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HOUSE BILL NO. 2389

Offered January 18, 2017

A *BILL to amend and reenact §§ 45.1-361.21 and 45.1-361.22:2 of the Code of Virginia, relating to residual coalbed methane royalties.*

Patrons—Pillion and Kilgore

Referred to Committee on Agriculture, Chesapeake and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That §§ 45.1-361.21 and 45.1-361.22:2 of the Code of Virginia are amended and reenacted as follows:

§ 45.1-361.21. Pooling of interests in drilling units.

A. The Board, upon application from any gas or oil owner, shall enter an order pooling all interests in the drilling unit for the development and operation thereof when:

1. Two or more separately owned tracts are embraced in a drilling unit;
2. There are separately owned interests in all or part of any such drilling unit and those having interests have not agreed to pool their interests; or
3. There are separately owned tracts embraced within the minimum statewide spacing requirements prescribed in § 45.1-361.17.

However, no pooling order shall be entered until the notice and hearing requirements of this article have been satisfied.

B. Subject to any contrary provision contained in a gas or oil lease respecting the property, gas or oil operations incident to the drilling of a well on any portion of a unit covered by a pooling order shall be deemed to be the conduct of such operations on each tract in the unit. The portion of production allocated to any tract covered by a pooling order shall be in the same proportion as the acreage of that tract bears to the total acreage of the unit.

C. All pooling orders entered by the Board pursuant to the provisions of this section shall:

1. Authorize the drilling and operation of a well, including the stimulation of all coal seams in the case of a coalbed methane well when authorized pursuant to clause (iii) of subdivision 2 b of subsection F of § 45.1-361.29, subject to the permit provisions contained in Article 3 (§ 45.1-361.27 et seq.) of this chapter;
2. Include the time and date when such order expires;
3. Designate the gas or oil owner who is authorized to drill and operate the well; provided, however, that except in the case of coalbed methane gas wells, the designated operators must have the right to conduct operations or have the written consent of owners with the right to conduct operations on at least 25% of the acreage included in the unit;
4. Prescribe the conditions under which gas or oil owners may become participating operators or exercise their rights of election under subdivision 7 of this subsection;
5. Establish the sharing of all reasonable costs, including a reasonable supervision fee, between participating operators so that each participating operator pays the same percentage of such costs as his acreage bears to the total unit acreage;
6. Require that nonleasing gas or oil owners be provided with reasonable access to unit records submitted to the Director or Inspector;
7. Establish a procedure for a gas or oil owner who received notice of the hearing and who does not decide to become a participating operator may elect either to (i) sell or lease his gas or oil ownership to a participating operator, (ii) enter into a voluntary agreement to share in the operation of the well at a rate of payment mutually agreed to by the gas or oil owner and the gas or oil operator authorized to drill the well, or (iii) share in the operation of the well as a nonparticipating operator on a carried basis after the proceeds allocable to his share equal the following:
 - a. In the case of a leased tract, 300 percent of the share of such costs allocable to his interest; or
 - b. In the case of an unleased tract, 200 percent of the share of such costs allocable to his interest.

D. Any gas or oil owner whose identity and location remain unknown at the conclusion of a hearing concerning the establishment of a pooling order for which public notice was given shall be deemed to have elected to lease his interest to the gas or oil operator at a rate to be established by the Board. The Board shall cause to be established an escrow account into which the unknown lessor's share of proceeds shall be paid and held for his benefit. Such escrowed proceeds shall be deemed to be unclaimed property and shall be disposed of pursuant to the provisions of the Uniform Disposition of Unclaimed Property Act (§ 55-210.1 et seq.) presumed abandoned and made available to the school

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59 *board of the nearest school division in the county or city in which the associated drilling unit is located.*
60 Upon discovery of the identity and location of any unknown owner subject to escrow under the
61 provisions of this subsection and not subject to conflicting claims of ownership, the designated operator
62 shall, within 30 days, file with the Board a petition for disbursement of funds to be considered at the
63 next available hearing. The petition shall include a detailed accounting of all funds deposited in escrow
64 that are subject to the proposed disbursement.

65 E. Any person who does not make an election under the pooling order shall be deemed to have
66 leased his gas or oil interest to the gas or oil well operator as the pooling order may provide.

67 F. Should a gas or oil owner be a person under a disability, the applicant for a pooling order may
68 petition the appropriate circuit court to appoint a guardian ad litem pursuant to the provisions of
69 § 8.01-261 for purposes of making the election provided for by this section.

70 G. Any royalty or overriding royalty reserved in any lease which is deducted from a nonparticipating
71 operator's share of production shall not be subject to charges for operating costs but shall be separately
72 calculated and paid to the royalty owner.

73 H. The Board shall resolve all disputes arising among gas or oil operators regarding the amount and
74 reasonableness of well operation costs. The Board shall, by regulation, establish allowable types of costs
75 which may be shared in pooled gas or oil operations.

