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SENATE BILL NO. 1271

Offered January 14, 2015

Prefiled January 14, 2015

A BILL to amend and reenact § 2.2-1102 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 2.2-1157.1, relating to submerged beds of rivers or creeks; claims of private ownership; arbitration.

Patron—Deeds

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:

1. That § 2.2-1102 of the Code of Virginia is amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-1157.1, as follows:

§ 2.2-1102. Additional powers of Department.

A. The Department shall have the following additional powers, all of which, with the approval of the Director of the Department, may be exercised by a division of the Department with respect to matters assigned to that division:

1. Prescribe regulations necessary or incidental to the performance of duties or execution of powers conferred under this chapter; and

2. Establish fee schedules that may be collectible from users when general fund appropriations are not applicable to the services rendered.

B. All statewide contracts and agreements made and entered into by the Department for the purchase of computers, software, supplies, and related peripheral equipment and services shall provide for the inclusion of counties, cities, and towns in such contracts and agreements. For good cause shown, the Secretary of Administration may disapprove the inclusion from a specific contract or agreement.

C. The Department may operate or provide for the operation of hazardous waste management facilities.

D. The Department may order the submission to arbitration of claims of ownership of submerged beds of inland rivers or creeks pursuant to § 2.2-1157.1.

§ 2.2-1157.1. Claims of ownership of submerged beds; arbitration.

A. The Department shall enter an order requiring that the matter of a claim of private ownership of the submerged bed of any inland river or creek pursuant to a special grant be submitted to arbitration, and shall so notify the circuit court in the jurisdiction wherein the majority of the subject bed is located, after (i) receiving written request from a claimant and (ii) conducting a preliminary hearing noticed pursuant to subsection B.

B. At least 10 days prior to a hearing, the Department shall publish its agenda for the hearing on its website and in a newspaper of general circulation in the locality where the submerged bed that is the subject of the hearing is located. The agenda shall include the name of the claimant, the locality where the bed that is the subject of the hearing is located, the purpose of the hearing, and the date, time, and location thereof.

C. The circuit court, within 30 days of receipt of the notice from the Department of the order requiring arbitration, shall appoint an attorney from the list maintained by the Department pursuant to subsection E or, at the discretion of the court, such other attorney meeting the qualifications set forth in subsection E. Prior to his appointment as an arbitrator of a particular dispute, the attorney shall certify to the circuit court that he has not asserted a claim on a submerged bed on his own behalf or on behalf of any affiliated entities or immediate family members and, during the past three years, has not represented or worked on behalf of any claimant asserting ownership or rights in the subject bed or any affiliated entities or immediate family members of such claimants. If the attorney cannot provide such certification, he shall notify the circuit court and the court shall disqualify him from serving as arbitrator for that particular dispute.

D. The Department shall send notice to the claimant of the estimated costs to the claimant of the arbitration pursuant to subsection I. If the claimant declines to pursue the arbitration after receiving the estimate, the arbitration shall be delayed until the claimant decides to pursue it.

E. To be qualified as an arbitrator, a candidate (i) shall be an attorney licensed in the Commonwealth, (ii) shall have at least 10 years of experience in real estate law, including substantial expertise in title examination, and (iii) shall disclose to the Department whether he has been engaged within the preceding three years by any person in matters subject to the jurisdiction of the Department under this section. The Department shall solicit applications from attorneys meeting the qualifications

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59 set forth above and maintain a list of attorneys qualifying as arbitrators for use by the circuit courts. At
60 least once annually, the Department shall update its list. To maintain qualification, each attorney whose
61 name appears on the list shall update annually his disclosures set forth in clause (iii).

62 F. The arbitrator shall determine a time and place for the arbitration hearing and cause written
63 notification of such hearing to be served on the Attorney General and each owner claiming an interest
64 in the bed that is the subject of the hearing. Notice to all parties, including the Commonwealth, shall be
65 served personally or by certified mail, return receipt requested, not less than 14 days before the
66 hearing. Appearance at the hearing waives the right of such party, other than the Commonwealth, to
67 challenge notice.

68 G. Any party to the arbitration has the right to representation before the arbitrator pursuant to
69 § 8.01-581.05. In accordance with § 8.01-581.06, the arbitrator may (i) issue subpoenas for the
70 attendance of witnesses and for the production of books, records, documents, and other evidence; (ii)
71 administer oaths; and (iii) upon application by a party to the arbitration, may permit the taking of
72 depositions for use as evidence. The arbitrator shall hear and determine the controversy upon the
73 evidence and consistent with applicable law, notwithstanding the failure of a party other than the
74 Commonwealth to appear at the hearing.

75 H. The arbitrator shall issue his determination as to the ownership in the claimed bed within six
76 months from the order of the Department requiring the matter be submitted to arbitration, unless a
77 longer period is otherwise agreed to by all parties. Such determination shall be in writing and sent to
78 the Department and each party to whom notice is required to be given under subsection F.

79 I. Upon the issuance of the arbitrator's determination of ownership, the fees and expenses of the
80 arbitration, not including fees or costs of counsel engaged by the respective parties or any other costs
81 of the parties, shall be paid by the claimant.

82 J. An arbitrator's determination, rendered pursuant to subsection H, shall be binding upon the
83 parties and shall be entered as the judgment of the circuit court responsible for appointing the
84 arbitrator under subsection C.

85 K. Upon application of any party to the arbitration, a determination rendered pursuant to subsection
86 H may be confirmed, vacated, corrected, or appealed pursuant to the grounds set forth in Chapter 21
87 (§ 8.01-577 et seq.) of Title 8.01.