

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 455

FISCAL
NOTE

BY SENATORS SMITH AND SYPOLT

[Introduced February 1, 2018; Referred
to the Committee on Energy, Industry and Mining; and
then to the Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §37-4-9; and to amend and reenact §55-12A-7 of said code, all relating to
 3 providing that proceeds from certain oil and gas wells that are due to persons whose name
 4 or address are unknown are to be kept in a special fund and if unclaimed within seven
 5 years the proceeds shall be transferred to the Oil and Gas Reclamation Fund; providing
 6 that if there is a surface disturbance those named surface owners of a leased interest
 7 subject to pooling for a horizontal well are the only surface owners insofar as the well
 8 permit is concerned; providing that if another surface owner should become known his or
 9 her name shall be added as a surface owner on the permit; providing that if proceeds from
 10 other mineral tracts in a unit or pool of a horizontal well are not claimed by an unknown,
 11 missing, or abandoned owner within seven years the proceeds shall be transferred to the
 12 Oil and Gas Reclamation Fund; providing that certain provisions take effect beginning
 13 when funds have been unclaimed for seven years after the special commissioner's lease
 14 regardless of when the lease was signed; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

CHAPTER 37. REAL PROPERTY.

ARTICLE 4. PARTITION.

§37-4-9. Disposition of funds due to unknown or unlocatable interest owners; rule-making.

1 Notwithstanding the requirements of §36-8-1 et seq. of this code, all proceeds or dividends
 2 arising out the provisions of this article regarding any interest in real property that includes oil and
 3 gas but not surface, other than rights to use the surface for the exploration for or production of
 4 the minerals, that are due to a person whose name or location is unknown and who does not
 5 make a claim for those funds for seven years after the date of the order of the court authorizing
 6 the distribution of the funds shall be paid to the Oil and Gas Reclamation Fund established
 7 pursuant to §22-6-29 of this code. The funds shall be paid by the special receiver or other person

8 or entity holding the funds on or before November 1 of each year for the funds that became
 9 payable in the 12 months next preceding July 1 of that year. The Department of Environmental
 10 Protection may propose rules for legislative approval in accordance with §29A-3-1 et seq. of this
 11 code to carry out the provisions of this section.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 12A. LEASE AND CONVEYANCE OF MINERAL INTERESTS OWNED BY MISSING OR UNKNOWN OWNERS OR ABANDONING OWNERS.

**§55-12A-7. When special commissioner may convey title in mineral interest to surface
 owner; form of deed; payment to surface owner; final report of special
 commissioner; unknown owners; transfer of funds; rule-making.**

1 (a) (1) If an owner of any mineral interest leased under §55-12A-6 of this code remains
 2 unknown or missing, or does not disavow the abandonment, for a period of seven years from the
 3 date of the special commissioner's lease, the special receiver shall report the same to the court,
 4 whereupon the court shall enter an order naming those who then appear to be surface owners as
 5 additional parties and giving notice to them, pursuant to the West Virginia rules of civil procedure,
 6 of an opportunity to appear and present proof of ownership in fee of the surface estate. If the
 7 interest leased was included in a unit or pool for the drilling of a horizontal well, the surface owners
 8 named shall only be the surface owners of the tract upon which there was some surface
 9 disturbance for the drilling of the well or wells in the unit according to the operator's permit for the
 10 wells. If a surface owner who was not initially named appears and presents proof of ownership in
 11 fee of the surface estate and, in the case of a horizontal well, that his or her surface was disturbed,
 12 whether or not shown on the permit, then that surface owner shall also be a named surface owner.
 13 Upon a finding by the court of the present ownership in fee of the surface estate of a named
 14 surface owner, the court shall: (i) Order the special commissioner to convey to the proven named
 15 surface owner, subject to the special commissioner's lease, the mineral interest specified in the

16 motion, by a deed substantially in the form specified in subsection (b) of this section, and (ii) order
 17 the special receiver to pay to the named surface owner the funds which have accrued to the credit
 18 of the mineral interests specified in the motion to the date of his or her report after payment of all
 19 allowable fees, expenses and court costs, including special commissioner's fees paid or to be
 20 paid in amounts determined by the court. After the date of the special commissioner's deed, the
 21 named surface owner grantee shall be entitled to receive all proceeds under the lease attributable
 22 to the mineral interests specified in the deed. If the proceeds payable for other mineral tracts
 23 drilled or included in a unit or pool for the drilling of a horizontal well have not been claimed by
 24 the unknown, missing or abandoning owner within seven years as provided in §55-12A-6(g) of
 25 this code, then the special receiver shall pay those proceeds currently in his or her possession
 26 and that come into his or her possession pursuant to the special commissioner's lease into the
 27 Oil and Gas Reclamation Fund established pursuant to §22-6-29 of this code.

