

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

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HOUSE PRINCIPAL CLERK

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HOUSE DRH20136-RI-13 (03/17)

Short Title: Proh't Comp. Pooling/Rqr. Surf. Owner's Cons.

(Public)

Sponsors: Representative Holloway.

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROHIBIT THE STATE FROM REQUIRING PERSONS WITH OIL OR GAS  
3 RIGHTS TO INVOLUNTARILY INTEGRATE THEIR INTERESTS IN A DRILLING  
4 UNIT AND TO GENERALLY REQUIRE A SURFACE OWNER'S CONSENT FOR  
5 OPERATIONS OR DISTURBANCES TO THE SURFACE OF THE LAND.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 113-393 reads as rewritten:

8 "**§ 113-393. Development of lands as drilling unit by ~~agreement or order of~~**  
9 **Commission agreement.**

10 (a) Integration of Interests and Shares in Drilling Unit. – When two or more separately  
11 owned tracts of land are embraced within an established drilling unit, the owners thereof may  
12 agree validly to integrate their interests and to develop their lands as a drilling unit. ~~Where,~~  
13 ~~however, such owners have not agreed to integrate their interests, the Commission shall, for the~~  
14 ~~prevention of waste or to avoid drilling of unnecessary wells, require such owners to do so and~~  
15 ~~to develop their lands as a drilling unit. All orders requiring such integration shall be made after~~  
16 ~~notice and hearing, and shall be upon terms and conditions that are just and reasonable, and will~~  
17 ~~afford to the owner of each tract the opportunity to recover or receive his just and equitable~~  
18 ~~share of the oil and gas in the pool without unnecessary expense, and will prevent or minimize~~  
19 ~~reasonably avoidable drainage from each developed unit which is not equalized by~~  
20 ~~counter drainage. The portion of the production allocated to the owner of each tract included in~~  
21 ~~a drilling unit formed by an integration order shall, when produced, be considered as if it had~~  
22 ~~been produced from such tract by a well drilled thereon.~~ The Commission shall not require the  
23 owner or lessor of subsurface oil or gas resources to integrate their interest with another  
24 owner's interest or require extraction of that resource.

25 ~~In the event such integration is required, and provided also that after due notice to all the~~  
26 ~~owners of tracts within such drilling unit of the creation of such drilling unit, and provided~~  
27 ~~further that the Commission has received no protest thereto, or request for hearing thereon,~~  
28 ~~whether or not 10 days have elapsed after notice has been given of the creation of the drilling~~  
29 ~~unit, the~~ An operator designated by the Commission to develop and operate the a voluntarily  
30 integrated unit shall have the right to charge to each other interested owner the actual  
31 expenditures required for such purpose not in excess of what are reasonable, including a  
32 reasonable charge for supervision, and the operator shall have the right to receive the first  
33 production from the well drilled by him thereon, which otherwise would be delivered or paid to  
34 the other parties jointly interested in the drilling of the well, so that the amount due by each of  
35 them for his shares of the expense of drilling, equipping, and operating the well may be paid to  
36 the operator of the well out of production; with the value of the production calculated at the



1 market price in the field at the time such production is received by the operator or placed to his  
2 credit. After being reimbursed for the actual expenditures for drilling and equipping and  
3 operating expenses incurred during the drilling operations and until the operator is reimbursed,  
4 the operator shall thereafter pay to the owner of each tract within the pool his ratable share of  
5 the production calculated at the market price in the field at the time of such production less the  
6 reasonable expense of operating the well. In the event of any dispute relative to such costs, the  
7 Commission shall determine the proper costs.

8 (b) When Each Owner May Drill. – Should the owners of separate tracts embraced  
9 within a drilling unit fail to agree upon the integration of the tracts and the drilling of a well on  
10 the unit, ~~and should it be established that the Commission is without authority to require~~  
11 ~~integration as provided for in subsection (a) of this section, then,~~ subject to all other applicable  
12 provisions of this law, the owner of each tract embraced within the drilling unit may drill on his  
13 tract, but the allowable production from each tract shall be such proportion of the allowable for  
14 the full drilling unit as the area of such separately owned tract bears to the full drilling unit.

15 (c) Cooperative Development Not in Restraint of Trade. – Agreements made in the  
16 interests of conservation of oil or gas, or both, or for the prevention of waste, between and  
17 among owners or operators, or both, owning separate holdings in the same oil or gas pool, or in  
18 any area that appears from geological or other data to be underlaid by a common accumulation  
19 of oil or gas, or both, or between and among such owners or operators, or both, and royalty  
20 owners therein, of a pool or area, or any part thereof, as a unit for establishing and carrying out  
21 a plan for the cooperative development and operation thereof, when such agreements are  
22 approved by the Commission, are hereby authorized and shall not be held or construed to  
23 violate any of the statutes of this State relating to trusts, monopolies, or contracts and  
24 combinations in restraining of trade.

