

1 **ENROLLED**

2 **Senate Bill No. 579**

3 (BY SENATORS KESSLER (MR. PRESIDENT), BEACH, D. FACEMIRE, PALUMBO, HELMICK,
4 HALL, FOSTER AND BROWNING)

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7 [Passed March 9, 2012; to take effect July 1, 2012.]
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10 AN ACT to amend and reenact §22-3-11 of the Code of West Virginia,
11 1931, as amended, relating to the special reclamation tax and
12 funds of the Surface Coal Mining and Reclamation Act;
13 continuing and reimposing the special reclamation tax on clean
14 coal mined at an increased rate; and dedicating portion of
15 special reclamation tax to Special Reclamation Water Trust
16 Fund.

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

18 That §22-3-11 of the Code of West Virginia, 1931, as amended,
19 be amended and reenacted to read as follows:

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

21 **§22-3-11. Bonds; amount and method of bonding; bonding**
22 **requirements; special reclamation tax and funds;**
23 **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 been
3 issued, each operator shall furnish a penal bond, on a form to be
4 prescribed and furnished by the secretary, payable to the State of
5 West Virginia and conditioned upon the operator faithfully
6 performing all of the requirements of this article and of the
7 permit. The penal amount of the bond shall be not less than \$1000
8 nor more than \$5000 for each acre or fraction of an acre: *Provided,*
9 That the minimum amount of bond furnished for any type of
10 reclamation bonding shall be \$10,000. The bond shall cover: (1)
11 The entire permit area; or (2) that increment of land within the
12 permit area upon which the operator will initiate and conduct
13 surface mining and reclamation operations within the initial term
14 of the permit. If the operator chooses to use incremental bonding,
15 as succeeding increments of surface mining and reclamation
16 operations are to be initiated and conducted within the permit
17 area, the operator shall file with the secretary an additional bond
18 or bonds to cover the increments in accordance with this section:
19 *Provided, however,* That once the operator has chosen to proceed
20 with bonding either the entire permit area or with incremental
21 bonding, the operator shall continue bonding in that manner for the
22 term of the permit.

23 (b) The period of liability for bond coverage begins with
24 issuance of a permit and continues for the full term of the permit

1 plus any additional period necessary to achieve compliance with the
2 requirements in the reclamation plan of the permit.

3 (c) (1) The form of the bond shall be approved by the
4 secretary and may include, at the option of the operator, surety
5 bonding, collateral bonding (including cash and securities),
6 establishment of an escrow account, self bonding or a combination
7 of these methods. If collateral bonding is used, the operator may
8 elect to deposit cash or collateral securities or certificates as
9 follows: Bonds of the United States or its possessions of the
10 Federal Land Bank or of the Homeowners' Loan Corporation; full
11 faith and credit general obligation bonds of the State of West
12 Virginia or other states and of any county, district or
13 municipality of the State of West Virginia or other states; or
14 certificates of deposit in a bank in this state, which certificates
15 shall be in favor of the department. The cash deposit or market
16 value of the securities or certificates shall be equal to or
17 greater than the penal sum of the bond. The secretary shall, upon
18 receipt of any deposit of cash, securities or certificates,
19 promptly place the same with the Treasurer of the State of West
20 Virginia whose duty it is to receive and hold the deposit in the
21 name of the state in trust for the purpose for which the deposit is
22 made when the permit is issued. The operator making the deposit is
23 entitled, from time to time, to receive from the State Treasurer,
24 upon the written approval of the secretary, the whole or any

1 portion of any cash, securities or certificates so deposited, upon
2 depositing with him or her in lieu thereof cash or other securities
3 or certificates of the classes specified in this subsection having
4 value equal to or greater than the sum of the bond.

5 (2) The secretary may approve an alternative bonding system if
6 it will: (A) Reasonably assure that sufficient funds will be
7 available to complete the reclamation, restoration and abatement
8 provisions for all permit areas which may be in default at any
9 time; and (B) provide a substantial economic incentive for the
10 permittee to comply with all reclamation provisions.

11 (d) The secretary may accept the bond of the applicant itself
12 without separate surety when the applicant demonstrates to the
13 satisfaction of the secretary the existence of a suitable agent to
14 receive service of process and a history of financial solvency and
15 continuous operation sufficient for authorization to self insure.

16 (e) It is unlawful for the owner of surface or mineral rights
17 to interfere with the present operator in the discharge of the
18 operator's obligations to the state for the reclamation of lands
19 disturbed by the operator.

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

22 (g) The Special Reclamation Fund previously created is
23 continued. The Special Reclamation Water Trust Fund is created
24 within the State Treasury into and from which moneys shall be paid

1 for the purpose of assuring a reliable source of capital to reclaim
2 and restore water treatment systems on forfeited sites. The moneys
3 accrued in both funds, any interest earned thereon and yield from
4 investments by the State Treasurer or West Virginia Investment
5 Management Board are reserved solely and exclusively for the
6 purposes set forth in this section and section seventeen, article
7 one of this chapter. The funds shall be administered by the
8 secretary who is authorized to expend the moneys in both funds for
9 the reclamation and rehabilitation of lands which were subjected to
10 permitted surface mining operations and abandoned after August 3,
11 1977, where the amount of the bond posted and forfeited on the land
12 is less than the actual cost of reclamation, and where the land is
13 not eligible for abandoned mine land reclamation funds under
14 article two of this chapter. The secretary shall develop a long-
15 range planning process for selection and prioritization of sites to
16 be reclaimed so as to avoid inordinate short-term obligations of
17 the assets in both funds of such magnitude that the solvency of
18 either is jeopardized. The secretary may use both funds for the
19 purpose of designing, constructing and maintaining water treatment
20 systems when they are required for a complete reclamation of the
21 affected lands described in this subsection. The secretary may
22 also expend an amount not to exceed ten percent of the total annual
23 assets in both funds to implement and administer the provisions of
24 this article and, as they apply to the Surface Mine Board, articles

1 one and four, chapter twenty-two-b of this code.

