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HOUSE BILL NO. 1344

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Agriculture, Conservation and Natural Resources
on March 8, 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, determination, 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. The Board shall enter an order requiring that the matter of disputed ownership be submitted to arbitration, and notify the circuit court in the jurisdiction wherein the majority of the subject tract is located, (i) upon written request from all claimants to the ownership of coalbed methane gas related to the subject tract under § 45.1-361.22; (ii) upon receipt of an affidavit executed by all such claimants affirming that there is no other known surface owner, gas or oil owner, coal owner, mineral owner, or operator of a gas storage field certificated by the State Corporation Commission having an interest underlying the subject tract; (iii) after a hearing noticed pursuant to subsection B of § 45.1-361.19; and (iv) upon a determination by the Department whether sufficient funds are available to pay the estimated

60 costs of the arbitration pursuant to subsection F. Within 30 days of receipt of the notice from the Board,
61 the circuit court shall appoint an attorney from the list maintained by the Department pursuant to
62 subsection C or, at the discretion of the court, such other attorney meeting the qualifications set forth in
63 subsection C. Prior to his appointment as an arbitrator of a particular dispute, the attorney shall certify
64 to the circuit court that he has not derived more than 10 percent of his income during any of the
65 preceding three years from any claimants asserting ownership or rights in the subject tract or any
66 affiliated entities or immediate family members of such claimants. If the attorney cannot provide such
67 certification, he shall notify the circuit court and he will be disqualified from serving as arbitrator for
68 that particular dispute.

69 B. The Department shall send notice to all claimants if it determines that there are insufficient funds
70 to pay the estimated costs of the arbitration pursuant to subsection F. The claimants may, by unanimous
71 agreement, proceed with the arbitration process, notify the Board of such agreement, and bear the costs
72 to the extent of the insufficiency. If the parties do not agree, the arbitration shall be delayed until such
73 funds are available.

74 C. To be qualified as an arbitrator, a candidate (i) shall be an attorney licensed in the
75 Commonwealth; (ii) shall have at least 10 years of experience in real estate law, including substantial
76 expertise in mineral title examination; and (iii) shall disclose to the Board whether he has been engaged
77 within the preceding three years by any person in matters subject to the jurisdiction of the Board or the
78 Department under this chapter. The Department shall solicit applications from attorneys meeting the
79 qualifications set forth above and maintain a list of attorneys qualifying as arbitrators for use by the
80 circuit courts. At least once annually, the Department shall update its list. To maintain qualification,
81 each attorney whose name appears on the list shall update annually his disclosures set forth in clause
82 (iii).

83 D. The arbitrator shall determine a time and place for the arbitration hearing and cause written
84 notification of such hearing to be served on each surface owner, gas or oil owner, coal owner, mineral
85 owner, or operator of a gas storage field certificated by the State Corporation Commission having an
86 interest underlying the tract that is the subject of the hearing. Parties shall be served personally or by
87 certified mail, return receipt requested, not less than 14 days before the hearing. Appearance at the
88 hearing waives such party's right to challenge notice. Any party to the arbitration has the right to
89 representation before the arbitrator pursuant to § 8.01-581.05. In accordance with § 8.01-581.06, the
90 arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records,
91 documents, and other evidence; administer oaths; and, upon application by a party to the arbitration,
92 permit the taking of depositions for use as evidence. The arbitrator shall hear and determine the
93 controversy upon the evidence and consistent with applicable law, notwithstanding the failure of a party
94 to appear at the hearing.

95 E. The arbitrator shall issue his determination as to the ownership in the coalbed methane gas and
96 entitlement to proceeds held in escrow within six months from the order of the Board requiring the
97 matter be submitted to arbitration, unless a longer period is otherwise agreed to by all parties. Such
98 determination shall be in writing and sent to the Board and each party to whom notice is required to be
99 given under subsection D.

100 F. Upon the issuance of the arbitrator's determination of ownership and subject to the availability of
101 funds, the fees and expenses of the arbitration, but not including fees or costs of counsel engaged by the
102 respective claimants or any other costs of the claimants, shall be paid from the accrued interest on
103 general escrow account funds.

104 G. An arbitrator's determination, rendered pursuant to subsection E, shall be binding upon the
105 parties and, upon request of any party to the arbitration, may be entered as the judgment of the circuit
106 court responsible for appointing the arbitrator under subsection A.

107 H. Upon application of any party to the arbitration, a determination rendered pursuant to subsection
108 E may be confirmed, vacated, corrected, or appealed pursuant to the grounds set forth in Chapter 21
109 (§ 8.01-577 et seq.) of Title 8.01.

110 **2. That the Virginia Gas and Oil Board shall adopt regulations to implement the provisions of this**
111 **act to be effective within 280 days of its enactment.**