1   **Senate Bill No. 360**

2   (By Senators Green, Beach and Klempa)

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4   [Introduced January 31, 2011; referred to the Committee on

5   Energy, Industry and Mining; then to the Committee on the

6   Judiciary; and then to the Committee on Finance.]

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11 A BILL to amend the Code of West Virginia, 1931, as amended, by

12   adding thereto a new section, designated §22-3-33, relating to

13   the award of attorney fees by the Surface Mine Board.

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

15   That the Code of West Virginia, 1931, as amended, be amended

16 by adding thereto a new section, designated §22-3-33, to read as

17 follows:

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

19 **§22-3-33. Attorney fees and costs.**

20   (a) As a result of any administrative proceeding under this

21 act, at the request of any person, a sum equal to the aggregate

22 amount of all costs and expenses, including attorney fees, as

23 determined by the circuit court or the surface mine board to have

24 been reasonably incurred by the requesting person for or in

1 connection with his or her participation in the administrative

2 proceeding, including any judicial review of agency actions, may be

3 assessed against either party as the court, resulting from judicial

4 review or the surface mine board, resulting from administrative

5 proceedings, deems proper.

6   (b) On a finding that a claim was brought in bad faith or for

7 the purposes of harassment, the surface mine board or the court,

8 whichever is appropriate, may award to the defendant or respondent,

9 however designated, reasonable attorney fees, court costs, and

10 fees.

11   (c) The secretary shall propose legislative rules for

12 legislative approval in accordance with the provisions of article

13 three, chapter twenty-nine-a of this code necessary to implement

14 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, strike-throughs and
underscoring have been omitted.