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SENATE BILL NO. 548

Offered January 8, 2014

A *BILL to amend and reenact § 45.1-361.22:1 of the Code of Virginia, relating to arbitration of conflicting claims of ownership of coalbed methane.*

Patron—Puckett

Referred to Committee on Agriculture, Conservation and Natural Resources

Be it enacted by the General Assembly of Virginia:**1. That § 45.1-361.22:1 of the Code of Virginia is amended and reenacted as follows:****§ 45.1-361.22:1. Conflicting claims of ownership; arbitration.**

A. The Board shall enter an order requiring that the matter of disputed ownership be submitted to arbitration, and notify the circuit court in the jurisdiction wherein the majority of the subject tract is located, (i) upon written request from ~~all claimants~~ *any claimant* to the ownership of coalbed methane gas related to the subject tract under § 45.1-361.22; (ii) upon receipt of an affidavit executed by ~~all such claimants~~ *a claimant* affirming that there is no ~~other~~ known surface owner, gas or oil owner, coal owner, mineral owner, or operator of a gas storage field certificated by the State Corporation Commission having an interest underlying the subject tract *other than those listed in the affidavit*; (iii) after a hearing noticed pursuant to subsection B of § 45.1-361.19; and (iv) upon a determination by the Department whether sufficient funds are available to pay the estimated costs of the arbitration pursuant to subsection F. Within 30 days of receipt of the notice from the Board, the circuit court shall appoint an attorney from the list maintained by the Department pursuant to subsection C or, at the discretion of the court, such other attorney meeting the qualifications set forth in subsection C. Prior to his appointment as an arbitrator of a particular dispute, the attorney shall certify to the circuit court that he has not derived more than 10 percent of his income during any of the preceding three years from any claimants asserting ownership or rights in the subject tract 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 he will be disqualified from serving as arbitrator for that particular dispute.

B. The Department shall send notice to all claimants if it determines that there are insufficient funds to pay the estimated costs of the arbitration pursuant to subsection F. The claimants may, by unanimous agreement, proceed with the arbitration process, notify the Board of such agreement, and bear the costs to the extent of the insufficiency. If the parties do not agree, the arbitration shall be delayed until such funds are available.

C. To be qualified as an arbitrator, a candidate (i) shall be ~~an attorney licensed in the Commonwealth~~ *a retired circuit court judge*; (ii) shall have at least 10 years of experience in real estate law, including substantial expertise in mineral title examination; and (iii) shall disclose to the Board whether he has been engaged within the preceding three years by any person in matters subject to the jurisdiction of the Board or the Department under this chapter. The Department shall solicit applications from attorneys meeting the qualifications set forth above and maintain a list of attorneys qualifying as arbitrators for use by the circuit courts. At least once annually, the Department shall update its list. To maintain qualification, each attorney whose name appears on the list shall update annually his disclosures set forth in clause (iii).

D. The arbitrator shall determine a time and place for the arbitration hearing and cause written notification of such hearing to be served on each surface owner, gas or oil owner, coal owner, mineral owner, or operator of a gas storage field certificated by the State Corporation Commission having an interest underlying the tract that is the subject of the hearing. Parties shall be served personally or by certified mail, return receipt requested, not less than 14 days before the hearing. Appearance at the hearing waives such party's right to challenge notice. Any party to the arbitration has the right to representation before the arbitrator pursuant to § 8.01-581.05. In accordance with § 8.01-581.06, the arbitrator may issue subpoenas for the attendance of witnesses and for the production of books, records, documents, and other evidence; administer oaths; and, upon application by a party to the arbitration, permit the taking of depositions for use as evidence. The arbitrator shall hear and determine the controversy upon the evidence and consistent with applicable law, notwithstanding the failure of a party to appear at the hearing.

E. The arbitrator shall issue his determination as to the ownership in the coalbed methane gas and entitlement to proceeds held in escrow within six months from the order of the Board requiring the matter be submitted to arbitration, unless a longer period is otherwise agreed to by all parties. Such determination shall be in writing and sent to the Board and each party to whom notice is required to be

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59 given under subsection D.

60 F. Upon the issuance of the arbitrator's determination of ownership and subject to the availability of
61 funds, the fees and expenses of the arbitration, but not including fees or costs of counsel engaged by the
62 respective claimants or any other costs of the claimants, shall be paid from the accrued interest on
63 general escrow account funds.

64 G. An arbitrator's determination, rendered pursuant to subsection E, shall be binding upon the parties
65 and, upon request of any party to the arbitration, may be entered as the judgment of the circuit court
66 responsible for appointing the arbitrator under subsection A.

67 H. Upon application of any party to the arbitration, a determination rendered pursuant to subsection
68 E may be confirmed, vacated, corrected, or appealed pursuant to the grounds set forth in Chapter 21 (§
69 8.01-577 et seq.) of Title 8.01 to the circuit court responsible for appointing the arbitrator under
70 subsection A. The circuit court shall have the discretion to award attorney fees as circumstances may
71 require.