

1 HB169  
2 181201-1  
3 By Representatives Gaston and Buskey  
4 RFD: Ways and Means General Fund  
5 First Read: 09-FEB-17

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8 SYNOPSIS: Under existing law, the State Oil and Gas  
9 Board may enter orders requiring owners in a  
10 proposed or existing drilling or production unit to  
11 pool or integrate their interests and to develop  
12 their interests and lands as a drilling or  
13 production unit and may under certain circumstances  
14 provide that, if a productive well is drilled on  
15 the unit, there may be deducted from any production  
16 or proceeds thereof due to a nonconsenting owner  
17 who did not pay a share of drilling costs for the  
18 well, a risk compensation fee equal to 150% of that  
19 owners share of those costs but that in all events  
20 a 3/16th share of production from such well must be  
21 treated as royalty and shall be free from any  
22 drilling costs or risk compensation fee. A risk  
23 compensation fee cannot be imposed unless all  
24 affected parties are given notice and a public  
25 hearing is held by the State Oil and Gas Board and  
26 the Board finds that all of the statutory  
27 requirements for imposing such a fee have been met.

1                   This bill clarifies that although a risk  
2                   compensation fee cannot be charged against the  
3                   interest of an owner who does not receive actual  
4                   notice of the hearing on the petition requesting  
5                   imposition of the fee, the fee is chargeable  
6                   against the interests of other nonconsenting owners  
7                   in the unit who were given actual notice of the  
8                   hearing in compliance with applicable laws.

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10   A BILL  
11   TO BE ENTITLED  
12   AN ACT

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14                   To amend Section 9-17-13, Code of Alabama 1975 to  
15                   allow forced pooling or integration of drilling and production  
16                   units and risk compensation fee for properly notice owners.

17                   BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

18                   Section 1. Section 9-17-13 is amended to read as  
19                   follows:

20                   "§9-17-13.

21                   "(a) When any mineral or other related interests  
22                   deriving from two or more separately owned tracts of land are  
23                   embraced within an established or a proposed drilling or  
24                   production unit, or when there are separately owned interests  
25                   in all or a part of an established or proposed drilling or  
26                   production unit, or any combination of such, the persons  
27                   owning the interests therein may validly agree to integrate or

1 pool the interests and to develop the interests and associated  
2 lands as a drilling or production unit. Where, however, the  
3 owners have not agreed to so integrate or pool the interests,  
4 the board shall, for the prevention of waste or to avoid the  
5 drilling of unnecessary wells, require the persons owning such  
6 interests to do so and to develop their interests and the  
7 associated lands as a drilling or production unit.

8 "(b) The board, in order to prevent waste and avoid  
9 the drilling of unnecessary wells, may permit or require the  
10 cycling of gas in any pool or portion thereof and is also  
11 authorized to permit or require the introduction of gas or  
12 other substance into an oil or gas reservoir for the purpose  
13 of repressuring the reservoir, maintaining pressure or  
14 carrying on enhanced recovery operations. The board may  
15 require pooling or integration of all the interests in or  
16 associated with the tracts, when reasonably necessary in  
17 connection with cycling operations.

18 "(c) All orders requiring integration, pooling,  
19 cycling, repressuring, pressure maintenance or enhanced  
20 recovery operations shall be made after notice and hearing and  
21 shall be upon terms and conditions that are just and  
22 reasonable and which will afford to the person owning each  
23 such interest associated with each tract the opportunity to  
24 recover or receive his or her just and equitable share of the  
25 oil and gas in the pool without unnecessary expense and will  
26 prevent or minimize reasonably avoidable drainage from each  
27 developed unit which is not equalized by counterdrainage. The

1 portion of the production allocated to each tract or interest  
2 included in an integrated or pooled unit formed by an  
3 integration or pooling order shall, when produced, be  
4 considered as if it had been produced from the tract or  
5 interest by a well drilled thereon; and any operations  
6 conducted within or with respect to the pooled or integrated  
7 unit pursuant to the pooling or integration order shall be  
8 deemed for all purposes to be the conduct of operations for  
9 the production of oil or gas or both from each tract or  
10 interest within the unit. All orders requiring pooling or  
11 integration shall, among other things, provide all of the  
12 following:

13 "(1) That the actual and reasonable costs of  
14 developing and operating the pooled integrated unit (including  
15 a reasonable charge for supervision) and, if applicable, a  
16 risk compensation fee (as hereinafter provided) shall be  
17 charged to the separately owned tracts or interests in the  
18 unit in the same proportion that such tracts or interests  
19 share in production from the unit.

20 "(2) That such costs and fee (if any) chargeable to  
21 a tract or interest shall be paid by the person or persons not  
22 entitled to share in production free of development and  
23 operating costs and who, in the absence of the pooling or  
24 integration order, would be responsible for the expense of  
25 developing and operating the tract or interest and that  
26 person's or persons' interest in the separately owned tract or  
27 interest shall be primarily responsible therefor.

