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134th General Assembly

Regular Session

2021-2022

Sub. H. B. No. 152

A BILL

To amend section 1509.28 of the Revised Code to
revise the law governing unit operation.

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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 1509.28 of the Revised Code be
amended to read as follows:

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Sec. 1509.28. (A) The As used in this section:

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(1) "Bonus payment" means a payment for the execution of
an oil and gas lease.

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(2) "Gross proceeds" means the proceeds received on the
sale of production of oil or gas without deduction of any post-
production costs incurred between the wellhead and the point of
sale, but less a proportionate share of any taxes or government
fees levied on or as a result of that production.

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(3) "Net acres" means the pro rata undivided interest in
oil and gas in a tract, expressed on an acreage basis and
determined by multiplying an unleased mineral owner's percentage
ownership interest in the oil and gas in a tract by the gross

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<u>acreage of the tract.</u>	17
<u>(4) "Non-operating working interest owner"</u> means a working <u>interest owner that is not the operator for the unit.</u>	18 19
<u>(5) "Operational changes"</u> means <u>adjustments, amendments,</u> <u>or changes to any oil and gas operations, including, but not</u> <u>limited to, changes related to permitting, pad construction, pad</u> <u>location, drilling, completions, production, and workovers,</u> <u>within the unit.</u>	20 21 22 23 24
<u>(6) "Post-production costs"</u> means all costs and expenses <u>incurred between the wellhead and the point of sale, including,</u> <u>without limitation, the costs of any treating, separating,</u> <u>dehydrating, processing, storing, gathering, transporting,</u> <u>compressing, and marketing.</u>	25 26 27 28 29
<u>(7) "Royalty"</u> means a share of production that is free <u>from the costs of production.</u>	30 31
<u>(8) "Unit order"</u> means an order providing for unit operations.	32 33
<u>(9) "Unleased mineral owner"</u> means an owner of a fee mineral interest that is free of a lease or other instrument conveying all or any portion of the working interest in such rights to another.	34 35 36 37
<u>(10) "Working interest"</u> means an interest in oil or gas by virtue of a lease, operating agreement, fee title, or otherwise, including a carried interest, the owner of which, in the absence of a unit order, would have the right to drill and operate a well on one or more of the separately owned tracts comprising the unit and who is obligated to pay, either in cash or out of production, or otherwise, a portion of the unit expense.	38 39 40 41 42 43 44

(11) "Working interest owner" means a person who owns a
working interest and who is not an unleased mineral owner.

(B) (1) An applicant who has obtained the consent of the
owners of at least sixty-five per cent of the land area
overlying a pool or a part of a pool may submit an application
for the operation as a unit of the entire pool or part of the
pool to the chief of the division of oil and gas resources
~~management, upon the chief's own motion or upon application by~~
~~the owners of sixty five per cent of the land area overlying the~~
~~pool, shall hold a hearing to consider the need for the~~
~~operation as a unit of an entire pool or part thereof. In~~
calculating the sixty-five per cent, an owner's entire interest
in each tract in the proposed unit area, including any divided,
undivided, partial, fee, or other interest in the tract, shall
be included to the fullest extent of that interest.

(2) The chief may make a motion, without application, for
the operation as a unit of an entire pool or part of the pool.

(C) An application by owners applicant shall be
~~accompanied by a~~ include with the application for unit operation
all of the following:

(1) A nonrefundable fee of ten thousand dollars and by
such;

(2) If desired by the applicant, a request that the
hearing on the application be held remotely, as provided in
division (D) (3) of this section;

(3) If desired by the applicant, a request that any trade
secret, research, development, or commercial information
separately designated and identified by the applicant be
protected from disclosure;

(4) Any additional information as requested by the chief 74
may request. 75

(D) (1) The chief shall hold a hearing to consider the need 76
for the operation as a unit of an entire pool or part thereof. 77
Before the hearing, the chief shall notify interest holders 78
located in the proposed unit of the date of the hearing by 79
certified mail and by publishing notice twice in a newspaper of 80
general circulation in the county or counties in which the unit 81
is proposed to be located. 82

(2) The chief shall hold the hearing not more than sixty 83
days after the date of the chief's motion under division (B) (2) 84
of this section or the date the chief received the application 85
for unit operation under division (B) (1) of this section, as 86
applicable. 87

(3) Notwithstanding section 121.22 of the Revised Code, 88
and, at the request of an applicant, the chief shall conduct the 89
hearing electronically by teleconference, video conference, or 90
any other similar electronic technology. 91

(4) The chief shall maintain the confidentiality of, and 92
protect against the public disclosure of, information included 93
in the application or presented at the hearing that identifies 94
lease bonus and royalty terms applicable to an individual 95
mineral interest owner within the proposed unit area unless the 96
mineral interest owner consents to the disclosure of the 97
information. 98

(5) If the applicant made a protection request under 99
division (C) (3) of this section, both of the following apply: 100

