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**HOUSE BILL NO. 915**

Offered January 8, 2014

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*A BILL to amend and reenact §§ 2.2-1157 and 45.1-361.1 of the Code of Virginia, relating to hydraulic fracturing on state-owned uplands.*

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Patron—Poindexter

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Referred to Committee on Agriculture, Chesapeake and Natural Resources

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**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 2.2-1157 and 45.1-361.1 of the Code of Virginia are amended and reenacted as follows:**

**§ 2.2-1157. Exploration for and extraction of minerals on state-owned uplands.**

A. The Department of Mines, Minerals and Energy, in cooperation with the Division, shall develop, with the assistance of affected state agencies, departments, and institutions, a State Minerals Management Plan (the "Plan"). The Plan shall include provisions for the holding of public hearings and the public advertising for competitive bids or proposals for mineral exploration, leasing, and extraction activities on state-owned uplands. Sales of mineral exploration permits and leases for these lands shall be administered by the Division, with the advice of the Department of Mines, Minerals and Energy.

B. Upon receiving the recommendation of both the Director of the Department of General Services and the Director of the Department of Mines, Minerals and Energy, the Governor shall determine whether the proposed mineral exploration, leasing, or extraction of minerals on state-owned uplands is in the public interest. No state-owned uplands shall be approved for mineral exploration, leasing, or extraction without a public hearing in the locality where the affected land or the greater portion thereof is located and a competitive bid or proposal process as described in the Plan. *No permit or lease that allows oil or gas exploration or extraction activities shall prohibit the use of fracturing as defined in § 45.1-361.1.* The provisions of this section shall not apply to the extraction of minerals on state-owned uplands pursuant to an oil or gas pooling order unless the well through which the extraction will occur is situated on such land.

For purposes of this section, "state-owned uplands" means lands owned by the Commonwealth that (i) lie landward of the mean low water mark in tidal areas or (ii) have an elevation above the average surface water level in nontidal areas.

C. The agencies, departments, or institutions proposing or receiving applications for mineral exploration, leasing or extraction on state-owned uplands shall, through their boards or commissions, recommend as specified in subsection D of § 2.2-1156 all such activities to the Division following guidelines set forth in the Plan. The Division and the Department of Mines, Minerals and Energy shall review and recommend to the Governor such proposed activities. Such agencies, departments or institutions, through their boards or commissions, may execute the leases or contracts that have been approved by the Governor.

D. The proceeds from all such sales or leases above the costs of the sale to the Department of Mines, Minerals and Energy or to the agency, department or institution sponsoring the sale shall be paid into the general fund of the state treasury, so long as the sales or leases pertain to general fund agencies or the property involved was originally acquired through the general fund. Net proceeds from sales or leases of special-fund agency properties or property acquired through a gift shall be retained by such agency or institution or used in accordance with the original terms of the gift if so stated.

E. Mining, leasing, and extraction activities in state-owned submerged lands shall be authorized and administered by the Virginia Marine Resources Commission pursuant to § 28.2-100 et seq.

**§ 45.1-361.1. Definitions.**

As used in this chapter, unless the context clearly indicates otherwise:

"Abandonment of a well" or "cessation of well operations" means the time at which (i) a gas or oil operator has ceased operation of a well and has not properly plugged the well and reclaimed the site as required by this chapter, (ii) the time at which a gas or oil operator has allowed the well to become incapable of production or conversion to another well type, or (iii) the time at which the Director revokes a permit or forfeits a bond covering a gas or oil operation.

"Associated facilities" means any facility utilized for gas or oil operations in the Commonwealth, other than a well or a well site.

"Barrel" means forty-two U.S. gallons of liquids, including slurries, at a temperature of sixty degrees Fahrenheit.

"Board" means the Virginia Gas and Oil Board.

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59 "Coalbed methane gas" means occluded natural gas produced from coalbeds and rock strata  
60 associated therewith.

61 "Coalbed methane gas well" means a well capable of producing coalbed methane gas.

62 "Coalbed methane gas well operator" means any person who has been designated to operate or does  
63 operate a coalbed methane gas well.

64 "Coal operator" means any person who has the right to operate or does operate a coal mine.

