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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
Fifth Extraordinary Session, 2001

ENROLLED

SENATE BILL NO. 5003

(By Senators Tomblin Mr. President and
Sprouse, by Request of the Executive)

PASSED September 15, 2001

In Effect from Passage

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Senate Bill No. 5003

(BY SENATORS TOMBLIN, MR. PRESIDENT, AND SPROUSE,
BY REQUEST OF THE EXECUTIVE)

[Passed September 15, 2001; in effect from passage.]

AN ACT to amend article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen; and to amend and reenact sections eleven and twelve, article three of said chapter, all relating to surface coal mining and reclamation; creating a special reclamation fund advisory council; providing for eight members of the council; authorizing the governor to appoint five members with the advice and consent of the Senate; providing for six-year terms for the appointed members; providing that the secretary of the department of environmental protection will serve as an ex officio, nonvoting member; establishing the requirements of appointed members; authorizing payment of compensation and expenses of members; requiring the council to meet a minimum of twice a year; establishing the study requirements and responsibilities of the council; requiring the council to report to the governor and the Legislature annually; establishing issues the reports must

address; correcting nomenclature; removing the twenty-five percent limitation on funds available for water treatment; clarifying applicable minimum and maximum bond requirements; clarifying that abandoned mining sites that qualify for federal reclamation funds do not qualify for certain state funds; increasing the per ton of coal mined special reclamation tax from three cents per ton to fourteen cents per ton beginning the first day of January, two thousand two; providing that the fourteen cents per ton will be reduced to seven cents per ton after thirty-nine months; providing that the tax may be adjusted by the Legislature based on recommendation of the council; prohibiting reduction of tax if the special reclamation fund does not have sufficient capital to meet the reclamation needs; removing requirement that reclamation-related liabilities must exceed accrued amount in reclamation fund before reclamation fund tax is collected; recognizing the need for federal approval of certain modifications to the reclamation program; and removing rule-making and reporting provisions which are no longer applicable.

Be it enacted by the Legislature of West Virginia:

That article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seventeen; and that sections eleven and twelve, article three of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-17. Special reclamation fund advisory council.

1 (a) There is hereby created within the department of
2 environmental protection a special reclamation fund
3 advisory council. The council's purpose is to ensure the
4 effective, efficient and financially stable operation of the
5 special reclamation fund. The special reclamation advi-
6 sory council shall consist of eight members, including the
7 secretary of the department of environmental protection
8 or his or her designee, the treasurer of the state of West

9 Virginia or his or her designee, the director of the national
10 mine land reclamation center at West Virginia university
11 and five members to be appointed by the governor with the
12 advice and consent of the Senate.

13 (b) Each appointed member of the council shall be
14 selected based on his or her ability to serve on the council
15 and effectuate its purposes. The governor shall appoint,
16 from a list of three names submitted by the major trade
17 association representing the coal industry regulated under
18 article three of this chapter, a member to represent the
19 interests of the industry. The governor shall appoint, from
20 a list of three names submitted by organizations advocat-
21 ing environmental protection, one member to represent the
22 interest of environmental protection organizations. The
23 governor shall appoint, from a list of four names submitted
24 by the coal mining industry and the organizations advo-
25 cating environmental protection, one member who, by
26 training and profession, is an actuary or an economist.
27 The governor shall appoint, from a list of three names
28 submitted by the united mine workers of America, one
29 member to represent the interests of coal miners. The
30 governor shall appoint a member to represent the interests
31 of the general public.

32 (c) The terms of all members shall begin on the first day
33 of July, two thousand two. The secretary shall be an ex
34 officio, nonvoting member and serve as chairperson of the
35 council. The terms of the governor's appointees shall be
36 for six years. Appointees may be reappointed to serve on
37 the council. The terms of the appointed members first
38 taking office are to be expired as designated by the
39 governor at the time of the nomination, two at the end of
40 the second year, two at the end of the fourth year and one at
41 the end of the sixth year. As the original appointments
42 expire, each subsequent appointment will be for a full six-
43 year term. Any appointed member whose term has expired
44 shall serve until a successor has been duly appointed and

45 qualified. Any person appointed to fill a vacancy is to
46 serve only for the unexpired term.

47 (d) Appointed members of the council shall be paid the
48 same compensation and expense reimbursement as is
49 provided for members of the Legislature pursuant to
50 sections six and eight, article two-a, chapter four of this
51 code. Council members who are state employees or
52 officials shall be reimbursed for expenses in accordance
53 with the applicable agency's policy.