28 (2) If the boundaries of the mineral tract subject to the special commissioner's lease
 29 encompass two or more surface tracts, a separate deed shall be made for the mineral interest
 30 underlying each surface tract. If a surface tract is ~~owner~~ owned by more than one person, the
 31 deed respecting that surface tract shall convey the mineral interest according to the surface estate
 32 and interest of each surface owner.

33 (b) The special commissioner's deed may be made in the following form, or to the same
 34 effect:

35 This deed, made the ____ day of _____, 19____, between
 36 _____, special commissioner, grantor, and
 37 _____, grantee,

38 Witnesseth, that whereas, grantor, in pursuance of the authority vested in him or her by
 39 an order of the circuit court of _____ county, West Virginia, entered on the ____ day
 40 of _____, 19____, in civil action no. _____ therein pending, to convey the mineral
 41 interest more particularly described below to the grantee,

42 Now, therefore, this deed witnessed: That grantor grants unto grantee, subject to the
 43 special commissioner's lease mentioned below, and further subject to all other liens and
 44 encumbrances of record, that certain mineral interest in _____ county, West Virginia,
 45 more particularly described in the cited order of the circuit court as follows: (here insert the
 46 description in the order); and being (here specify "all" or "a portion") of the mineral interest
 47 described in that certain special commissioner's lease dated _____, 19____, of record in
 48 the office of the clerk of _____ county, in _____ book _____, at page _____.

49 Witness the following signature.

50 _____

51 Special Commissioner

52 (c) Upon the delivery of the deed or deeds and the payment or payments as directed in
 53 subsection (a) of this section, the special commissioner shall make a final report to the court; and
 54 upon approval thereof, the court shall order the discharge of the special commissioner's bond.

55 (d) Prior to the delivery of the special commissioner's deed, no deed from a surface owner
 56 to another shall sever ownership of the surface as such from ownership of any benefits under this
 57 article. Any deed purporting to create such a severance shall be void.

58 (e) The amendments to this section made during the 2018 regular session of the
 59 Legislature: (1) Which limited the naming of parties in the case of an underlying interest that was
 60 used for or included in a unit or pool for the drilling of a horizontal well to those parties whose
 61 surface was disturbed, and (2) which provided for certain proceeds to be payable to the Oil and
 62 Gas Reclamation Fund, shall take effect beginning with any funds that have been unclaimed for
 63 seven years after the date of the special commissioner's lease on or after July 1, 2018, whether
 64 or not the special commissioner's lease was signed before or after the effective date of the
 65 amendments.

66 (f) The Department of Environmental Protection may propose rules for legislative approval
 67 in accordance with §29A-3-1 et seq. of this code to carry out the provisions of this section relating

68 to transfer of funds to the Oil and Gas Reclamation Fund.

NOTE: The purpose of this bill is to provide that proceeds from certain oil and gas wells that are due to persons whose name or address are unknown are to be kept in a special fund and if unclaimed within seven years the proceeds shall be transferred to the Oil and Gas Reclamation Fund. The bill provides that if there is a surface disturbance those named surface owners of a leased interest subject to pooling for a horizontal well are the only surface owners insofar as the well permit is concerned. The bill provides that if another surface owner should become known his or name shall be added as a surface owner on the permit. The bill provides that if proceeds from other mineral tracts in a unit or pool of a horizontal well are not claimed by an unknown, missing or abandoned owner within seven years the proceeds shall be transferred to the Oil and Gas Reclamation Fund. The bill provides that certain provisions take effect beginning when funds have been unclaimed for seven years after the special commissioner's lease regardless of when the lease was signed. The bill authorizes rule-making.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.