

1 **H. B. 2979**

2
3 (By Delegates Caputo, Hall and Barker)

4 (By Request of the Department of Environmental
5 Protection)

6 [Introduced February 1, 2011; referred to the
7 Committee on the Judiciary.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §22-3-33, relating to
12 the award of attorney fees by the Surface Mine Board.

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

14 That the Code of West Virginia, 1931, as amended, be amended
15 by adding thereto a new section, designated §22-3-33, to read as
16 follows:

17 **ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.**

18 **§22-3-33. Attorney fees and costs.**

19 (a) As a result of any administrative proceeding under this
20 act, at the request of any person, a sum equal to the aggregate
21 amount of all costs and expenses, including attorney fees, as
22 determined by the circuit court or the surface mine board to have
23 been reasonably incurred by the requesting person for or in
24 connection with his or her participation in the administrative

1 proceeding, including any judicial review of agency actions, may be
2 assessed against either party as the court, resulting from judicial
3 review or the surface mine board, resulting from administrative
4 proceedings, deems proper.

5 (b) On a finding that a claim was brought in bad faith or for
6 the purposes of harassment, the surface mine board or the court,
7 whichever is appropriate, may award to the defendant or respondent,
8 however designated, reasonable attorney fees, court costs, and
9 fees.

10 (c) The secretary shall propose legislative rules for
11 legislative approval in accordance with the provisions of article
12 three, chapter twenty-nine-a of this code necessary to implement
13 the provisions of this section.

NOTE: The purpose of this bill is to deal with the award of attorney fees by the Surface Mine Board.

This section is new; therefore, it has been completely underscored.