(a) The trade secret, research, development, or commercial 101
information shall not be included in the public record of the 102

hearing, is not a public record subject to inspection or copying 103
under section 149.43 of the Revised Code, and shall not be 104
disclosed to the public. 105

(b) However, the chief may issue an order providing for 106
the limited disclosure of trade secret, research, development, 107
or commercial information to a person that owns a mineral rights 108
interest in the proposed unit area only if the person requests 109
it and the information will be used solely for the purpose of 110
supporting or opposing the unit application at the hearing. 111

(E) The chief shall make an order providing for the unit 112
operation of a pool or part thereof if the chief finds that such 113
operation is reasonably necessary to increase substantially the 114
ultimate recovery of oil and gas, and the value of the estimated 115
additional recovery of oil or gas exceeds the estimated 116
additional cost incident to conducting the operation. The chief 117
shall issue the unit order not later than thirty days after the 118
date of the hearing unless the chief denies the application by 119
order within that thirty days. 120

(F) The unit order shall be upon terms and conditions that 121
are just and reasonable and shall prescribe a plan for unit 122
operations that ~~shall include~~includes all of the following: 123

(1) A description of the unitized area, termed the unit 124
area; 125

(2) A statement of the nature of the operations 126
contemplated; 127

(3) An allocation to the separately owned tracts in the 128
unit area of all the oil and gas that is produced from the unit 129
area and is saved, being the production that is not used in the 130
conduct of operations on the unit area or not unavoidably lost. 131

The allocation shall be in accord with the agreement, if any, of
the interested parties. If there is no such agreement, the chief
shall determine the value, from the evidence introduced at the
hearing, of each separately owned tract in the unit area,
exclusive of physical equipment, for development of oil and gas
by unit operations, and the production allocated to each tract
shall be the proportion that the value of each tract so
determined bears to the value of all tracts in the unit area.

(4) A provision for the credits and charges to be made in
the adjustment among the owners in the unit area for their
respective investments in wells, tanks, pumps, machinery,
materials, and equipment contributed to the unit operations;

(5) A provision providing how the expenses of unit
operations, including capital investment, shall be determined
and charged to the separately owned tracts and how the expenses
shall be paid;

(6) A provision, if necessary, for carrying ~~or otherwise~~
~~financing the cost of any person non-operating working interest~~
~~owner who is unable elects to be carried or who fails to meet~~
~~the person's the non-operating working interest owner's~~
~~financial obligations in connection with under the unit,~~
~~allowing a reasonable interest charge for such service; order,~~
~~payable out of production and upon terms and conditions~~
~~determined by the chief to be just and reasonable.~~

The terms and conditions shall include a non-participation
charge in an amount of not less than three hundred per cent of
the amount carried, payable out of the non-operating working
interest owner's share of production.

(7) A provision for the supervision and conduct of the

unit operations, in respect to which each person shall have a
vote with a value corresponding to the percentage of the
expenses of unit operations chargeable against the interest of
that person;

(8) The time when the unit operations shall commence, and
the manner in which, and the circumstances under which, the unit
operations shall terminate. The unit order also shall include
provisions authorizing the extension of these times by not less
than twelve months and specifying the manner and circumstances
under which an extension may be obtained without requiring an
additional hearing.

(9) Such additional provisions as are found to be
appropriate for carrying on the unit operations, and for the
protection or adjustment of correlative rights. If the unit
order addresses the interest owned by an unleased mineral owner,
a provision entitling the unleased mineral owner to elect one of
the following not later than thirty days after the chief issues
the unit order:

(a) To lease the unleased mineral owner's interests to the
applicant under just and reasonable terms established at the
hearing, including a royalty equal to one-eighth of the gross
proceeds received by the applicant on the sale of production
plus a bonus payment equal to fifty per cent of the current
market rate for a bonus payment per acre within the proposed
unit area at the time the application is made or the date of the
chief's motion, as applicable, multiplied by the net acres
contributed to the unit by the unleased mineral owner's
interest;

(b) To participate in unit operations as a consenting
party under the terms of the joint operating agreement attached

to the application; 191

(c) To participate in unit operations as a non-consenting 192
party under the terms of the joint operating agreement attached 193
to the application, provided, however, that the non- 194
participation charge applicable to the unleased mineral owner's 195
interest under the joint operating agreement shall be equal to 196
two hundred per cent of the carried amounts, payable out of the 197
unleased mineral owner's share of production. 198

If an unleased mineral owner does not make an election in 199
the time specified in division (F)(9) of this section, the 200
unleased mineral owner shall be deemed for all purposes to have 201
elected the option specified in division (F)(9)(a) of this 202
section. 203

(10) Such additional provisions as are found to be 204
appropriate for carrying on the unit operations, and for the 205
protection or adjustment of correlative rights. 206