1           "(3) That, if any nonconsenting owner shall fail or  
2 refuse to pay the costs and/or fee (if any) chargeable to his  
3 or her tract or interest, the costs and/or fee shall be  
4 recoverable solely out of the production allocable to the  
5 tract or interest, provided, however, that this limitation  
6 shall not apply to a nonconsenting owner who has furnished the  
7 operator with a notarized statement agreeing to pay his or her  
8 proportionate share of the drilling and completion costs for a  
9 unit well as hereinafter provided.

10           "(4) That, when the full amount of any charge made  
11 against a separately owned tract or interest is not paid when  
12 due by the person or persons primarily responsible therefor,  
13 as provided above, then 13/16ths (or if said tract or interest  
14 is leased, the working interest fraction or percent if it is  
15 greater) of the oil and gas production allocated to the  
16 separately owned tract or interest may be appropriated by the  
17 operator and marketed and sold for the payment of the charge,  
18 but that a 3/16ths part (or the actual landowner royalty if it  
19 is less) of the unit production allocated to each separately  
20 owned tract or interest shall in all events be regarded as  
21 royalty and shall, if there be no reasonable question as to  
22 good and merchantable title, be distributed to and among, or  
23 the proceeds thereof paid to, the person or persons owning  
24 royalty or unleased mineral interests (as the case may be) in  
25 the tract or interest free and clear of the development and  
26 operating costs and of any risk compensation fee and free and  
27 clear of any lien for the payment of the costs and fee.

1           "(5) That any person owning any overriding royalty,  
2 oil and gas payment, royalty in excess of 3/16ths of  
3 production, or other interests, who is not primarily  
4 responsible for payment of the development and operating costs  
5 or risk compensation fee (if any), shall, to the extent of any  
6 payment or deduction therefor from his or her share, be  
7 subrogated to all the rights of the operator with respect to  
8 the interest or interests primarily responsible for the  
9 payment.

10           "Additionally, if the operator, or the operator  
11 together with the consenting owners, shall own a majority in  
12 interest of the drilling and operating rights in the  
13 integrated or pooled unit, and the operator has made a good  
14 faith effort to (i) negotiate with each nonconsenting owner to  
15 have the owner's interest voluntarily integrated or pooled  
16 into the unit, (ii) notify each nonconsenting owner of record  
17 of the names of all owners of drilling rights who have agreed  
18 to integrate or pool any interests in the unit, (iii)  
19 ascertain the address of each nonconsenting owner, (iv) give  
20 each nonconsenting owner written notice of the proposed  
21 operation, specifying the work to be performed, the proposed  
22 location, proposed depth, objective formation and the  
23 estimated cost of the proposed operation, and (v) to offer  
24 each nonconsenting owner the opportunity to lease or farm out  
25 on reasonable terms or participate in the cost and risk of  
26 developing and operating the unit well involved on reasonable  
27 terms, then the pooling or integration order shall, if the

1 operator so requests, also provide that, if any nonconsenting  
2 owner (a) does not pay his or her proportionate share of the  
3 drilling and completion costs for any unit well within 30 days  
4 after commencement of actual drilling operations, or prior to  
5 reaching total depth, whichever is earlier, or at such other  
6 time as may be contracted between the parties, or,  
7 alternatively, (b) does not, on or before commencement of  
8 actual drilling operations, provide the operator with a  
9 notarized statement agreeing to pay the costs, then there  
10 shall be charged to the tract or interest of the nonconsenting  
11 owner a risk compensation fee equal to 150 percent of the  
12 tract's or interest's share of the actual and reasonable costs  
13 of drilling, reworking (prior to initial commercial  
14 production), testing, plugging back, deepening (but not below  
15 that depth specified in the permit for the well), and  
16 completing (through the wellhead) said well; provided,  
17 however, that no risk compensation fee shall be chargeable  
18 against the tract or interest of any nonconsenting owner who  
19 owned of record a tract or interest in the unit prior to the  
20 time notice was given unless, at the pooling or integration  
21 hearing, it is shown, by a United States mail certified mail  
22 return receipt card or by other evidence deemed sufficient by  
23 the board, that the nonconsenting owner was given actual  
24 notice of the pooling or integration hearing and unless it is  
25 also shown that the notice given to the owner specifically  
26 stated that the operator was requesting that the board impose  
27 a risk compensation fee in accordance with the provisions of



1        this section. Provided, further, that, if after diligent  
2        search and inquiry, the operator is unable to locate and give  
3        the required notice to any nonconsenting owner, the risk  
4        compensation fee shall not be imposed as to the interest of  
5        that nonconsenting owner, however, the operator may request  
6        that a risk compensation fee be imposed as to the interests of  
7        all other nonconsenting owners in the unit who received the  
8        required notice in accordance with the provisions of this  
9        section. In the event that a nonconsenting owner who has  
10       provided the operator with a notarized statement agreeing to  
11       pay his or her proportionate share of the drilling and  
12       completion costs for a unit well does not fully pay the costs  
13       within 30 days after commencement of actual drilling  
14       operations or prior to reaching total depth, whichever is  
15       earlier, or on or before such other time as may be contracted  
16       between the parties, then any unpaid balance of the costs  
17       shall bear interest at the rate of one and one-half percent  
18       per month, and the nonconsenting owner shall be personally  
19       liable for the unpaid balance together with interest thereon  
20       and also for any attorney's fees, court costs, or other  
21       expenses incurred by the operator in attempting to collect the  
22       unpaid balance and interest thereon; and, additionally, the  
23       operator shall have the right, if the well is a producer, to  
24       appropriate, market, and sell the nonconsenting owner's share  
25       of production for the payment of the amounts due by that  
26       owner. The value of any production appropriated by the  
27       operator under the authority of any integration or pooling

