

**Senator Ralph Okerlund** proposes the following substitute bill:

**OIL AND GAS AMENDMENTS**

2017 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ralph Okerlund**

House Sponsor: Stephen G. Handy

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**LONG TITLE**

**General Description:**

This bill modifies the duties of the Board of Oil, Gas, and Mining.

**Highlighted Provisions:**

This bill:

- ▶ modifies definitions;
- ▶ states that the Board of Oil, Gas, and Mining may make an order establishing a drilling unit or a pooling order retroactive under certain circumstances; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**40-6-2**, as last amended by Laws of Utah 2012, Chapter 342

**40-6-6**, as last amended by Laws of Utah 2015, Chapter 44

**40-6-6.5**, as last amended by Laws of Utah 2014, Chapter 404

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26 *Be it enacted by the Legislature of the state of Utah:*

27 Section 1. Section **40-6-2** is amended to read:

28 **40-6-2. Definitions.**

29 For the purpose of this chapter:

30 (1) "Board" means the Board of Oil, Gas, and Mining.

31 (2) "Correlative rights" means the opportunity of each owner in a pool to produce his  
32 just and equitable share of the oil and gas in the pool without waste.

33 (3) "Condensate" means hydrocarbons, regardless of gravity, that:

34 (a) occur naturally in the gaseous phase in the reservoir; and

35 (b) are separated from the natural gas as liquids through the process of condensation  
36 either in the reservoir, in the wellbore, or at the surface in field separators.

37 (4) "Consenting owner" means an owner who, in the manner and within the time frame  
38 established by the board in rule, consents [~~in advance~~] to the drilling and operation of a well  
39 and agrees to bear [~~his~~] the owner's proportionate share of the costs of the drilling and  
40 operation of the well.

41 (5) "Crude oil" means hydrocarbons, regardless of gravity, that:

42 (a) occur naturally in the liquid phase in the reservoir; and

43 (b) are produced and recovered at the wellhead in liquid form.

44 (6) (a) "Gas" means natural gas, as defined in Subsection (9), natural gas liquids, as  
45 defined in Subsection (10), other gas, as defined in Subsection (16), or any mixture of them.

46 (b) "Gas" does not include any gaseous or liquid substance processed from coal, oil  
47 shale, or tar sands.

48 (7) "Illegal oil" or "illegal gas" means oil or gas that has been produced from any well  
49 within the state in violation of this chapter or any rule or order of the board.

50 (8) "Illegal product" means any product derived in whole or in part from illegal oil or  
51 illegal gas.

52 (9) (a) "Natural gas" means hydrocarbons that occur naturally in the gaseous phase in  
53 the reservoir and are produced and recovered at the wellhead in gaseous form, except natural  
54 gas liquids as defined in Subsection (10) and condensate as defined in Subsection (3).

55 (b) "Natural gas" includes coalbed methane gas.

56 (10) "Natural gas liquids" means hydrocarbons, regardless of gravity, that are separated

57 from natural gas as liquids in gas processing plants through the process of condensation,  
58 absorption, adsorption, or other methods.

59 (11) "Nonconsenting owner" means an owner who [~~after written notice does not~~  
60 ~~consent in advance~~] does not, after written notice and in the manner and within the time frame  
61 established by the board in rule, consent to the drilling and operation of a well or agree to bear  
62 [his] the owner's proportionate share of the costs.

63 (12) (a) "Oil" means crude oil, as defined in Subsection (5), condensate, as defined in  
64 Subsection (3), or any mixture of them.

65 (b) "Oil" does not include any gaseous or liquid substance processed from coal, oil  
66 shale, or tar sands.

67 (13) "Oil and gas operations" means to explore for, develop, or produce oil and gas.

68 (14) (a) "Oil and gas proceeds" means any payment that:

69 (i) derives from oil and gas production from any well located in the state;

70 (ii) is expressed as a right to a specified interest in the:

71 (A) cash proceeds received from the sale of the oil and gas; or

72 (B) the cash value of the oil and gas; and

73 (iii) is subject to any tax withheld from the payment pursuant to law.

74 (b) "Oil and gas proceeds" includes a royalty interest, overriding royalty interest,  
75 production payment interest, or working interest.

76 (c) "Oil and gas proceeds" does not include a net profits interest or other interest the  
77 extent of which cannot be determined with reference to a specified share of:

78 (i) the cash proceeds received from the sale of the oil and gas; or

79 (ii) the cash value of the oil and gas.