(B) (G) No unit order of the chief providing for unit 207
operations shall become effective unless and until the plan for 208
unit operations prescribed by the chief has been approved in 209
writing by those owners who, under the chief's order, will be 210
required to pay at least sixty-five per cent of the costs of the 211
unit operation, and also by the royalty or, with respect to 212
unleased acreage, fee owners of sixty-five per cent of the 213
acreage to be included in the unit. If the plan for unit 214
operations has not been so approved by owners and royalty owners 215
at the time the unit order providing for unit operations is 216
made, the chief shall upon application and notice hold such 217
supplemental hearings as may be required to determine if and 218
when the plan for unit operations has been so approved. If the 219
owners and royalty owners, or either, owning the required 220

percentage of interest in the unit area do not approve the plan 221
for unit operations within a period of six months from the date 222
on which the unit order providing for unit operations is made, 223
the order shall cease to be of force and shall be revoked by the 224
chief. 225

~~An-(H) A unit order providing for unit operations~~ may be 226
amended by an order made by the chief, in the same manner ~~and~~ 227
~~subject to the same conditions as an original unit order-~~ 228
~~providing for unit operations~~, provided that: 229

(1) If such an amendment affects only the rights and 230
interests of the owners, the approval of the amendment by the 231
royalty owners shall not be required. 232

(2) No such order of amendment shall change the percentage 233
for allocation of oil and gas as established for any separately 234
owned tract by the original order, except with the consent of 235
all persons owning interest in the tract. 236

(3) No such order of amendment shall be required by the 237
chief for either of the following: 238

(a) A change in the ownership of the interests included in 239
the unit order when the unit boundaries do not change; 240

(b) Operational changes within the unit. 241

(I) The chief, by an order, may provide for the unit 242
operation of a pool or a part thereof that embraces a unit area 243
established by a previous unit order of the chief. Such an 244
order, in providing for the allocation of unit production, shall 245
first treat the unit area previously established as a single 246
tract, and the portion of the unit production so allocated 247
thereto shall then be allocated among the separately owned 248
tracts included in the previously established unit area in the 249

same proportions as those specified in the previous unit order. 250

(J) Oil and gas allocated to a separately owned tract 251
shall be deemed, for all purposes, to have been actually 252
produced from the tract, and all operations, including, but not 253
limited to, the commencement, drilling, operation of, or 254
production from a well upon any portion of the unit area shall 255
be deemed for all purposes the conduct of such operations and 256
production from any lease or contract for lands any portion of 257
which is included in the unit area. The operations conducted 258
pursuant to the order of the chief shall constitute a 259
fulfillment of all the express or implied obligations of each 260
lease or contract covering lands in the unit area to the extent 261
that compliance with such obligations cannot be had because of 262
the order of the chief. 263

Oil—(K) Except as otherwise provided in the unit order, 264
oil and gas allocated to any tract, and the proceeds from the 265
sale thereof, shall be the property and income of the several 266
persons ~~to whom, or to whose credit, the same are allocated or~~ 267
~~payable under the order providing for unit operations~~entitled to 268
share in that property and income in the same manner, in the 269
same proportions, and upon the same conditions, as they would 270
have been entitled to had the order not been made by the chief, 271
and with the same legal effect. 272

(L) No order of the chief or other contract relating to 273
the sale or purchase of production from a separately owned tract 274
shall be terminated by the unit order providing for unit 275
operations, but shall remain in force and apply to oil and gas 276
allocated to the tract until terminated in accordance with the 277
provisions thereof. 278

(M) Notwithstanding (1) Except as otherwise provided in 279

<u>division (M) (2) of this section and notwithstanding divisions</u>	280
<u>(A) to (H) of section 1509.73 of the Revised Code and rules</u>	281
<u>adopted under it, the chief shall issue an<u>a</u> unit order for the</u>	282
<u>unit operation of a pool or a part of a pool that encompasses a</u>	283
<u>unit area for which all or a portion of the mineral rights are</u>	284
<u>owned by the department of transportation state.</u>	285
 <u>(2) Division (M) (1) of this section does not apply to a</u>	286
<u>nature preserve, as defined in section 1517.01 of the Revised</u>	287
<u>Code, that is owned or controlled by a state agency.</u>	288
 <u>(N) No person shall undertake operations under the unit</u>	289
<u>order on the surface of a tract owned by an unleased mineral</u>	290
<u>owner without the written consent of the unleased mineral owner.</u>	291
 <u>(O) Except to the extent that the parties affected so</u>	292
<u>agree, no unit order providing for unit operations shall be</u>	293
<u>construed to result in a transfer of all or any part of the</u>	294
<u>title of any person to the oil and gas rights in any tract in</u>	295
<u>the unit area. All property, whether real or personal, that may</u>	296
<u>be acquired for the account of the owners within the unit area</u>	297
<u>shall be the property of such owners in the proportion that the</u>	298
<u>expenses of unit operations are charged.</u>	299
 <u>(P) Beginning on the effective date of this amendment, the</u>	300
<u>chief shall not establish any new guidelines to administer and</u>	301
<u>implement this section other than by rule adopted in accordance</u>	302
<u>with Chapter 119. of the Revised Code.</u>	303
 Section 2. That existing section 1509.28 of the Revised	304
Code is hereby repealed.	305