS LEASE, UNRECORDED
18 MEMORANDUM OF OIL AND GAS LEASE, OR UNRECORDED AGREEMENT.

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

25 (f) (I) NOTWITHSTANDING ANY PROVISION IN THIS SECTION TO THE
26 CONTRARY, THE COMMISSION SHALL NOT ENTER A POOLING ORDER THAT
27 POOLS THE MINERAL INTERESTS OF AN UNLEASED MINERAL INTEREST

1 OWNER IF:

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

5 (B) THE MINERALS SUBJECT TO THE LOCAL GOVERNMENT'S
6 UNLEASED MINERAL INTERESTS ARE LOCATED WITHIN THE LOCAL
7 GOVERNMENT'S GEOGRAPHIC BOUNDARIES.

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

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

17 (9) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE
18 REQUIRES, "LOCAL GOVERNMENT" MEANS A HOME RULE OR STATUTORY
19 COUNTY, CITY AND COUNTY, OR MUNICIPALITY.

20 **SECTION 3. Appropriation. (1) For the 2024-25 state fiscal**
21 **year, \$20,483 is appropriated to the department of Natural Resources.**
22 **This appropriation is from the energy and carbon management cash fund**
23 **created in section 34-60-122 (5)(a), C.R.S. To implement this act, the**
24 **department may use this appropriation for the purchase of legal services.**

25 **(2) For the 2024-25 state fiscal year, \$20,483 is appropriated to**
26 **the department of law. This appropriation is from reappropriated funds**
27 **received from the department of natural resources under subsection (1) of**

1 this section and is based on an assumption that the department of law will
2 require an additional 0.1 FTE. To implement this act, the department of
3 law may use this appropriation to provide legal services for the
4 department of natural resources.

5 **SECTION 4. Act subject to petition - effective date -**
6 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
7 the expiration of the ninety-day period after final adjournment of the
8 general assembly; except that, if a referendum petition is filed pursuant
9 to section 1 (3) of article V of the state constitution against this act or an
10 item, section, or part of this act within such period, then the act, item,
11 section, or part will not take effect unless approved by the people at the
12 general election to be held in November 2024 and, in such case, will take
13 effect on the date of the official declaration of the vote thereon by the
14 governor.

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