65 "Coal owner" means any person who owns, leases, mines and produces, or has the right to mine and  
66 produce, a coal seam.

67 "Coal seam" means any stratum of coal twenty inches or more in thickness, unless a stratum of less  
68 thickness is being commercially worked, or can in the judgment of the Department foreseeably be  
69 commercially worked and will require protection if wells are drilled through it.

70 "Correlative rights" means the right of each gas or oil owner having an interest in a single pool to  
71 have a fair and reasonable opportunity to obtain and produce his just and equitable share of production  
72 of the gas or oil in such pool or its equivalent without being required to drill unnecessary wells or incur  
73 other unnecessary expenses to recover or receive the gas or oil or its equivalent.

74 "Cubic foot of gas" means the volume of gas contained in one cubic foot of space at a standard  
75 pressure base of 14.73 pounds per square foot and a standard temperature base of sixty degrees  
76 Fahrenheit.

77 "Disposal well" means any well drilled or converted for the disposal of drilling fluids, produced  
78 waters, or other wastes associated with gas or oil operations.

79 "Drilling unit" means the acreage on which one gas or oil well may be drilled.

80 "Enhanced recovery" means (i) any activity involving injection of any air, gas, water or other fluid  
81 into the productive strata, (ii) the application of pressure, heat or other means for the reduction of  
82 viscosity of the hydrocarbons, or (iii) the supplying of additional motive force other than normal  
83 pumping to increase the production of gas or oil from any well, wells or pool.

84 "Exploratory well" means any well drilled (i) to find and produce gas or oil in an unproven area, (ii)  
85 to find a new reservoir in a field previously found to be productive of gas or oil in another reservoir, or  
86 (iii) to extend the limits of a known gas or oil reservoir.

87 "Field rules" means rules established by order of the Virginia Gas and Oil Board that define a pool,  
88 drilling units, production allowables, or other requirements for gas or oil operations within an  
89 identifiable area.

90 "First point of sale" means, for oil, the point at which the oil is sold, exchanged or transferred for  
91 value from one person to another person, or when the original owner of the oil uses the oil, the point at  
92 which the oil is transported off the permitted site and delivered to another facility for use by the original  
93 owner; and for gas, the point at which the gas is sold, exchanged or transferred for value to any  
94 interstate or intrastate pipeline, any local distribution company, any person for use by such person, or  
95 when the gas is used by the owner of the gas for a purpose other than the production or transportation  
96 of the gas, the point at which the gas is delivered to a facility for use.

97 "*Fracturing*" or "*hydraulic fracturing*" means the stimulation of a gas or oil well by the injection of  
98 *fracturing fluid into the well.*

99 "Fund" means the Gas and Oil Plugging and Restoration Fund.

100 "Gas" or "natural gas" means all natural gas whether hydrocarbon or nonhydrocarbon or any  
101 combination or mixture thereof, including hydrocarbons, hydrogen sulfide, helium, carbon dioxide,  
102 nitrogen, hydrogen, casing head gas, and all other fluids not defined as oil pursuant to this section.

103 "Gas or oil operations" means any activity relating to drilling, redrilling, deepening, stimulating,  
104 production, enhanced recovery, converting from one type of a well to another, combining or physically  
105 changing to allow the migration of fluid from one formation to another, plugging or replugging any  
106 well; ground disturbing activity relating to the development, construction, operation and abandonment of  
107 a gathering pipeline; the development, operation, maintenance, and restoration of any site involved with  
108 gas or oil operations; or any work undertaken at a facility used for gas or oil operations. The term  
109 embraces all of the land or property that is used for or which contributes directly or indirectly to a gas  
110 or oil operation, including all roads.

111 "Gas or oil operator" means any person who has been designated to operate or does operate any gas  
112 or oil well or gathering pipeline.

113 "Gas or oil owner" means any person who owns, leases, has an interest in, or who has the right to  
114 explore for, drill or operate a gas or oil well as principal or as lessee. In the event that the gas is owned  
115 separately from the oil, the definitions contained herein shall apply separately to the gas owner or oil  
116 owner.