80 (15) "Operator" means a person who has been designated by the owners or the board to  
81 operate a well or unit.

82 (16) (a) "Other gas" means nonhydrocarbon gases that:

83 (i) occur naturally in the gaseous phase in the reservoir; or

84 (ii) are injected into the reservoir in connection with pressure maintenance, gas cycling,  
85 or other secondary or enhanced recovery projects.

86 (b) "Other gas" includes hydrogen sulfide, carbon dioxide, helium, and nitrogen.

87 (17) "Owner" means a person who has the right:

88 (a) to drill into and produce from a reservoir; and

89 (b) appropriate the oil and gas produced for himself or for himself and others.

90 (18) "Payor" means the person who undertakes to distribute oil and gas proceeds to the  
91 persons entitled to them, whether as the first purchaser of that production, as operator of the  
92 well from which the production was obtained, or as lessee under the lease on which royalty is  
93 due.

94 (19) "Pool" means an underground reservoir containing a common accumulation of oil  
95 or gas or both. Each zone of a general structure that is completely separated from any other  
96 zone in the structure is a separate pool. "Common source of supply" and "reservoir" are  
97 synonymous with "pool."

98 (20) "Pooling" means the bringing together of separately owned interests for the  
99 common development and operation of a drilling unit.

100 (21) "Producer" means the owner or operator of a well capable of producing oil and  
101 gas.

102 (22) "Product" means any commodity made from oil and gas.

103 (23) "Surface land" means privately owned land:

104 (a) overlying privately owned oil and gas resources;

105 (b) upon which oil and gas operations are conducted; and

106 (c) owned by a surface land owner.

107 (24) (a) "Surface land owner" means a person who owns, in fee simple absolute, all or  
108 part of the surface land as shown by the records of the county where the surface land is located.

109 (b) "Surface land owner" does not include the surface land owner's lessee, renter,  
110 tenant, or other contractually related person.

111 (25) "Surface land owner's property" means a surface land owner's:

112 (a) surface land;

113 (b) crops on the surface land; and

114 (c) existing improvements on the surface land.

115 (26) "Surface use agreement" means an agreement between an owner or operator and a  
116 surface land owner addressing:

117 (a) the use and reclamation of surface land owned by the surface land owner; and

118 (b) compensation for damage to the surface land caused by oil and gas operations that

119 result in:

120 (i) loss of the surface land owner's crops on the surface land;

121 (ii) loss of value of existing improvements owned by the surface land owner on the  
122 surface land; and

123 (iii) permanent damage to the surface land.

124 (27) "Waste" means:

125 (a) the inefficient, excessive, or improper use or the unnecessary dissipation of oil or  
126 gas or reservoir energy;

127 (b) the inefficient storing of oil or gas;

128 (c) the locating, drilling, equipping, operating, or producing of any oil or gas well in a  
129 manner that causes:

130 (i) a reduction in the quantity of oil or gas ultimately recoverable from a reservoir  
131 under prudent and economical operations;

132 (ii) unnecessary wells to be drilled; or

133 (iii) the loss or destruction of oil or gas either at the surface or subsurface; or

134 (d) the production of oil or gas in excess of:

135 (i) transportation or storage facilities; or

136 (ii) the amount reasonably required to be produced as a result of the proper drilling,  
137 completing, testing, or operating of a well or otherwise utilized on the lease from which it is  
138 produced.

139 Section 2. Section **40-6-6** is amended to read:

140 **40-6-6. Drilling units -- Establishment by board -- Modifications -- Prohibitions.**

141 (1) The board may order the establishment of drilling units for a pool.

142 (2) Within each drilling unit, only one well may be drilled for production from the  
143 common source of supply, except as provided in Subsections (6) and (7).

144 (3) A drilling unit may not be smaller than the maximum area that can be efficiently  
145 and economically drained by one well.

146 (4) (a) Each drilling unit within a pool shall be of uniform size and shape, unless the  
147 board finds that it must make an exception due to geologic, geographic, or other factors.

148 (b) If the board finds it necessary to divide a pool into zones and establish drilling units  
149 for each zone, drilling units may differ in size and shape for each zone.