2 (h) (1) *Rate, deposits and review.*

3 (A) For tax periods commencing on and after July 1, 2009,
4 every person conducting coal surface mining shall remit a special
5 reclamation tax of fourteen and four-tenths cents per ton of clean
6 coal mined, the proceeds of which shall be allocated by the
7 secretary for deposit in the Special Reclamation Fund and the
8 Special Reclamation Water Trust Fund.

9 (B) For tax periods commencing on and after July 1, 2012, the
10 rate of tax specified in paragraph (A) of this subdivision is
11 discontinued and is replaced by the rate of tax specified in this
12 paragraph (B). For tax periods commencing on and after July 1,
13 2012, every person conducting coal surface mining shall remit a
14 special reclamation tax of twenty-seven and nine-tenths cents per
15 ton of clean coal mined, the proceeds of which shall be allocated
16 by the secretary for deposit in the Special Reclamation Fund and
17 the Special Reclamation Water Trust Fund. Of that amount, fifteen
18 cents per ton of clean coal mined shall be deposited into the
19 Special Reclamation Water Trust Fund.

20 (C) The tax shall be levied upon each ton of clean coal
21 severed or clean coal obtained from refuse pile and slurry pond
22 recovery or clean coal from other mining methods extracting a
23 combination of coal and waste material as part of a fuel supply.

24 (D) Beginning with the tax period commencing on July 1, 2009,

1 and every two years thereafter, the special reclamation tax shall
2 be reviewed by the Legislature to determine whether the tax should
3 be continued: *Provided*, That the tax may not be reduced until the
4 Special Reclamation Fund and Special Reclamation Water Trust Fund
5 have sufficient moneys to meet the reclamation responsibilities of
6 the state established in this section.

7 (2) In managing the Special Reclamation Program, the secretary
8 shall: (A) Pursue cost-effective alternative water treatment
9 strategies; and (B) conduct formal actuarial studies every two
10 years and conduct informal reviews annually on the Special
11 Reclamation Fund and Special Reclamation Water Trust Fund.

12 (3) Prior to December 31, 2008, the secretary shall:

13 (A) Determine the feasibility of creating an alternate
14 program, on a voluntary basis, for financially sound operators by
15 which those operators pay an increased tax into the Special
16 Reclamation Fund in exchange for a maximum per-acre bond that is
17 less than the maximum established in subsection (a) of this
18 section;

19 (B) Determine the feasibility of creating an incremental
20 bonding program by which operators can post a reclamation bond for
21 those areas actually disturbed within a permit area, but for less
22 than all of the proposed disturbance and obtain incremental release
23 of portions of that bond as reclamation advances so that the
24 released bond can be applied to approved future disturbance; and

1 (C) Determine the feasibility for sites requiring water
2 reclamation by creating a separate water reclamation security
3 account or bond for the costs so that the existing reclamation bond
4 in place may be released to the extent it exceeds the costs of
5 water reclamation.

6 (4) If the secretary determines that the alternative program,
7 the incremental bonding program or the water reclamation account or
8 bonding programs reasonably assure that sufficient funds will be
9 available to complete the reclamation of a forfeited site and that
10 the Special Reclamation Fund will remain fiscally stable, the
11 secretary is authorized to propose legislative rules in accordance
12 with article three, chapter twenty-nine-a of this code to implement
13 an alternate program, a water reclamation account or bonding
14 program or other funding mechanisms or a combination thereof.

15 (i) This special reclamation tax shall be collected by the
16 State Tax Commissioner in the same manner, at the same time and
17 upon the same tonnage as the minimum severance tax imposed by
18 article twelve-b, chapter eleven of this code is collected:
19 *Provided*, That under no circumstance shall the special reclamation
20 tax be construed to be an increase in either the minimum severance
21 tax imposed by said article or the severance tax imposed by article
22 thirteen of said chapter.

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

1 (k) The Tax Commissioner shall provide to the secretary a
2 quarterly listing of all persons known to be delinquent in payment
3 of the special reclamation tax. The secretary may take the
4 delinquencies into account in making determinations on the
5 issuance, renewal or revision of any permit.

6 (l) The Tax Commissioner shall deposit the moneys collected
7 with the Treasurer of the State of West Virginia to the credit of
8 the Special Reclamation Fund and Special Reclamation Water Trust
9 Fund.

10 (m) At the beginning of each quarter, the secretary shall
11 advise the State Tax Commissioner and the Governor of the assets,
12 excluding payments, expenditures and liabilities, in both funds.

13 (n) To the extent that this section modifies any powers,
14 duties, functions and responsibilities of the department that may
15 require approval of one or more federal agencies or officials in
16 order to avoid disruption of the federal-state relationship
17 involved in the implementation of the federal Surface Mining
18 Control and Reclamation Act, 30 U. S. C. §1270 by the state, the
19 modifications will become effective upon the approval of the
20 modifications by the appropriate federal agency or official.