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HOUSE BILL NO. 1344

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources
on February 3, 2010)

(Patron Prior to Substitute—Delegate Kilgore)

A BILL to amend and reenact § 45.1-361.22 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 45.1-361.22:1, relating to coalbed methane gas; conflicting claims of ownership; arbitration.

Be it enacted by the General Assembly of Virginia:

1. That § 45.1-361.22 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 45.1-361.22:1 as follows:

§ 45.1-361.22. Pooling of interests for coalbed methane gas wells; conflicting claims to ownership.

When there are conflicting claims to the ownership of coalbed methane gas, the Board, upon application from any claimant, shall enter an order pooling all interests or estates in the coalbed methane gas drilling unit for the development and operation thereof. In addition to the provisions of § 45.1-361.21, the following provisions shall apply:

1. Simultaneously with the filing of such application, the gas or oil owner applying for the order shall provide notice pursuant to the provisions of § 45.1-361.19 to each person identified by the applicant as a potential owner of an interest in the coalbed methane gas underlying the tract which is the subject of the hearing.

2. The Board shall cause to be established an escrow account into which the payment for costs or proceeds attributable to the conflicting interests shall be deposited and held for the interest of the claimants.

3. The coalbed methane gas well operator shall deposit into the escrow account any money paid by a person claiming a contested ownership interest as a participating operator's share of costs pursuant to the provisions of § 45.1-361.21 and the order of the Board.

4. The coalbed methane gas well operator shall deposit into the escrow account one-eighth of all proceeds attributable to the conflicting interests plus all proceeds in excess of ongoing operational expenses as provided for under § 45.1-361.21 and the order of the Board attributable to a participating or nonparticipating operator.

5. The Board shall order payment of principal and accrued interest, less escrow account fees, from the escrow account to conflicting claimants only after (i) a final decision of a court of competent jurisdiction adjudicating the ownership of coalbed methane gas as between them ~~or~~; (ii) *a determination reached by an arbitrator pursuant to § 45.1-361.22:1; or* (iii) an agreement among all claimants owning conflicting estates in the tract in question or any undivided interest therein. Upon receipt of an affidavit from conflicting claimants affirming such decision or agreement, the designated operator shall, within 30 days, file with the Board a petition for disbursement of funds on behalf of the conflicting claimants. The petition shall include a detailed accounting of all funds deposited in escrow that are subject to the proposed disbursement. The amount to be paid to the conflicting claimants shall be determined based on the percentage of ownership interest of the conflicting claimants as shown in the operator's supplemental filing made part of the pooling order that established the escrow account, the operator's records of deposits attributable to those tracts for which funds are being requested, and the records of the escrow account for the coalbed methane gas drilling unit. The petition for disbursement shall be placed on the first available Board docket. Funds shall be disbursed within 30 days after the Board decision and receipt by the Department of all documentation required by the Board. The interests of any cotenants that have not been resolved by the agreement or by judicial decision shall remain in the escrow account.

6. Any person who does not make an election under the pooling order shall be deemed, subject to a final legal determination of ownership, to have leased his gas or oil interest to the coalbed methane gas well operator as the pooling order may provide.

§ 45.1-361.22:1. Conflicting claims of ownership; arbitration.

A. Upon application from any claimant as to the ownership of coalbed methane gas under § 45.1-361.22, the Board shall enter an order requiring the matter of disputed ownership be submitted to arbitration and notify the circuit court in the jurisdiction wherein the tract is located of such order.

B. Within 30 days of receipt of the notice from the Board, the circuit court shall appoint an arbitrator. To be qualified as an arbitrator, a candidate (i) shall be an attorney licensed in the Commonwealth; (ii) shall have at least 10 years of experience in real estate law, including substantial expertise in mineral title examination; (iii) shall not have derived more than 10 percent of his income during the preceding three years from any claimants asserting ownership in the subject tract or any affiliates of claimants; and (iv) shall disclose to the circuit court any income he earned within the

60 preceding three years from any person holding a permit issued by the Department.

61 C. The arbitrator shall determine a time and place for the hearing and cause written notification of
62 such hearing to be served to each gas or oil owner, coal owner, mineral owner, or operator of a gas
63 storage field certificated by the State Corporation Commission having an interest underlying the tract
64 that is the subject of the hearing. Parties shall be served personally or by registered mail not less than
65 14 days before the hearing. Appearance at the hearing waives such notice. Any person to whom notice
66 is required to be given under this subsection shall be entitled to representation before the arbitrator
67 pursuant to § 8.01-581.05. The arbitrator shall hear and determine the controversy consistent with
68 applicable law, and may hear and determine the controversy upon the evidence notwithstanding the
69 failure of a party to appear. In accordance with § 8.01-581.06, the arbitrator may issue subpoenas for
70 the attendance of witnesses and for the production of books, records, documents, and other evidence;
71 administer oaths; and, upon application by a party, permit the taking of depositions for use as evidence.

72 D. Unless by agreement of all the parties, the arbitrator shall issue his determination as to the
73 ownership interest in the coalbed methane gas and entitlement to proceeds held in escrow within six
74 months from the initial application of the owner of the surface estate. Such determination shall be in
75 writing and sent to the Board and each party to whom notice is required to be given under subsection
76 C.

77 E. Upon the issuance of the arbitrator's determination of ownership, the fees and expenses of the
78 arbitration, including any court costs incurred in the selection and qualification of an arbitrator or in
79 the arbitration process, but not including fees or costs of counsel engaged by the respective claimants,
80 shall be shared equally between or among the parties.

81 F. An arbitrator's award, rendered pursuant to subsection D, shall be binding upon the parties and,
82 upon request of any party to the arbitration, may be entered as the judgment of the circuit court
83 responsible for appointing the arbitrator under subsection B.

84 G. Upon application of any party to the arbitration, an arbitrated award rendered pursuant to
85 subsection D may be confirmed, vacated, corrected, or appealed pursuant to the grounds set forth in
86 Chapter 21 (§ 8.01-577 et seq.) of Title 8.01.

87 **2. That the Director of the Department of Mines, Minerals and Energy shall promulgate**
88 **regulations to implement the provisions of this act to be effective within 280 days of its enactment.**