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## HOUSE BILL NO. 2181

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Agriculture, Chesapeake and Natural Resources  
on February 2, 2011)

(Patron Prior to Substitute—Delegate Phillips)

A BILL to amend and reenact § 45.1-361.22 of the Code of Virginia, relating to coalbed methane gas; conflicting claims to ownership.

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

**1. That § 45.1-361.22 of the Code of Virginia is amended and reenacted as follows:**

§ 45.1-361.22. Pooling of interests for coalbed methane gas wells; conflicting claims to ownership.

A. 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.

B. In addition to the provisions of § 45.1-361.21, the following provisions shall apply to an order pooling all interests or estates in a coalbed methane gas drilling unit pursuant to subsection A:

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; (ii) a determination reached by an arbitrator pursuant to § 45.1-361.22:1; ~~or~~ (iii) a finding by the Board issued pursuant to subsection C; or (iv) 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.

C. Upon the initiative of the Board or upon a request from a claimant, an order pooling all interests or estates in a coalbed methane gas drilling unit pursuant to subsection A shall be reviewed by the Board to determine the ownership of the coalbed methane gas. The Board may appoint a title review officer to provide a recommendation, in accordance with the law of the Commonwealth, as to the ownership of the coalbed methane gas between the conflicting claimants. The Board shall consider the recommendation of the title review officer and, in its discretion, order payment of principal and accrued interest, less escrow account fees, from the escrow account pursuant to such recommendation. A decision of the Board under this subsection to disburse funds from the escrow account shall be considered a case decision as defined in § 2.2-4001. Any final decision under the Administrative Process Act (§ 2.2-4000 et seq.) arising from this subsection may be appealed to the circuit court having

60 jurisdiction, and the court shall hear such appeal de novo.

61 1. The claimant requesting the review or, if the review is taken upon the initiative of the Board, the  
62 Board shall, simultaneously upon the acceptance of the request by the title review officer, provide notice  
63 pursuant to the notice provisions of § 45.1-361.19 to each person identified as a potential owner of an  
64 interest in the coalbed methane gas underlying the tract.

65 2. The title review officer shall provide an opportunity for claimants to submit documents and  
66 provide interviews.

67 3. Upon the request of the title review officer, the coalbed methane gas well operator shall provide  
68 title records for the tract overlying the coalbed methane gas. The title records shall include copies of a  
69 title abstract and all instruments of record for the unit that identify ownership or control of coal, gas,  
70 surface, oil or other minerals.

71 a. The coalbed methane gas well operator shall not be required to submit title opinions, but exhibits  
72 attached to title opinions showing ownership shall be submitted. The provision of such exhibits shall not  
73 be deemed a waiver of the attorney-client privilege or work product doctrine.

74 b. Any claimant to the ownership of the coalbed methane gas may inspect the documents submitted  
75 by the coalbed methane gas well operator pursuant to this subdivision and provide any additional  
76 documents that such claimant believes, in good faith, affect the determination of the ownership of the  
77 coalbed methane gas.

78 c. The submission of documents pursuant to this subdivision shall not constitute the unauthorized  
79 practice of law.

80 4. The coalbed methane gas well operator submitting documents, following an order of the Board or  
81 responding to a title review officer, shall not be liable to any claimant except for intentional misconduct.  
82 This limitation of liability shall extend only to actions taken by the coalbed methane gas well operator  
83 pursuant to this subsection on and after July 1, 2011.

84 5. Neither the findings of the title review officer nor the orders of the Board entered pursuant to this  
85 subsection shall affect any settlement of any dispute, or any judgment or governmental order, as to the  
86 ownership or development of coalbed methane gas made or entered prior to such findings or orders.

87 6. Nothing in this subsection shall affect the authority granted by prior orders of the Board to pool  
88 all interests or estates in a coalbed methane gas drilling unit or the rights of the operator thereunder.

89 7. Nothing in this section shall foreclose the rights of a claimant to resolve the matter of ownership  
90 of the coalbed methane gas pursuant to any other law.

91 **2. That the Virginia Gas and Oil Board, pursuant to its authority under § 45.1-361.15 of the Code**  
92 **of Virginia, shall adopt regulations to implement the provisions of this act to be effective within**  
93 **280 days of its enactment. The regulations shall include procedures for the review of orders**  
94 **entered prior to July 1, 2011; the selection, qualification, and compensation of the title review**  
95 **officer; and procedures for the submission of documents from interested parties.**