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West Virginia Legislature Passes Multiple Bills Impacting Oil and Gas Industry

The recently concluded 2022 Regular Session of the West Virginia Legislature addressed a number of issues facing the state's oil and gas industry. One of those bills—H.B. 4336—made additional changes to the way oil, natural gas, and NGLs are valued for property tax purposes by building on a piece of legislation passed in 2021 that required the State Tax Commissioner to adopt a valuation methodology that applies a yield capitalization model to net proceeds for a particular well. Click [here](#) to read more on how this year's bill further specifies how that yield capitalization model must now be applied.

The Legislature also adopted unitization legislation that had long been a goal of the industry to address the issue of absent or hold-out mineral interest owners impeding development. In addition, changes were made to the Contenancy Act.

West Virginia Adopts Long-Awaited Unitization Legislation

The West Virginia Legislature, nearing the close of its annual 60-day Regular Session, passed legislation on March 9 relating to the unitization (i.e., the combination of tracts) of oil and gas interests for horizontal well drilling. Passing legislation addressing unitization—sometimes called forced pooling or lease integration—has been a long-sought but elusive goal for the oil and gas industry in West Virginia, where development is often impeded by absent or hold-out mineral interest owners. Similar measures were introduced but failed in each of the last eight annual regular sessions.

The bill, [S.B. 694](#), authorizes the West Virginia Oil and Gas Conservation Commission ("Commission") to set new application requirements for the issuance of horizontal well unit orders. The legislation permits unitization of interests for both shallow and deep well drilling where a producer can show it has

secured agreement from executive interest royalty owners in the target formation owning at least 75% of the net acreage in the prospective unit and, with respect to the operator (working) interest, the producer controls 55% or more of the net acreage in the prospective unit. See W.Va. Code §22C-9-7a.

The bill caps horizontal well units at 640 acres per unit, and a unit cannot contain more than 128 net acres held by non-consenting royalty owners. The measure also provides non-consenting royalty owners with valid leases two options for how they are compensated: 1) 25% of the weighted average bonuses; or 2) 80% of the weighted average production royalty percentage. Non-consenting owners without leases can sell their minerals, participate in the well subject to a penalty, or elect to receive royalty payments in one of three ways.

S.B. 694 was passed after industry reached agreement with royalty owners and the West Virginia Farm Bureau on compromise language that also did not draw opposition from the state's surface owners association. Part of that compromise was expanding the membership of the five-member Commission to seven by adding two seats dedicated to representatives of farming and mineral interest owners. See W.Va. Code §22C-9-4. The legislation now sits on Governor Jim Justice's desk, where approval is expected. If signed into law, S.B. 694 would go into effect on June 7, 2022.

S.B. 694 was not the only important legislation passed by the West Virginia Legislature this year.

West Virginia Broadens Cotenancy Statute

On March 5, the West Virginia Legislature passed [S.B. 650](#), which amended the Cotenancy Modernization and Majority Protection Act, W.Va. Code § 37B-1-1, et seq ("the Cotenancy Act"), by removing the "seven or more cotenants" requirement, thereby broadening the statute's applicability. Adopted in 2018, the Cotenancy Act permits oil and gas development within a mineral tract co-owned by seven or more co-tenants if the operator obtains consent from at least 75% of the cotenants. The legislation is now before Governor Jim Justice, who is expected to sign it into law. If approved by the

Governor, S.B. 650 would go into effect on June 3, 2022.

For more information on these issues, please contact [Joe Ward](#), or any attorney with Frost Brown Todd's Energy [Oil & Gas](#) industry team.

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