54 (e) The council shall meet at the call of the chairperson
55 or his or her designee, but not less than once every six
56 months. The secretary shall provide funds for necessary
57 administrative and technical services for the council from
58 the special reclamation fund.

59 (f) The council shall, at a minimum:

60 (1) Study the effectiveness, efficiency and financial
61 stability of the special reclamation fund with an emphasis
62 on development of a financial process that ensures long-
63 term stability of the special reclamation program;

64 (2) Identify and define problems associated with the
65 special reclamation fund, including, but not limited to, the
66 enforcement of federal and state law, regulation and rules
67 pertaining to contemporaneous reclamation;

68 (3) Evaluate bond forfeiture collection, reclamation
69 efforts at bond forfeiture sites and compliance with
70 approved reclamation plans as well as any modifications;

71 (4) Provide a forum for a full and fair discussion of
72 issues relating to the special reclamation fund;

73 (5) Contract with a qualified actuary who shall make a
74 determination as to the special reclamation fund's fiscal
75 soundness. This determination shall be completed on the
76 thirty-first day of December, two thousand four, and every
77 four years thereafter. The review is to include an evalua-

78 tion of the present and prospective assets and liabilities of
79 the special reclamation fund; and

80 (6) Study and recommend to the Legislature alternative
81 approaches to the current funding scheme of the special
82 reclamation fund, considering revisions which will assure
83 future proper reclamation of all mine sites and continued
84 financial viability of the state's coal industry.

85 (g) On or before the first day of January, two thousand
86 three, and every year thereafter, the council shall submit
87 to the Legislature and the governor a report on the ade-
88 quacy of the special reclamation tax and the fiscal condi-
89 tion of the special reclamation fund. The report shall, at
90 a minimum, contain:

91 (1) A recommendation as to whether or not any adjust-
92 ments to the special reclamation tax should be made
93 considering the cost, timeliness and adequacy of bond
94 forfeiture reclamation, including water treatment;

95 (2) A discussion of the council's required study issues as
96 set forth in subsection (f) of this section; and

97 (3) The availability of federal abandoned mine lands
98 funds for West Virginia reclamation projects.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and fund; prohibited acts; period of bond liability.

1 (a) After a surface mining permit application has been
2 approved pursuant to this article but before a permit has
3 been issued, each operator shall furnish a penal bond, on
4 a form to be prescribed and furnished by the secretary,
5 payable to the state of West Virginia and conditioned upon
6 the operator faithfully performing all of the requirements
7 of this article and of the permit. The penal amount of the
8 bond shall be not less than one thousand dollars nor more
9 than five thousand dollars for each acre or fraction

10 thereof: *Provided*, That the minimum amount of bond
11 furnished for any type of reclamation bonding shall be ten
12 thousand dollars. The bond shall cover: (1) The entire
13 permit area; or (2) that increment of land within the
14 permit area upon which the operator will initiate and
15 conduct surface mining and reclamation operations within
16 the initial term of the permit. If the operator chooses to
17 use incremental bonding, as succeeding increments of
18 surface mining and reclamation operations are to be
19 initiated and conducted within the permit area, the
20 operator shall file with the secretary an additional bond or
21 bonds to cover the increments in accordance with this
22 section: *Provided, however*, That once the operator has
23 chosen to proceed with bonding either the entire permit
24 area or with incremental bonding, the operator shall
25 continue bonding in that manner for the term of the
26 permit.

27 (b) The period of liability for bond coverage begins with
28 issuance of a permit and continues for the full term of the
29 permit plus any additional period necessary to achieve
30 compliance with the requirements in the reclamation plan
31 of the permit.

32 (c) (1) The form of the bond shall be approved by the
33 secretary and may include, at the option of the operator,
34 surety bonding, collateral bonding (including cash and
35 securities), establishment of an escrow account, self-
36 bonding or a combination of these methods. If collateral
37 bonding is used, the operator may elect to deposit cash or
38 collateral securities or certificates as follows: Bonds of the
39 United States or its possessions, of the federal land bank
40 or of the homeowners' loan corporation; full faith and
41 credit general obligation bonds of the state of West
42 Virginia or other states and of any county, district or
43 municipality of the state of West Virginia or other states;
44 or certificates of deposit in a bank in this state, which
45 certificates shall be in favor of the department. The cash
46 deposit or market value of such securities or certificates

47 shall be equal to or greater than the penal sum of the bond.
48 The secretary shall, upon receipt of any deposit of cash,
49 securities or certificates, promptly place the same with the
50 treasurer of the state of West Virginia whose duty it is to
51 receive and hold the same in the name of the state in trust
52 for the purpose for which the deposit is made when the
53 permit is issued. The operator making the deposit is
54 entitled, from time to time, to receive from the state
55 treasurer, upon the written approval of the secretary, the
56 whole or any portion of any cash, securities or certificates
57 so deposited, upon depositing with him or her in lieu
58 thereof cash or other securities or certificates of the classes
59 herein specified having value equal to or greater than the
60 sum of the bond.

