

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

SENATE BILL 24-185

BY SENATOR(S) Fenberg, Bridges, Coleman, Hinrichsen, Jaquez Lewis, Marchman, Michaelson Jenet, Priola;
also REPRESENTATIVE(S) Amabile, Bacon, Bird, Boesenecker, Brown, deGruy Kennedy, Duran, Epps, Hamrick, Jodeh, Lindstedt, Marvin, McCormick, Parenti, Rutinel, Sirota, Snyder, Story, Valdez, Weissman, McCluskie.

CONCERNING PROTECTIONS FOR UNLEASED MINERAL INTEREST OWNERS IN THE POOLING OF MINERAL INTERESTS BY THE COLORADO ENERGY AND CARBON MANAGEMENT COMMISSION, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

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

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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

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

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

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

(c) Statutory pooling was first established in the state in 1951, as part of the originally enacted "Colorado Oil and Gas Act", as a way to minimize inefficiencies in mineral extraction and to protect the correlative rights of mineral interest owners;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) THE AMERICAN PETROLEUM INSTITUTE UNIQUE IDENTIFIER NUMBER ASSIGNED BY THE COMMISSION FOR ANY OIL AND GAS WELL THAT IS HOLDING OPEN A RECORDED OIL AND GAS LEASE, RECORDED

MEMORANDUM OF OIL AND GAS LEASE, OR RECORDED AGREEMENT IDENTIFIED PURSUANT TO SUBSECTION (6)(b)(I)(A) OF THIS SECTION.

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

(I.5) IF A PROTEST IS FILED PURSUANT TO SUBSECTION (6)(b.5)(I) OF THIS SECTION, THE COMMISSION SHALL REQUIRE THE APPLICANT TO PROVIDE INFORMATION ABOUT THE UNRECORDED OIL AND GAS LEASE, UNRECORDED MEMORANDUM OF OIL AND GAS LEASE, OR UNRECORDED AGREEMENT IN ACCORDANCE WITH SUBSECTION (6)(b.5)(III) OF THIS SECTION AND THE COMMISSION'S APPLICABLE CONFIDENTIALITY PROCEDURES.

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

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

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

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

FACTUAL DISPUTE CONCERNING THE DECLARATION IN THE AFFIDAVIT PROVIDED BY THE APPLICANT PURSUANT TO SUBSECTION (6)(b)(I) OF THIS SECTION AND MAY INCLUDE A STAY OF THE APPLICATION PENDING A DETERMINATION MADE BY A COURT.

(III) THE COMMISSION SHALL ALLOW AN UNLEASED MINERAL INTEREST OWNER THAT FILES A BONA FIDE PROTEST TO REVIEW, IN A MANNER THAT PROTECTS CONFIDENTIAL INFORMATION, ANY UNRECORDED OIL AND GAS LEASE, UNRECORDED MEMORANDUM OF OIL AND GAS LEASE, OR UNRECORDED AGREEMENT THE APPLICANT IS USING TO SUPPORT THE DECLARATION IN THE AFFIDAVIT, INCLUDING THE NAMES OF THE PARTIES TO THE UNRECORDED OIL AND GAS LEASE, UNRECORDED MEMORANDUM OF OIL AND GAS LEASE, OR UNRECORDED AGREEMENT; THE DATE OF THE UNRECORDED OIL AND GAS LEASE, UNRECORDED MEMORANDUM OF OIL AND GAS LEASE, OR UNRECORDED AGREEMENT; THE MINERAL ACRES SUBJECT TO THE UNRECORDED OIL AND GAS LEASE, UNRECORDED MEMORANDUM OF OIL AND GAS LEASE, OR UNRECORDED AGREEMENT; AND THE DURATION OF THE UNRECORDED OIL AND GAS LEASE, UNRECORDED MEMORANDUM OF OIL AND GAS LEASE, OR UNRECORDED AGREEMENT.

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

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

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

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

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

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

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

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

(2) For the 2024-25 state fiscal year, \$20,483 is appropriated to the department of law. This appropriation is from reappropriated funds received from the department of natural resources under subsection (1) of this section and is based on an assumption that the department of law will require an additional 0.1 FTE. To implement this act, the department of law may use this appropriation to provide legal services for the department of natural resources.

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

(2) This act applies to conduct occurring on or after the applicable

effective date of this act, including determinations of applications pending on the applicable effective date of this act.

Steve Fenberg
PRESIDENT OF
THE SENATE

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Cindi L. Markwell
SECRETARY OF
THE SENATE

Robin Jones
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO