

1 **H. B. 2824**

2  
3 (By Delegates Perdue, Wells, Marshall,  
4 Hatfield and Fragale)

5  
6 [Introduced January 24, 2011; referred to the  
7 Committee on Energy, Industry and Labor, Economic  
8 Development and Small Business then the Judiciary.]  
9

10 A BILL to amend and reenact §22-3-22, §22-3-22a and §22-3-30a of  
11 the Code of West Virginia, 1931, as amended, all relating to  
12 increasing the distance required for surface mining activity  
13 in relation to cemeteries.

14 *Be it enacted by the Legislature of West Virginia:*

15 That §22-3-22, §22-3-22a, and §22-3-30a of the Code of West  
16 Virginia, 1931, as amended, be amended and reenacted, all to read  
17 as follows:

18 **ARTICLE 3. SURFACE MINING CONTROL AND RECLAMATION ACT.**

19 **§22-3-22. Designation of areas unsuitable for surface mining;**  
20 **petition for removal of designation; prohibition of**  
21 **surface mining on certain areas; exceptions; taxation**  
22 **of minerals underlying land designated unsuitable.**

23 (a) The director shall establish a planning process to enable  
24 objective decisions based upon competent and scientifically sound  
25 data and information as to which, if any, land areas of this state  
26 are unsuitable for all or certain types of surface-mining

1 operations pursuant to the standards set forth in subdivisions (1)  
2 and (2) of this subsection: *Provided*, That such designation shall  
3 not prevent prospecting pursuant to section seven of this article  
4 on any area so designated.

5 (1) Upon petition pursuant to subsection (b) of this section,  
6 the director shall designate an area as unsuitable for all or  
7 certain types of surface-mining operations, if it determines that  
8 reclamation pursuant to the requirements of this article is not  
9 technologically and economically feasible.

10 (2) Upon petition pursuant to subsection (b) of this section,  
11 a surface area may be designated unsuitable for certain types of  
12 surface-mining operations, if the operations: (A) Conflict with  
13 existing state or local land use plans or programs; (B) affect  
14 fragile or historic lands in which the operations could result in  
15 significant damage to important historic, cultural, scientific and  
16 aesthetic values and natural systems; (C) affect renewable resource  
17 lands, including significant aquifers and aquifer recharge areas,  
18 in which the operations could result in a substantial loss or  
19 reduction of long-range productivity of water supply, food or fiber  
20 products; or (D) affect natural hazard lands in which the  
21 operations could substantially endanger life and property. Such  
22 lands shall include lands subject to frequent flooding and areas of  
23 unstable geology.

24 (3) The director shall develop a process which includes: (A)

1 The review of surface-mining lands; (B) a database and an inventory  
2 system which will permit proper evaluation of the capacity of  
3 different land areas of the state to support and permit reclamation  
4 of surface-mining operations; (C) a method for implementing land  
5 use planning decisions concerning surface-mining operations; and  
6 (D) proper notice and opportunities for public participation,  
7 including a public hearing prior to making any designation or  
8 redesignation pursuant to this section.

9 (4) Determinations of the unsuitability of land for surface  
10 mining, as provided ~~for~~ in this section, shall be integrated as  
11 closely as possible with present and future land use planning and  
12 regulation processes at federal, state and local levels.

13 (5) The requirements of this section do not apply to lands on  
14 which surface-mining operations were being conducted on August 3,  
15 1977, or under a permit issued pursuant to this article, or where  
16 substantial legal and financial commitments in the operations were  
17 in existence prior to January 4, 1977.

18 (b) Any person having an interest which is or may be adversely  
19 affected has the right to petition the director to have an area  
20 designated as unsuitable for surface-mining operations or to have  
21 such a designation terminated. The petition shall contain  
22 allegations of fact with supporting evidence which would tend to  
23 establish the allegations. After receipt of the petition, the  
24 director shall immediately begin an administrative study of the

1 area specified in the petition. Within ten months after receipt of  
2 the petition, the director shall hold a public hearing in the  
3 locality of the affected area after appropriate notice and  
4 publication of the date, time and location of the hearing. After  
5 the director or any person having an interest which is or may be  
6 adversely affected has filed a petition and before the hearing  
7 required by this subsection, any person may intervene by filing  
8 allegations of fact with supporting evidence which would tend to  
9 establish the allegations. Within sixty days after the hearing,  
10 the director shall issue and furnish to the petitioner and any  
11 other party to the hearing, a written decision regarding the  
12 petition and the reasons therefor. ~~In the event that~~ If all the  
13 petitioners stipulate agreement prior to the requested hearing and  
14 withdraw their request, the hearing need not be held.

15 (c) Prior to designating any land areas as unsuitable for  
16 surface-mining operations, the director shall prepare a detailed  
17 statement on: (1) The potential coal resources of the area; (2)  
18 the demand for the coal resources; and (3) the impact of the  
19 designation on the environment, the economy and the supply of coal.

20 (d) After August 3, 1977, and subject to valid existing  
21 rights, no surface-mining operations, except those which existed on  
22 that date, shall be permitted:

23 (1) On any lands in this state within the boundaries of units  
24 of the national park system, the national wildlife refuge systems,

1 the national system of trails, the national wilderness preservation  
2 system, the wild and scenic rivers system, including study rivers  
3 designated under section five-a of the Wild and Scenic Rivers Act,  
4 and national recreation areas designated by Act of Congress;

5 (2) Which will adversely affect any publicly owned park or  
6 places included in the national register of historic sites, or  
7 national register of natural landmarks unless approved jointly by  
8 the director and the federal, state or local agency with  
9 jurisdiction over the park, the historic site or natural landmark;

10 (3) Within one hundred feet of the outside right-of-way line  
11 on any public road, except where mine access roads or haulage roads  
12 join such right-of-way line, and except that the director may  
13 permit the roads to be relocated or the area affected to lie within  
14 one hundred feet of the road if, after public notice and an  
15 opportunity for a public hearing in the locality, the director  
16 makes a written finding that the interests of the public and the  
17 landowners affected thereby will be protected;

18 (4) Within three hundred feet from any occupied dwelling,  
19 unless waived by the owner thereof, or within ~~one~~ three hundred  
20 feet of any public building, school, church, community or  
21 institutional building, public park or within ~~one~~ three hundred  
22 feet of a cemetery; or

23 (5) On any federal lands within the boundaries of any national  
24 forest: *Provided*, That surface coal mining operations may be

1 permitted on the lands if the secretary of the interior finds that  
2 there are no significant recreational, timber, economic or other  
3 values which may be incompatible with the surface-mining  
4 operations: *Provided, however,* That the surface operations and  
5 impacts are incident to an underground coal mine.

6 (e) Notwithstanding any other provision of this code, the coal  
7 underlying any lands designated unsuitable for surface-mining  
8 operations under any provisions of this article or underlying any  
9 land upon which mining is prohibited by any provisions of this  
10 article shall be assessed for taxation purposes according to their  
11 value and the Legislature hereby finds that the coal has no value  
12 for the duration of the designation or prohibition unless suitable  
13 for underground mining not in violation of this article: *Provided,*  
14 That the owner of the coal shall forthwith notify the proper  
15 assessing authorities if the designation or prohibition is removed  
16 so that the coal may be reassessed.

17 **§22-3-22a. Blasting restrictions; site specific blasting design**  
18 **requirement.**

19 (a) For purposes of this section, the term "production  
20 blasting" means blasting that removes the overburden to expose  
21 underlying coal seams and does not include construction blasting.

22 (b) For purposes of this section, the term "construction  
23 blasting" means blasting to develop haul roads, mine access roads,  
24 coal preparation plants, drainage structures or underground coal

1 mine sites and does not include production blasting.

2 (c) For purposes of this section, the term "protected  
3 structure" means any of the following structures that are situated  
4 outside the permit area: An occupied dwelling; a temporarily  
5 unoccupied dwelling which has been occupied within the past ninety  
6 days; a public building; a structure for commercial purposes; a  
7 school; a church; a community or institutional building; and a  
8 public park or a water well.

9 (d) Production blasting is prohibited within three hundred  
10 feet of a protected structure or within ~~one~~ three hundred feet of  
11 a cemetery.

12 (e) Blasting within one thousand feet of a protected structure  
13 shall have a site-specific blast design approved by the office of  
14 explosives and blasting. The site-specific blast design shall  
15 limit the type of explosives and detonating equipment, the size,  
16 the timing and frequency of blasts to do the following:

17 (1) Prevent injury to persons; (2) prevent damage to public  
18 and private property outside the permit area; (3) prevent adverse  
19 impacts on any underground mine; (4) prevent change in the course,  
20 channel or availability of ground or surface water outside the  
21 permit area; and (5) reduce dust outside the permit area.

22 In the development of a site-specific blasting plan,  
23 consideration shall be given, but is not limited to, the physical  
24 condition, type and quality of construction of the protected

1 structure, the current use of the protected structure and the  
2 concerns of the owner or occupant living in the protected  
3 structures identified in the blasting schedule notification area.

4 (f) An owner or occupant of a protected structure may waive  
5 the blasting prohibition within three hundred feet. If a protected  
6 structure is occupied by a person other than the owner, both the  
7 owner and the occupant of the protected structure shall waive the  
8 blasting prohibition within three hundred feet in writing. The  
9 operator shall send copies of all written waivers executed pursuant  
10 to this subsection to the office of explosives and blasting.  
11 Written waivers executed and filed with the office of explosives  
12 and blasting are valid during the life of the permit or any  
13 renewals of the permit and are enforceable against any subsequent  
14 owners or occupants of the protected structure.