76 **§ 45.1-361.22:2. Release of funds held in escrow or suspense because of conflicting claims to**
77 **coalbed methane gas.**

78 A. For a coalbed methane gas well that was force-pooled prior to July 1, 2015, the coalbed methane
79 gas well operator shall, on or before January 1, 2016, apply to the Board for the release of the funds in
80 escrow and give written notice of such application to all conflicting claimants identified in the pooling
81 orders, or to the successors of such claimants where the successors are known to the coalbed methane
82 gas well operator or have identified themselves to the coalbed methane gas well operator or the Board.
83 Such notice shall be in accordance with the applicable provisions of § 45.1-361.19 and, if unknown
84 persons or unlocatable conflicting claimants are subject to escrow, such notice shall also be published in
85 a newspaper of general circulation in ~~the county or counties~~ *each county or city* where the drilling unit
86 is located once each week for four successive weeks. The application shall include a detailed accounting
87 in accordance with subdivision 5 of § 45.1-361.22. The Board shall order payment of the principal and
88 accrued interest, less escrow account fees, held in escrow, along with all future royalties attributable to
89 the drilling unit, to each gas claimant identified in the pooling order unless, within 45 days of the
90 coalbed methane gas well operator's notice of its application, the coal claimant provides the Board and
91 the coalbed methane gas well operator with evidence of a proceeding or agreement. The Board, pursuant
92 to its authority granted by § 45.1-361.15, may extend the time for filing the application and delay the
93 payment of funds for gas title conflicts, the existence of unknown gas claimants, the existence of
94 unlocatable gas claimants, unresolved gas heirship issues, or other reasons beyond the reasonable control
95 of the coalbed methane gas well operator and shall not order payment where the gas claimant fails to
96 provide the Board with information needed under applicable law or regulation to distribute the funds.
97 *One year after the last provision of notice to a known claimant who (i) is locatable, (ii) has been*
98 *properly notified pursuant to this section, and (iii) has failed to present to the Board or the gas well*
99 *operator any instrument or documentation sufficient to serve as a basis for payment, the escrowed*
100 *proceeds attributable to such claimant shall be presumed abandoned and made available to the school*
101 *board of the nearest school division in the county or city in which the associated drilling unit is located.*

102 B. For a coalbed methane gas well force-pooled on or after July 1, 2015, the Board, in its pooling
103 order, shall direct the coalbed methane gas well operator to pay royalties to the gas claimant unless the
104 coal claimant provides the coalbed methane gas well operator and the Board with evidence of a
105 proceeding or agreement not later than the time and place of the pooling hearing. The coalbed methane
106 gas well operator shall provide written notice of the hearing to the gas claimants and coal claimants in
107 accordance with § 45.1-361.19. However, the Board, pursuant to its authority granted by § 45.1-361.15,
108 shall not order the coalbed methane gas well operator to make payment to a gas claimant where there
109 are gas title conflicts, unknown gas claimants, unlocatable gas claimants, unresolved gas heirship issues,
110 or other reasons beyond the reasonable control of the coalbed methane gas well operator or where the
111 gas claimant fails to provide the coalbed methane gas well operator with the information required under
112 applicable law or regulation to pay royalties. In such cases, the coalbed methane gas well operator shall
113 provide each affected gas claimant and the Board with written notice of the same in accordance with the
114 applicable provisions of § 45.1-361.19. Where payment is not required to be made due to the gas
115 claimant's failure to provide needed information under applicable law or regulation, the notice shall
116 identify the information that is needed to enable the payment to be made.

117 C. For a coalbed methane gas well voluntarily pooled at any time, the coalbed methane gas well
118 operator shall pay royalties, including past royalties held, to each gas claimant unless, within 45 days of
119 the coalbed methane gas well operator's provision of written notice to the coal claimant that the operator
120 will be paying royalties to the gas claimants, the coal claimant provides the coalbed methane gas well

operator and each gas claimant with evidence of a proceeding or agreement. For units voluntarily pooled before July 1, 2015, the coalbed methane gas well operator shall provide such written notice to the gas claimants and coal claimants on or before January 1, 2016. For units voluntarily pooled on or after July 1, 2015, the coalbed methane gas well operator shall provide such written notice to the gas claimants and coal claimants not later than 45 days after production commences. However, the coalbed methane gas well operator shall not be required to make payment to a gas claimant where there are gas title conflicts, unknown gas claimants, unlocatable gas claimants, unresolved gas heirship issues, or other reasons beyond the reasonable control of the coalbed methane gas well operator or where the gas claimant fails to provide the coalbed methane gas well operator with information to process or pay royalties. In such cases, the coalbed methane gas well operator shall provide each affected gas claimant with written notice of the same. Where payment is not required to be made due to a gas claimant's failure to provide needed information, the notice shall identify the information that is needed to enable the payment to be made.

D. Any pending judicial or arbitration proceeding shall be pursued by the coal claimant with diligence and shall not be voluntarily dismissed or nonsuited without the consent of the gas claimant. No default judgment shall be entered against a gas claimant. Royalties shall be paid as determined by the final order in the proceeding. A prevailing gas claimant shall be entitled to recover from that coal claimant reasonable costs and attorney fees if such person substantially prevails on the merits of the case and the coal claimant's position is not substantially justified.

E. A coalbed methane gas well operator paying funds to a gas claimant in accordance with this section shall have no liability to a coal claimant for the payments made by the coalbed methane gas well operator to a gas claimant.

F. This section shall not operate to extinguish any other right or cause of action or defenses thereto that may exist including, but not limited to, claims for an accounting or a claim under § 8.01-31. Nothing in this section shall create, confer, or impose a fiduciary duty.