25 (d) Variation from Vertical. – Whenever the Department fixes the location of any well  
26 or wells on the surface, the point at which the maximum penetration of such wells into the  
27 producing formation is reached shall not unreasonably vary from the vertical drawn from the  
28 center of the hole at the surface, provided, that the Commission shall prescribe rules and the  
29 Department shall prescribe orders governing the reasonableness of such variation. This  
30 subsection shall not apply to wells drilled for the purpose of exploration or development of  
31 natural gas through use of horizontal drilling in conjunction with hydraulic fracturing  
32 treatments."

33 **SECTION 2.** G.S. 113-423.1 reads as rewritten:

34 "**§ 113-423.1. Surface activities.**

35 (a) ~~Agreements on Rights and Obligations of Parties. — The developer or operator and~~  
36 ~~the surface owner may enter into a mutually acceptable agreement that sets forth the rights and~~  
37 ~~obligations of the parties with respect to the surface activities conducted by the developer or~~  
38 ~~operator.~~ Written Consent From Surface Owner Required to Conduct Surface Activities. – If the  
39 owner of the surface of the land is not the owner or lessor of the subsurface oil or gas resources  
40 underlying the land, no surface operations or disturbances to the surface of the land shall occur  
41 without the written consent of the surface owner that approves the operations or disturbances.  
42 The following conditions shall apply to this subsection:

43 (1) If the surface owner provides written consent that approves operations or  
44 disturbances to the surface of the land, the developer or operator and the  
45 surface owner may enter into a mutually acceptable agreement that sets forth  
46 the rights and obligations of the parties with respect to operations or  
47 disturbances to the surface of the land conducted by the developer or  
48 operator.

49 (2) If failure to approve operations or disturbances to the surface of the land by  
50 the surface owner would render access to subsurface oil or gas resources  
51 underlying the land technically or economically infeasible, this subsection

1                   shall not apply, but minimization of intrusion shall still be required pursuant  
2                   to subsection (b) of this section. In any litigation or arbitration based upon  
3                   this subdivision, the developer or operator shall bear the burden of proof that  
4                   a surface owner's failure to approve operations or disturbances to the surface  
5                   would render access to subsurface oil or gas resources underlying the land  
6                   technically or economically infeasible. If a developer or operator makes that  
7                   showing, the surface owner may present rebuttal evidence.

8           (b)   Minimization of Intrusion Required. – ~~An~~ Subject to the limitations of subdivision  
9           (2) of subsection (a) of this section, an oil or gas developer or operator shall conduct oil and gas  
10           operations in a manner that accommodates the surface owner by minimizing intrusion upon and  
11           damage to the surface of the land. As used in this subsection, "minimizing intrusion upon and  
12           damage to the surface" means selecting alternative locations for wells, roads, pipelines, or  
13           production facilities, or employing alternative means of operation that prevent, reduce, or  
14           mitigate the impacts of the oil and gas operations on the surface, where such alternatives are  
15           technologically sound, economically practicable, and reasonably available to the operator. The  
16           standard of conduct set forth in this subsection shall not be construed to (i) prevent an operator  
17           from entering upon and using that amount of the surface as is reasonable and necessary to  
18           explore for, develop, and produce oil and gas and (ii) abrogate or impair a contractual provision  
19           binding on the parties that expressly provides for the use of the surface for the conduct of oil  
20           and gas operations or that releases the operator from liability for the use of the surface. Failure  
21           of an oil or gas developer or operator to comply with the requirements of this subsection shall  
22           give rise to a cause of action by the surface owner. Upon a determination by the trier of fact  
23           that such failure has occurred, a surface owner may seek compensatory damages and equitable  
24           relief. In any litigation or arbitration based upon this subsection, the surface owner shall present  
25           evidence that the developer's or operator's use of the surface materially interfered with the  
26           surface owner's use of the surface of the land. After such showing, the developer or operator  
27           shall bear the burden of proof of showing that it minimized intrusion upon and damage to the  
28           surface of the land in accordance with the provisions of this subsection. If a developer or  
29           operator makes that showing, the surface owner may present rebuttal evidence. A developer or  
30           operator may assert, as an affirmative defense, that it has conducted oil or gas operations in  
31           accordance with a regulatory requirement, contractual obligation, or land-use plan provision  
32           that is specifically applicable to the alleged intrusion or damage. Nothing in this subsection  
33           shall do any of the following:

- 34           (1)   Preclude or impair any person from obtaining any and all other remedies  
35           allowed by law.
- 36           (2)   Prevent a developer or operator and a surface owner from addressing the use  
37           of the surface for oil and gas operations in a lease, surface use agreement, or  
38           other written contract.
- 39           (3)   Establish, alter, impair, or negate the authority of local governments to  
40           regulate land use related to oil and gas operations."

41           **SECTION 3.** This act is effective when it becomes law.