150 (5) An order of the board that establishes drilling units for a pool shall:  
 151 (a) be made upon terms and conditions that are just and reasonable;  
 152 (b) include all lands determined by the board to overlay the pool;  
 153 (c) specify the acreage and shape of each drilling unit as determined by the board; and  
 154 (d) specify the location of the well in terms of distance from drilling unit boundaries  
 155 and other wells.

156 (6) The board may establish a drilling unit and concurrently authorize the drilling of  
 157 more than one well in a drilling unit if the board finds that:

158 (a) engineering or geologic characteristics justify the drilling of more than one well in  
 159 that drilling unit; and

160 (b) the drilling of more than one well in the drilling unit will not result in waste.

161 (7) The board may modify an order that establishes drilling units for a pool to provide  
 162 for:

163 (a) an exception to the authorized location of a well;

164 (b) the inclusion of additional areas which the board determines overlays the pool;

165 (c) the increase or decrease of the size of drilling units; or

166 (d) the drilling of additional wells within drilling units.

167 (8) (a) An order of the board that establishes a drilling unit may be made effective  
 168 retroactively to the date of first production of an existing well located within the drilling unit if  
 169 no party to the board's proceeding objects to the retroactive application.

170 (b) An order made retroactive under this section is binding upon a party owning an  
 171 interest in the drilling unit who receives proper notice of the board's proceeding.

172 ~~(8)~~ (9) (a) After an order establishing drilling units has been entered by the board, the  
 173 drilling of a well into the pool at a location other than that authorized by the order is prohibited.

174 (b) The operation of a well drilled in violation of an order fixing drilling units is  
 175 prohibited.

176 Section 3. Section 40-6-6.5 is amended to read:

177 **40-6-6.5. Pooling of interests for the development and operation of a drilling unit**  
 178 **-- Board may order pooling of interests -- Payment of costs and royalty interests --**  
 179 **Monthly accounting.**

180 (1) Two or more owners within a drilling unit may bring together their interests for the

181 development and operation of the drilling unit.

182 (2) (a) In the absence of a written agreement for pooling, the board may enter an order  
183 pooling all interests in the drilling unit for the development and operation of the drilling unit.

184 (b) The order shall be made upon terms and conditions that are just and reasonable.

185 (c) The board may adopt terms appearing in an operating agreement:

186 (i) for the drilling unit that is in effect between the consenting owners;

187 (ii) submitted by any party to the proceeding; or

188 (iii) submitted by its own motion.

189 (3) (a) Operations incident to the drilling of a well upon any portion of a drilling unit  
190 covered by a pooling order shall be deemed for all purposes to be the conduct of the operations  
191 upon each separately owned tract in the drilling unit by the several owners.

192 (b) The portion of the production allocated or applicable to a separately owned tract  
193 included in a drilling unit covered by a pooling order shall, when produced, be deemed for all  
194 purposes to have been produced from that tract by a well drilled on it.

195 (4) (a) (i) Each pooling order shall provide for the payment of just and reasonable costs  
196 incurred in the drilling and operating of the drilling unit, including:

197 (A) the costs of drilling, completing, equipping, producing, gathering, transporting,  
198 processing, marketing, and storage facilities;

199 (B) reasonable charges for the administration and supervision of operations; and

200 (C) other costs customarily incurred in the industry.

201 (ii) An owner is not liable under a pooling order for costs or losses resulting from the  
202 gross negligence or willful misconduct of the operator.

203 (b) Each pooling order shall provide for reimbursement to the consenting owners for  
204 any nonconsenting owner's share of the costs out of production from the drilling unit  
205 attributable to the nonconsenting owner's tract.

206 (c) Each pooling order shall provide that each consenting owner shall own and be  
207 entitled to receive, subject to royalty or similar obligations:

208 (i) the share of the production of the well applicable to the consenting owner's interest  
209 in the drilling unit; and

210 (ii) unless the consenting owner has agreed otherwise, the consenting owner's  
211 proportionate part of the nonconsenting owner's share of the production until costs are

212 recovered as provided in Subsection (4)(d).

