

6269

2009-2010 Regular Sessions

I N S E N A T E

November 5, 2009

Introduced by Sen. BONACIC -- read twice and ordered printed, and when printed to be committed to the Committee on Rules

AN ACT to amend the environmental conservation law, in relation to requiring permit holders engaging in the drilling, casing, operation, plugging, and replugging of gas wells to post a bond

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. Subdivision 8 of section 23-0305 of the environmental
2 conservation law is amended by adding a new paragraph 1 to read as
3 follows:
4 1. REQUIRE THAT ANY PERMIT HOLDER OR SURETY OF SUCH HOLDER, WHO
5 ENGAGES IN THE DRILLING, CASING, OPERATION, PLUGGING AND REPLUGGING OF
6 GAS WELLS, POST A BOND WITH THE COMPTROLLER OF THE STATE OF NEW YORK
7 WHICH WILL ALLOW FOR THE REPAIR OR REPLACEMENT OF ANY WATER SUPPLY THE
8 COMMISSIONER DEEMS PROXIMATE ENOUGH TO ANY PERMITTED WORK. IN THE EVENT
9 THE COMMISSIONER DETERMINES THE WELL USED BY ANY RESIDENTIAL DWELLING
10 MAY NOT BE RE-DRILLED OR OTHERWISE DRILLED OR CONSTRUCTED OR RECON-
11 STRUCTED DUE TO LOT SIZE OR OTHER LOT RELATED REASON, THE COMMISSIONER
12 MAY INCREASE THE SIZE OF THE BOND TO AN AMOUNT WHICH COMPENSATES THE
13 PROPERTY OWNER FOR THE FAIR MARKET VALUE OF THE PROPERTY WHERE THE WELL
14 IS SITUATED. THE BOND, IF NEEDING TO BE CALLED UPON, SHALL BE CALLED
15 UPON BY THE BENEFICIARY WITH SUCH NOTICE AS THE COMMISSIONER, BY REGU-
16 LATION, MAY REQUIRE. PAYMENT ON ANY BOND SHALL BE MADE, IF AT ALL, NOT
17 EARLIER THAN THIRTY DAYS AFTER NOTICE TO THE PERMITTED ENTITY WHICH
18 POSTED THE BOND HAS BEEN GIVEN. PRIOR TO ANY OR ALL OF THE PROCEEDS OF
19 SUCH BOND BEING PAID, THE PERMIT HOLDER WHO POSTED SUCH BOND MAY CONTEST
20 PAYMENT OF THE BOND IN AN ACTION BROUGHT IN A COURT OF COMPETENT JURIS-
21 DICTION. THE COMMISSIONER SHALL ALSO PRESCRIBE, BY REGULATION, AN ARBI-
22 TRATION SYSTEM WHICH SHALL BE AT NO COST TO ANY LANDOWNER WHO, IN THE
23 VIEW OF THE ARBITRATOR, SUBSTANTIALLY PREVAILS IN HIS OR HER CLAIMS
24 AGAINST A BOND. THE COSTS OF SUCH ARBITRATION SHALL BE PAYABLE FROM THE

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets
[] is old law to be omitted.

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1 BOND PROCEEDS DIRECTLY TO THE DEPARTMENT TO PAY THE COSTS OF THE ARBI-
2 TRATION IN SUCH CIRCUMSTANCE AND SHALL NOT BE CHARGEABLE AGAINST ANY
3 AWARD TO A DAMAGED PARTY. ARBITRATION SHALL NOT BE MANDATORY, BUT IN THE
4 EVENT A PERMIT HOLDER REFUSES TO ENGAGE IN ARBITRATION, A COURT OF
5 COMPETENT JURISDICTION MAY MAKE AN AWARD OF REASONABLE ATTORNEY FEES TO
6 A PREVAILING PARTY IN ANY ACTION TO HAVE THE BOND PROCEEDS OR A PORTION
7 OF SUCH PROCEEDS PAID TO A PREVAILING PARTY. AN ARBITRATION AWARD, IF
8 MADE, MAY BE CONFIRMED IN A COURT OF COMPETENT JURISDICTION PURSUANT TO
9 THE CIVIL PRACTICE LAW AND RULES. THE COMPTROLLER SHALL NOT BE A NECES-
10 SARY PARTY IN ANY SUCH ACTION UNDER THIS PARAGRAPH BUT SHALL BE SUBJECT
11 TO ANY ORDER MADE BY THE COURT SOLELY IN RELATION TO PAYING ANY OR ALL
12 OF THE PROCEEDS OF THE BOND. THE COMMISSIONER MAY, BY REGULATION,
13 FURTHER PRESCRIBE THE LAST DATE WHEN ANY CLAIM ON ANY BOND REQUIRED
14 UNDER THIS PARAGRAPH SHALL BE MADE.

15 S 2. This act shall take effect immediately.