117 "Gathering pipeline" means (i) a pipeline which is used or intended for use in the transportation of  
118 gas or oil from the well to a transmission pipeline regulated by the United States Department of  
119 Transportation or the State Corporation Commission or (ii) a pipeline which is used or intended for use  
120 in the transportation of gas or oil from the well to an off-site storage, marketing, or other facility where

the gas or oil is sold.

"Geophysical operator" means a person who has the right to explore for gas or oil using ground disturbing geophysical exploration.

"Gob" means the de-stressed zone associated with any full-seam extraction of coal that extends above and below the mined-out coal seam.

"Ground disturbing" means any changing of land which may result in soil erosion from water or wind and the movement of sediments into state waters, including, but not limited to, clearing, grading, excavating, drilling, and transporting and filling of land.

"Ground disturbing geophysical exploration" or "geophysical operation" means any activity in search of gas or oil that breaks or disturbs the surface of the earth, including but not limited to road construction or core drilling. The term shall not include the conduct of gravity, magnetic, radiometric and similar geophysical surveys, and vibroseis or other similar seismic surveys.

"Injection well" means any well used to inject or otherwise place any substance associated with gas or oil operations into the earth or underground strata for disposal, storage or enhanced recovery.

"Inspector" means the Virginia Gas and Oil Inspector, appointed by the Director pursuant to § 45.1-361.4, or such other public officer, employee or other authority as may in emergencies be acting in the stead, or by law be assigned the duties of, the Virginia Gas and Oil Inspector.

"Log" means the written record progressively describing all strata, water, oil or gas encountered in drilling, depth and thickness of each bed or seam of coal drilled through, quantity of oil, volume of gas, pressures, rate of fill-up, fresh and salt water-bearing horizons and depths, cavings strata, casing records and such other information as is usually recorded in the normal procedure of drilling. The term shall also include electrical survey records or electrical survey logs.

"Mine" means an underground or surface excavation or development with or without shafts, slopes, drifts or tunnels for the extraction of coal, minerals or nonmetallic materials, commonly designated as mineral resources, and the hoisting or haulage equipment or appliances, if any, for the extraction of the mineral resources. The term embraces all of the land or property of the mining plant, including both the surface and subsurface, that is used or contributes directly or indirectly to the mining, concentration or handling of the mineral resources, including all roads.

"Mineral" shall have the same meaning as ascribed to it in § 45.1-180.

"Mineral operator" means any person who has the right to or does operate a mineral mine.

"Mineral owner" means any person who owns, leases, mines and produces, or who has the right to mine and produce minerals and to appropriate such minerals that he produces therefrom, either for himself or for himself and others.

"Nonparticipating operator" means a gas or oil owner of a tract included in a drilling unit who elects to share in the operation of the well on a carried basis by agreeing to have his proportionate share of the costs allocable to his interest charged against his share of production from the well.

"Offsite disturbance" means any soil erosion, water pollution, or escape of gas, oil, or waste from gas, oil, or geophysical operations off a permitted site which results from activity conducted on a permitted site.

"Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir.

"Orphaned well" means any well abandoned prior to July 1, 1950, or for which no records exist concerning its drilling, plugging or abandonment.

"Participating operator" means a gas or oil owner who elects to bear a share of the risks and costs of drilling, completing, equipping, operating, plugging and abandoning a well on a drilling unit and to receive a share of production from the well equal to the proportion which the acreage in the drilling unit he owns or holds under lease bears to the total acreage of the drilling unit.

"Permittee" means any gas, oil, or geophysical operator holding a permit for gas, oil, or geophysical operations issued under authority of this chapter.

"Person under a disability" shall have the same meaning as ascribed to it in § 8.01-2.

"Pipeline" means any pipe above or below the ground used or to be used to transport gas or oil.

"Plat" or "map" means a map, drawing or print showing the location of a well or wells, mine, quarry, or other information required under this chapter.

"Pool" means an underground accumulation of gas or oil in a single and separate natural reservoir. It is characterized by a single natural pressure system so that production of gas or oil from one part of the pool tends to or does affect the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic structural conditions, impermeable strata, or water in the formation, so that it is effectively separated from any other pool which may be present in the same geologic structure. A coalbed methane pool means an area which is underlain or appears to be underlain by at least one coalbed capable of producing coalbed methane gas.