213 (d) (i) Each pooling order shall provide that each nonconsenting owner shall be entitled  
214 to receive, subject to royalty or similar obligations, the share of the production of the well  
215 applicable to the nonconsenting owner's interest in the drilling unit after the consenting owners  
216 have recovered from the nonconsenting owner's share of production the following amounts less  
217 any cash contributions made by the nonconsenting owner:

218 (A) 100% of the nonconsenting owner's share of the cost of surface equipment beyond  
219 the wellhead connections, including stock tanks, separators, treaters, pumping equipment, and  
220 piping;

221 (B) 100% of the nonconsenting owner's share of the estimated cost to plug and  
222 abandon the well as determined by the board;

223 (C) 100% of the nonconsenting owner's share of the cost of operation of the well  
224 commencing with first production and continuing until the consenting owners have recovered  
225 all costs; and

226 (D) an amount to be determined by the board but not less than 150% nor greater than  
227 400% of the nonconsenting owner's share of the costs of staking the location, wellsite  
228 preparation, rights-of-way, rigging up, drilling, reworking, recompleting, deepening or  
229 plugging back, testing, and completing, and the cost of equipment in the well to and including  
230 the wellhead connections.

231 (ii) The nonconsenting owner's share of the costs specified in Subsection (4)(d)(i) is  
232 that interest which would have been chargeable to the nonconsenting owner had the  
233 nonconsenting owner initially agreed to pay the nonconsenting owner's share of the costs of the  
234 well from commencement of the operation.

235 (iii) A reasonable interest charge may be included if the board finds it appropriate.

236 (e) If there is any dispute about costs, the board shall determine the proper costs.

237 (5) If a nonconsenting owner's tract in the drilling unit is subject to a lease or other  
238 contract for the development of oil and gas, the pooling order shall provide that the consenting  
239 owners shall pay any royalty interest or other interest in the tract not subject to the deduction of  
240 the costs of production from the production attributable to that tract.

241 (6) (a) If a nonconsenting owner's tract in the drilling unit is not subject to a lease or  
242 other contract for the development of oil and gas, the pooling order shall provide that the

243 nonconsenting owner shall receive as a royalty:

244 (i) the acreage weighted average landowner's royalty based on each leased fee and  
245 privately owned tract within the drilling unit, proportionately reduced by the percentage of the  
246 nonconsenting owner's interest in the drilling unit; or

247 (ii) if there is no leased fee or privately owned tract within the drilling unit other than  
248 the one owned by the nonconsenting owner, 16-2/3% proportionately reduced by the  
249 percentage of the nonconsenting owner's interest in the drilling unit.

250 (b) The royalty shall be:

251 (i) determined prior to the commencement of drilling; and

252 (ii) paid from production attributable to each tract until the consenting owners have  
253 recovered the costs specified in Subsection (4)(d).

254 (7) Once the consenting owners have recovered the costs, as described in Subsection  
255 (6)(b)(ii), the royalty shall be merged back into the nonconsenting owner's working interest and  
256 shall be terminated.

257 (8) The operator of a well under a pooling order in which there is a nonconsenting  
258 owner shall furnish the nonconsenting owner with monthly statements specifying:

259 (a) costs incurred;

260 (b) the quantity of oil or gas produced; and

261 (c) the amount of oil and gas proceeds realized from the sale of the production during  
262 the preceding month.

263 (9) Each pooling order shall provide that when the consenting owners recover from a  
264 nonconsenting owner's relinquished interest the amounts provided for in Subsection (4)(d):

265 (a) the relinquished interest of the nonconsenting owner shall automatically revert to  
266 him;

267 (b) the nonconsenting owner shall from that time:

268 (i) own the same interest in the well and the production from it; and

269 (ii) be liable for the further costs of the operation as if he had participated in the initial  
270 drilling and operation; and

271 (c) costs are payable out of production unless otherwise agreed between the  
272 nonconsenting owner and the operator.

273 (10) Each pooling order shall provide that in any circumstance where the

274 nonconsenting owner has relinquished his share of production to consenting owners or at any  
275 time fails to take his share of production in-kind when he is entitled to do so, the  
276 nonconsenting owner is entitled to:

277 (a) an accounting of the oil and gas proceeds applicable to his relinquished share of  
278 production; and

279 (b) payment of the oil and gas proceeds applicable to that share of production not taken  
280 in-kind, net of costs.

281 (11) (a) A pooling order may be made effective retroactively to the date of first  
282 production of a well to which it applies, even if the retroactive date predates the board's order  
283 establishing the drilling unit, if no party to the board's proceeding objects to the retroactive  
284 application.

285 (b) A pooling order made retroactive under this section is binding upon a party owning  
286 an interest in the drilling unit who receives proper notice of the board's proceeding.