61 (2) The secretary may approve an alternative bonding
62 system if it will: (1) Reasonably assure that sufficient
63 funds will be available to complete the reclamation,
64 restoration and abatement provisions for all permit areas
65 which may be in default at any time; and (2) provide a
66 substantial economic incentive for the permittee to comply
67 with all reclamation provisions.

68 (d) The secretary may accept the bond of the applicant
69 itself without separate surety when the applicant demon-
70 strates to the satisfaction of the secretary the existence of
71 a suitable agent to receive service of process and a history
72 of financial solvency and continuous operation sufficient
73 for authorization to self-insure.

74 (e) It is unlawful for the owner of surface or mineral
75 rights to interfere with the present operator in the dis-
76 charge of the operator's obligations to the state for the
77 reclamation of lands disturbed by the operator.

78 (f) All bond releases shall be accomplished in accordance
79 with the provisions of section twenty-three of this article.

80 (g) The special reclamation fund previously created is
81 continued. The moneys accrued in the fund, including

82 interest, are reserved solely and exclusively for the pur-
83 poses set forth in this section and section seventeen, article
84 one of this chapter. The fund shall be administered by the
85 secretary who is authorized to expend the moneys in the
86 fund for the reclamation and rehabilitation of lands which
87 were subjected to permitted surface mining operations and
88 abandoned after the third day of August, one thousand
89 nine hundred seventy-seven, where the amount of the bond
90 posted and forfeited on the land is less than the actual cost
91 of reclamation, and where the land is not eligible for
92 abandoned mine land reclamation funds under article two
93 of this chapter. The secretary shall develop a long-range
94 planning process for selection and prioritization of sites to
95 be reclaimed so as to avoid inordinate short-term obliga-
96 tions of the assets in the fund of such magnitude that the
97 solvency of the fund is jeopardized. The secretary may use
98 the special reclamation fund for the purpose of designing,
99 constructing and maintaining water treatment systems
100 when they are required for a complete reclamation of the
101 affected lands described in this subsection. The secretary
102 may also expend an amount not to exceed ten percent of
103 the total annual assets in the fund to implement and
104 administer the provisions of this article and, as they apply
105 to the surface mine board, articles one and four, chapter
106 twenty-two-b of this code.

107 (h) Prior to the first day of January, two thousand two,
108 every person conducting coal surface mining operations
109 shall contribute into the fund a sum equal to three cents
110 per ton of clean coal mined. For tax periods commencing
111 on and after the first day of January, two thousand two,
112 every person conducting coal surface mining shall contrib-
113 ute into the fund as follows: (1) For a period not to exceed
114 thirty-nine months, seven cents per ton of clean coal
115 mined; and (2) an additional seven cents per ton of clean
116 coal mined. The tax shall be levied upon each ton of clean
117 coal severed or clean coal obtained from refuse pile and
118 slurry pond recovery or clean coal from other mining
119 methods extracting a combination of coal and waste

120 material as part of a fuel supply on or after the first day of
121 January, two thousand two. The additional seven-cent tax
122 shall be reviewed and, if necessary, adjusted annually by
123 the Legislature upon recommendation of the council
124 pursuant to the provisions of section seventeen, article one
125 of this chapter: *Provided*, That the tax may not be reduced
126 until the special reclamation fund has sufficient moneys to
127 meet the reclamation responsibilities of the state estab-
128 lished in this section.

129 (i) This special reclamation tax shall be collected by the
130 state tax commissioner in the same manner, at the same
131 time and upon the same tonnage as the minimum sever-
132 ance tax imposed by article twelve-b, chapter eleven of
133 this code is collected: *Provided*, That under no circum-
134 stance shall the special reclamation tax be construed to be
135 an increase in either the minimum severance tax imposed
136 by said article or the severance tax imposed by article
137 thirteen of said chapter.

