

Senate Bill No. 497

(By Senators Beach, D. Facemire, Kirkendoll and Miller)

[Introduced February 2, 2012; referred to
the Committee on the Judiciary.]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-33. Attorney fees and costs.

- 1 (a) As a result of any administrative proceeding under
- 2 this article, at the request of any person, a sum equal to the
- 3 aggregate amount of all costs and expenses, including
- 4 attorney fees, as determined by the court or the Surface Mine

5 Board to have been reasonably incurred by the requesting
6 person for or in connection with his or her participation in
7 the administrative proceeding, including any judicial review
8 of agency actions, may be assessed against either party as the
9 court, resulting from judicial review or the Surface Mine
10 Board, resulting from administrative proceedings, considers
11 proper.

12 (b) On a finding that a claim was brought in bad faith or
13 for the purposes of harassment, the Surface Mine Board or
14 the court, whichever is appropriate, may award to the
15 defendant or respondent, however designated, a sum equal
16 to the aggregate amount of all costs and expenses, including
17 attorney fees, as determined to have been reasonably
18 incurred.

19 (c) The secretary shall propose rules for legislative
20 approval in accordance with the provisions of article three,
21 chapter twenty-nine-a of this code that are necessary to
22 implement the provisions of this section.

(NOTE: The purpose of this bill is to authorize the Surface Mine Board or the reviewing circuit court to award attorney fees and costs in administrative proceedings arising under the West Virginia Surface Coal Mining and Reclamation Act.

This section is new; therefore, strike-throughs and underscoring have been omitted.)