1 order shall be calculated at the market price in the field  
2 (after deduction for taxes and for cleansing, transportation,  
3 compression, and processing costs) at the time such production  
4 is received by the operator or placed to his or her credit.  
5 Unless the pooling or integration order (or an amendment  
6 thereto) shall specify otherwise or unless the affected  
7 parties shall agree otherwise, production from any pooled or  
8 integrated unit formed by a pooling or integration order shall  
9 be allocated to each separately owned tract or interest in the  
10 unit in the proportion that the acreage of each tract or  
11 interest bears to the total acreage of the unit; and under the  
12 circumstances allocation of production on this basis shall be  
13 considered as a just and reasonable allocation which will  
14 afford to each person owning each tract or interest within the  
15 unit the opportunity to recover or receive his or her just and  
16 equitable share of the oil and gas produced from the unit.  
17 Nothing herein or in any order issued pursuant hereto shall be  
18 construed to subject any nonconsenting owner who is subject to  
19 a risk compensation fee, as hereinabove provided, to any  
20 personal liability for any damages caused by or resulting from  
21 any negligent act or other tort committed by the operator or  
22 by any consenting owner in the course of developing and  
23 operating a pooled or integrated unit; nor shall anything  
24 herein or in any order issued pursuant hereto prevent the  
25 operator and any other owner or owners in the unit from  
26 entering into any agreement that contains provisions  
27 respecting the pooling, integration, or development of their

1 tracts or interests in the pooled or integrated unit that  
2 differ from the above provisions or from the provisions  
3 contained in any pooling or integration order. As used herein,  
4 the term "operator" shall mean the person designated by the  
5 board to be in charge of developing and operating a drilling  
6 or production unit; the term "nonconsenting owner" shall mean  
7 an owner who owns a tract or interest in a drilling or  
8 production unit and who has not, on or before the date a  
9 pooling or integration order is entered with respect to such  
10 unit, reached an agreement with the operator relative to the  
11 terms and conditions which will govern the manner in which his  
12 or her said tract or interest shall be developed and operated;  
13 the term "consenting owner" shall mean an owner who has so  
14 reached such an agreement with the operator; the term "owner"  
15 shall mean a person who, if a pooling or integration order had  
16 not been entered, would be an owner as that term is defined  
17 elsewhere in this article; the terms "costs of developing" and  
18 "development costs" shall include, among other things, the  
19 costs of drilling, equipping, reworking, testing, plugging  
20 back, deepening, and completing the initial unit well and any  
21 subsequent unit well but shall not include any costs incurred  
22 in connection with the acquisition of any oil and gas leases  
23 covering tracts or interests in the unit; and the term "actual  
24 and reasonable costs" means actual expenditures not in excess  
25 of what are reasonable.

26 "Subsection (c) shall apply only to unitization of  
27 interests within a drilling unit and shall not apply to

1 fieldwide or poolwide units, which are authorized and governed  
2 under the provisions of Article 3 of this chapter.

3 "(d) Should the owners of separate tracts or  
4 interests embraced within a drilling or production unit fail  
5 to agree upon the integration or pooling of the tracts or  
6 interests associated with the tracts and the drilling of a  
7 well on that unit, and should it be established that the board  
8 is without authority to require integration or pooling as  
9 provided for in this section, then subject to all other  
10 applicable provisions of this article, the owner of the  
11 interest or interests associated with each tract embraced  
12 within the drilling or production unit may drill on his or her  
13 tract; but the allowable production from that tract or  
14 interest shall be such proportion of the allowable production  
15 for the full drilling or production unit as the area of the  
16 separately owned tract associated with the separately owned  
17 interest bears to the full drilling or production unit.

18 "(e) Agreements made in the interest of conservation  
19 of oil or gas, or both, or for the prevention of waste,  
20 between and among owners or operators, or both, owning  
21 separate interests in the same oil or gas pool, or in any area  
22 that appears from geological or other data to be underlain by  
23 a common accumulation of oil or gas, or both, and agreements  
24 between and among the owners or operators, or both, and  
25 royalty owners therein of the pool or area or any part thereof  
26 as a unit for establishing and carrying out a plan for the  
27 cooperative development and operation thereof, when the

1 agreements are approved by the board, are hereby authorized  
2 and shall not be held or construed to violate any of the  
3 statutes of this state relating to trusts, monopolies, or  
4 contracts and combinations in restraint of trade."

5 Section 2. This act will become effective  
6 immediately following its passage and approval by the  
7 Governor, or its otherwise becoming law.