138 (j) Every person liable for payment of the special
139 reclamation tax shall pay the amount due without notice
140 or demand for payment.

141 (k) The tax commissioner shall provide to the secretary
142 a quarterly listing of all persons known to be delinquent in
143 payment of the special reclamation tax. The secretary may
144 take the delinquencies into account in making determina-
145 tions on the issuance, renewal or revision of any permit.

146 (l) The tax commissioner shall deposit the fees collected
147 with the treasurer of the state of West Virginia to the
148 credit of the special reclamation fund. The moneys in the
149 fund shall be placed by the treasurer in an interest-bearing
150 account with the interest being returned to the fund on an
151 annual basis.

152 (m) At the beginning of each quarter, the secretary shall
153 advise the state tax commissioner and the governor of the

154 assets, excluding payments, expenditures and liabilities, in
155 the fund.

156 (n) To the extent that this section modifies any powers,
157 duties, functions and responsibilities of the department
158 that may require approval of one or more federal agencies
159 or officials in order to avoid disruption of the federal-state
160 relationship involved in the implementation of the federal
161 Surface Mining Control and Reclamation Act, 30 U. S. C.
162 §1270 by the state, the modifications will become effective
163 upon the approval of the modifications by the appropriate
164 federal agency or official.

**§22-3-12. Site-specific bonding; legislative rule; contents of
legislative rule; legislative intent.**

1 (a) Notwithstanding the provisions of section eleven of
2 this article, the secretary may establish and implement a
3 site-specific bonding system in accordance with the
4 provisions of this section.

5 (b) A legislative rule proposed or promulgated pursuant
6 to this section must provide, at a minimum, for the follow-
7 ing:

8 (1) The penal amount of a bond shall be not less than one
9 thousand dollars nor more than five thousand dollars per
10 acre or fraction thereof.

11 (2) Every bond, subject to the limitations of subdivision
12 (1) of this subsection, shall reflect the relative potential
13 cost of reclamation associated with the activities proposed
14 to be permitted, which would not otherwise be reflected by
15 bonds calculated by merely applying a specific dollar
16 amount per acre for the permit.

17 (3) Every bond, subject to the provisions of subdivision
18 (1) of this subsection, shall also reflect an analysis under
19 the legislative rule of various factors, as applicable, which
20 affect the cost of reclamation, including, but not limited
21 to: (A) The general category of mining, whether surface or

22 underground; (B) mining techniques and methods proposed
23 to be utilized; (C) support facilities, fixtures, improve-
24 ments and equipment; (D) topography and geology; and (E)
25 the potential for degrading or improving water quality.

26 (c) A legislative rule proposed or promulgated pursuant
27 to the provisions of this section may, in addition to the
28 requirements of subsection (b) of this section, provide for
29 a consideration of other factors determined to be relevant
30 by the secretary. For example, the rule may provide for
31 the following:

32 (1) A consideration as to whether the bond relates to a
33 new permit application, a renewal of an existing permit,
34 an application for an incidental boundary revision or the
35 reactivation of an inactive permit;

36 (2) A consideration of factors which may result in
37 environmental enhancement, as in a case where re-mining
38 may improve water quality or reduce or eliminate existing
39 highwalls, or a permitted operation may create or improve
40 wetlands; or

41 (3) An analysis of various factors related to the specific
42 permit applicant, including, but not limited to: (A) The
43 prior mining experience of the applicant with the activities
44 sought to be permitted; and (B) the history of the applicant
45 as it relates to prior compliance with statutory and
46 regulatory requirements designed to protect, maintain or
47 enhance the environment in this or any other state.

48 (d) It is the intent of the Legislature that a legislative
49 rule proposed or promulgated pursuant to the provisions
50 of this section shall be constructed so that when the
51 findings of fact by the division of environmental protec-
52 tion with respect to the proposed mining activity and the
53 particular permit applicant coincide with the particular
54 factors or criteria to be considered and analyzed under the
55 rule, the rule will direct a conclusion as to the amount of
56 the bond to be required, subject to rebuttal and refutation

57 of the findings by the applicant. To the extent practicable,
58 the rule shall limit subjectivity and discretion by the
59 secretary and the division in fixing the amount of the
60 bond.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Larry Moore
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

Naurell Thomas
.....
Clerk of the Senate

Buzza M. Gray
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within *is approved* this the *4th*
Day of *October*, 2001.

[Signature]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 9/24/01

Time 4:12pm