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HOUSE JOINT RESOLUTION NO. 121

Offered January 13, 2010

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Establishing a joint subcommittee to study ownership rights of coalbed methane and other natural gases under the Virginia Gas and Oil Act. Report.

Patron—Griffith

Referred to Committee on Rules

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 of coalbed methane among property owners, resulting in a barrier to production of the gas; and

WHEREAS, the General Assembly enacted the 1990 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 eight fold 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, 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, the Virginia Supreme Court, in *Ratliff v. Harrison-Wyatt*, ruled that the deed subject to the case that severed the ownership of coal from the surface did not sever ownership of the coalbed methane and, absent other terms of deeds or leases governing the property, the coalbed methane is owned by the owner of the surface; and

WHEREAS, few contested ownership cases have been settled due to 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 for 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 have increased from 886 in 1991 to 6,426 in 2008; now, therefore, be it

RESOLVED by the House of Delegates, the Senate concurring, That a joint subcommittee be established to study ownership rights of coalbed methane and other natural gases under the Virginia Gas and Oil Act. The joint subcommittee shall have a total membership of six legislative members. Members shall be appointed as follows: four members of the House of Delegates to be appointed by the Speaker of the House of Delegates in accordance with the principles of proportional representation contained in the Rules of the House of Delegates and two members of the Senate to be appointed by the Senate Committee on Rules. The joint subcommittee shall elect a chairman and vice-chairman from among its membership.

In conducting its study, the joint subcommittee shall examine: (i) conditions affecting the ownership of coalbed methane, procedures related to "forced pooling," and any precedent set in 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

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59 which the implementation of an alternate dispute resolution system would facilitate resolution of
60 conflicting claims of ownership of coalbed methane; (v) methods for determining the rates of royalties;
61 (vi) the staffing required to effectively administer the Virginia Gas and Oil Act, and (vii) possible
62 amendments to the Virginia Gas and Oil Act, if needed, to facilitate the determination of ownership of
63 coalbed methane and the distribution of proceeds held in escrow.

64 Administrative staff support shall be provided by the Office of the Clerk of the House of Delegates.
65 Legal, research, policy analysis, and other services as requested by the joint subcommittee shall be
66 provided by the Division of Legislative Services. Technical assistance shall be provided by the
67 Department of Mines, Minerals and Energy. All agencies of the Commonwealth shall provide assistance
68 to the joint subcommittee for this study, upon request.

69 The joint subcommittee shall be limited to four meetings for the 2010 interim, and the direct costs of
70 this study shall not exceed \$6,000 without approval as set out in this resolution. Approval for
71 unbudgeted nonmember-related expenses shall require the written authorization of the chairman of the
72 joint subcommittee and the respective Clerk. If a companion joint resolution of the other chamber is
73 agreed to, written authorization of both Clerks shall be required.

74 No recommendation of the joint subcommittee shall be adopted if a majority of the House members
75 or a majority of the Senate members appointed to the joint subcommittee (i) vote against the
76 recommendation and (ii) vote for the recommendation to fail notwithstanding the majority vote of the
77 joint subcommittee.

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

86 Implementation of this resolution is subject to subsequent approval and certification by the Joint
87 Rules Committee. The Committee may approve or disapprove expenditures for this study, extend or
88 delay the period for the conduct of the study, or authorize additional meetings during the 2010 interim.