15 (g) The provisions of this section do not apply to the  
16 following: (1) Underground coal mining operations; (2) the surface  
17 operations and surface impacts incident to an underground coal  
18 mine; and (3) the extraction of minerals by underground mining  
19 methods or the surface impacts of the underground mining methods:  
20 *Provided*, That nothing contained in this section may be construed  
21 to exempt any coal mining operation from the general performance  
22 standards as contained in section thirteen of this article and any  
23 rules promulgated pursuant to said section.

24 **§22-3-30a. Blasting requirements; liability and civil penalties**

1                   **in the event of property damage.**

2           (a) Blasting shall be conducted in accordance with the rules  
3 and laws established to regulate blasting.

4           (b) If the ~~Division~~ Department of Environmental Protection  
5 establishes after an inspection that a blast at a surface coal mine  
6 operation as defined by the provisions of subdivision (2),  
7 subsection (a), section thirteen-a of this article was not in  
8 compliance with the regulations governing blasting parameters and  
9 resulted in property damage to a protected structure, as defined in  
10 section twenty-two-a of this article, other than water wells, the  
11 following penalties shall be imposed for each permit area or  
12 contiguous permit areas where the blasting was out of compliance:

13           (1) For the first offense, the operator shall be assessed a  
14 penalty of not less than \$1,000 nor more than \$5,000.

15           (2) For the second offense and each subsequent offense within  
16 one year of the first offense, the surface mining operator shall be  
17 assessed a penalty of not less than \$5,000 nor more than \$10,000.

18           (3) For the third offense and any subsequent offense within  
19 one year of the first offense, or for the failure to pay any  
20 assessment set forth within a reasonable time established by the  
21 director, the surface mining operator's permit is subject to an  
22 immediate issuance of a cessation order, as set out in section  
23 sixteen of this article. The cessation order shall only be  
24 released upon written order of the Director of the ~~Division~~

1 Department of Environmental Protection when the following  
2 conditions have been met:

3 (A) A written plan has been established and filed with the  
4 director assuring that additional violations will not occur;

5 (B) The permittee has provided compensation for the property  
6 damages or the assurance of adequate compensation for the property  
7 damages that have occurred; and

8 (C) A permittee shall provide such monetary and other  
9 assurances as the director considers appropriate to compensate for  
10 future property damages. The monetary assurances required shall be  
11 in an amount at least equal to the amount of compensation required  
12 in paragraph (B), subdivision (3) of this subsection.

13 (4) In addition to the penalties described in subdivisions  
14 (1), (2) and (3) of this subsection for the second and subsequent  
15 offenses on any one permitted area regardless of the time period,  
16 the owner of the protected structure is entitled to a rebuttable  
17 presumption that the property damage is a result of the blast if:

18 (A) A preblast survey was performed; and (B) the blasting site to  
19 which the second or subsequent offense relates is within seven  
20 tenths of a mile of the protected structure.

21 (5) No more than one offense may arise out of any one shot.  
22 For purposes of this section, "shot" means a single blasting event  
23 composed of one or multiple detonations of explosive material or  
24 the assembly of explosive materials for this purpose. One "shot"

1 may be composed of numerous explosive charges detonated at  
2 intervals measured in milliseconds.

3 (c) Notwithstanding the provisions of subsections (a) and (b)  
4 of this section, the ~~Division~~ Department Environmental Protection  
5 may not impose penalties, as provided for in subsection (b) of this  
6 section, on an operator for the violation of any rule identified in  
7 subsection (b) of this section that is merely administrative in  
8 nature.

9 (d) The remedies provided in this section are not exclusive  
10 and may not bar an owner or occupant from any other remedy accorded  
11 by law.

12 (e) Where inspection by the ~~Division~~ Department of  
13 Environmental Protection establishes that production blasting, in  
14 violation of section twenty-two-a of this article, was done within  
15 three hundred feet of a protected structure, without an approved  
16 site-specific blast design or not in accordance with an approved  
17 site-specific blast design for production blasting within one  
18 thousand feet of any protected structure as defined in section  
19 twenty-two-a of this article or within ~~one~~ three hundred feet of a  
20 cemetery, the monetary penalties and revocation, as set out in  
21 subsection (b) of this section, apply.

22 (f) All penalties and liabilities as set forth in subsection  
23 (b) of this section shall be assessed by the director, collected by  
24 the director and deposited with the Treasurer of the State of West

1 Virginia in the "General School Fund".

2       (g) The director shall propose rules for legislative approval  
3 pursuant to article three, chapter twenty-nine-a of this code for  
4 the implementation of this section.

5       (h) The provisions of this section do not apply to the  
6 extraction of minerals by underground mining methods: *Provided,*  
7 That nothing contained in this section may be construed to exempt  
8 any coal mining operation from the general performance standards as  
9 contained in section thirteen of this article and any rules  
10 promulgated pursuant thereto.

NOTE: The purpose of this bill is to extend the buffer zone for surface mining blasting to a distance of three hundred feet consistent with the buffer zone for dwellings.

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