

## HOUSE JOINT RESOLUTION NO. 121

*Directing the Virginia Coal and Energy Commission to study ownership rights of coalbed methane and other natural gases under the Virginia Gas and Oil Act and opportunities to encourage production and use of natural gas in Virginia. Report.*

Agreed to by the House of Delegates, February 15, 2010

Agreed to by the Senate, March 2, 2010

WHEREAS, Virginia's underground coal deposits contain a substantial amount of methane gas that historically was considered a hazard to coal miners and was vented to the atmosphere for safety; and

WHEREAS, the natural gas industry developed technology in the late 1980s to produce this coalbed methane for consumer use; and

WHEREAS, due to the prevalence of split ownership of property between the surface owner, coal owner, and natural gas owner, and co-ownership among heirs of property owners, there may be conflicting ownership claims to coalbed methane, resulting in a barrier to production of the gas; and

WHEREAS, in 1990 the General Assembly enacted the Virginia Gas and Oil Act (§ 45.1-361.1 et seq. of the Code of Virginia) providing a process for the Virginia Gas and Oil Board to escrow proceeds from the sale of coalbed methane and other natural gas to remove the barriers to producing the natural gas in cases of conflicting ownership claims or when an owner is unknown or unlocatable; and

WHEREAS, this change in state law allowed natural gas production in Virginia to grow eightfold from approximately 15 million cubic feet in 1990 to over 128 million cubic feet in 2008, increased the safety of underground coal mining in Virginia, resulted in the employment of thousands at resource extraction and other jobs in Southwest Virginia, and resulted in payment of over \$600 million in royalties since 1990 to property owners in Southwest Virginia and millions of dollars per year in tax payments to state and local governments in Virginia; and

WHEREAS, there are substantial other benefits to the Commonwealth, especially in Southwest Virginia, from increased natural gas production; and

WHEREAS, the escrowing of royalties was intended to be a temporary action until ownership of the natural gas can be determined among the conflicting claimants; and

WHEREAS, obtaining the proceeds held in escrow requires either a voluntary agreement among conflicting claimants or a decision regarding ownership by a court of competent jurisdiction; and

WHEREAS, in Ratliff v. Harrison-Wyatt the Virginia Supreme Court ruled that the deed at issue in the case which severed the ownership of coal from the surface did not sever ownership of the coalbed methane, as a conveyance of coal alone does not convey the coalbed methane; and

WHEREAS, few contested ownership cases have been settled due to, among other things, the lack of legal counsel and cost of court action or unwillingness among conflicting claimants to reach voluntary agreements, so that the value of proceeds in the natural gas escrow account now exceeds \$24 million; and

WHEREAS, data showing well-by-well production and sales of natural gas and amount of funds placed in escrow has not been easily available to property owners, making it difficult for the conflicting owners to monitor the status of gas production; and

WHEREAS, the Division of Gas and Oil within the Department of Mines, Minerals and Energy enforces regulations governing the development and production of the rapidly expanding natural gas and oil industries in the Commonwealth and serves as staff for the Virginia Gas and Oil Board; and

WHEREAS, the Division staff has increased from seven persons in 1991 to 12 in 2009, while the number of producing wells has increased from 886 in 1991 to 6,426 in 2008; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That the Virginia Coal and Energy Commission be directed to study ownership rights of coalbed methane and other natural gases under the Virginia Gas and Oil Act and opportunities to encourage production and use of natural gas in Virginia.

In conducting its study, the Commission shall examine: (i) conditions affecting the ownership of coalbed methane, procedures related to "forced pooling," and any precedent established by the Ratliff v. Harrison-Wyatt decision; (ii) the process required to decide conflicting claims of ownership of coalbed methane; (iii) the availability of production and sales data from natural gas in Virginia; (iv) the extent to which the implementation of an alternate dispute resolution system would facilitate resolution of conflicting claims of ownership of coalbed methane; (v) methods for determining the rates of royalties, including the costs and expenses of coalbed methane gas production; (vi) the staffing required to effectively administer the Virginia Gas and Oil Act; (vii) possible amendments to the Virginia Gas and Oil Act, if necessary to facilitate the determination of ownership of coalbed methane and the distribution of proceeds held in escrow; (viii) ways in which to encourage production of this valuable natural

resource; (ix) the actual and potential positive economic impact of the natural gas production industry in Virginia, including, but not limited to, the economic impact of royalty payments and severance taxes on localities, a prospective natural gas fired electric generation facility in Southwest Virginia, and potential development of infrastructure and investment in facilities that will allow for commercially viable natural gas vehicle refueling and for converting vehicles to clean burning natural gas; and (x) the potential for classifying coalbed methane gas as an alternative fuel and the benefits to the Commonwealth that may accrue therefrom.

The Office of the Clerk of the House of Delegates shall provide administrative staff support. The Division of Legislative Services shall provide legal, research, policy analysis, and other services as requested by the Commission. Technical assistance shall be provided to the Commission by the Department of Mines, Minerals and Energy. All agencies of the Commonwealth shall provide assistance to the Commission for this study, upon request.

The Commission shall complete its meetings by November 30, 2010, and the chairman shall submit to the Division of Legislative Automated Systems an executive summary of its findings and recommendations no later than the first day of the 2011 Regular Session of the General Assembly. The executive summary shall state whether the Commission intends to submit to the General Assembly and the Governor a report of its findings and recommendations for publication as a House or Senate document. The executive summary and report shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website.