182 "Project area" means the well, gathering pipeline, associated facilities, roads, and any other disturbed  
183 area, all of which are permitted as part of a gas, oil, or geophysical operation.

184 "Restoration" means all activity required to return a permitted site to other use after gas, oil, or  
185 geophysical operations have ended, as approved in the operations plan for the permitted site.

186 "Royalty owner" means any owner of gas or oil in place, or owner of gas or oil rights, who is  
187 eligible to receive payment based on the production of gas or oil.

188 "State waters" means all water, on the surface and under the ground, wholly or partially within or  
189 bordering the Commonwealth or within its jurisdiction and which affect the public welfare.

190 "Stimulate" means any action taken by a gas or oil operator to increase the inherent productivity of a  
191 gas or oil well, including, but not limited to, fracturing, shooting or acidizing, but excluding (i) cleaning  
192 out, bailing or workover operations and (ii) the use of surface-tension reducing agents, emulsion  
193 breakers, paraffin solvents, and other agents which affect the gas or oil being produced, as distinguished  
194 from the producing formation.

195 "Storage well" means any well used for the underground storage of gas.

196 "Surface owner" means any person who is the owner of record of the surface of the land.

197 "Waste from gas, oil, or geophysical operations" means any substance other than gas or oil which is  
198 (i) produced or generated during or results from the development, drilling and completion of wells and  
199 associated facilities or the development and construction of gathering pipelines or (ii) produced or  
200 generated during or results from well, pipeline and associated facilities' operations, including, but not  
201 limited to, brines and produced fluids other than gas or oil. In addition, this term shall include all  
202 rubbish and debris, including all material generated during or resulting from well plugging, site  
203 restoration, or the removal and abandonment of gathering pipelines and associated facilities.

204 "Waste" or "escape of resources" means (i) physical waste, as that term is generally understood in  
205 the gas and oil industry; (ii) the inefficient, excessive, improper use, or unnecessary dissipation of  
206 reservoir energy; (iii) the inefficient storing of gas or oil; (iv) the locating, drilling, equipping, operating,  
207 or producing of any gas or oil well in a manner that causes, or tends to cause, a reduction in the  
208 quantity of gas or oil ultimately recoverable from a pool under prudent and proper operations, or that  
209 causes or tends to cause unnecessary or excessive surface loss or destruction of gas or oil; (v) the  
210 production of gas or oil in excess of transportation or marketing facilities; (vi) the amount reasonably  
211 required to be produced in the proper drilling, completing, or testing of the well from which it is  
212 produced, except gas produced from an oil well or condensate well pending the time when with  
213 reasonable diligence the gas can be sold or otherwise usefully utilized on terms and conditions that are  
214 just and reasonable; or (vii) underground or above ground waste in the production or storage of gas, oil,  
215 or condensate, however caused. The term "waste" does not include gas vented from methane drainage  
216 boreholes or coalbed methane gas wells, where necessary for safety reasons or for the efficient testing  
217 and operation of coalbed methane gas wells; nor does it include the plugging of coalbed methane gas  
218 wells for the recovery of the coal estate.

219 "Water well" means any well drilled, bored or dug into the earth for the sole purpose of extracting  
220 therefrom potable, fresh or usable water for household, domestic, industrial, agricultural or public use.

221 "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or into underground strata  
222 for the extraction, injection or placement of any gaseous or liquid substance, or any shaft or hole sunk  
223 or used in conjunction with such extraction, injection or placement. The term shall not include any shaft  
224 or hole sunk, drilled, bored or dug into the earth for the sole purpose of pumping or extracting  
225 therefrom potable, fresh or usable water for household, domestic, industrial, agricultural, or public use  
226 and shall not include water boreholes, methane drainage boreholes where the methane is vented or flared  
227 rather than produced and saved, subsurface boreholes drilled from the mine face of an underground coal  
228 mine, any other boreholes necessary or convenient for the extraction of coal or drilled pursuant to a  
229 uranium exploratory program carried out pursuant to the laws of this Commonwealth, or any coal or  
230 non-fuel mineral core hole or borehole for the purpose of exploration.