

Senate Bill No. 579

(By Senators Kessler (Mr. President), Beach, D. Facemire,
Palumbo, Helmick, Hall, Foster and Browning)

[Introduced February 13, 2012; referred to
the Committee on Energy, Industry and Mining; and then to
the Committee on Finance.]

A BILL to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating to the Surface Coal Mining and Reclamation Act; special reclamation tax and funds; and continuing and reimposing the special reclamation tax on clean coal mined at an increased rate.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

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

23 the operator shall continue bonding in that manner for the
24 term of the permit.

25 (b) The period of liability for bond coverage begins with
26 issuance of a permit and continues for the full term of the
27 permit plus any additional period necessary to achieve
28 compliance with the requirements in the reclamation plan of
29 the permit.

30 (c) (1) The form of the bond shall be approved by the
31 secretary and may include, at the option of the operator,
32 surety bonding, collateral bonding (including cash and
33 securities), establishment of an escrow account, self bonding
34 or a combination of these methods. If collateral bonding is
35 used, the operator may elect to deposit cash or collateral
36 securities or certificates as follows: Bonds of the United
37 States or its possessions of the Federal Land Bank or of the
38 Homeowners' Loan Corporation; full faith and credit general
39 obligation bonds of the State of West Virginia or other states
40 and of any county, district or municipality of the State of
41 West Virginia or other states; or certificates of deposit in a
42 bank in this state, which certificates shall be in favor of the
43 department. The cash deposit or market value of the securi-
44 ties or certificates shall be equal to or greater than the penal

45 sum of the bond. The secretary shall, upon receipt of any
46 deposit of cash, securities or certificates, promptly place the
47 same with the Treasurer of the State of West Virginia whose
48 duty it is to receive and hold the deposit in the name of the
49 state in trust for the purpose for which the deposit is made
50 when the permit is issued. The operator making the deposit
51 is entitled, from time to time, to receive from the State
52 Treasurer, upon the written approval of the secretary, the
53 whole or any portion of any cash, securities or certificates so
54 deposited, upon depositing with him or her in lieu thereof
55 cash or other securities or certificates of the classes specified
56 in this subsection having value equal to or greater than the
57 sum of the bond.

58 (2) The secretary may approve an alternative bonding
59 system if it will: (A) Reasonably assure that sufficient funds
60 will be available to complete the reclamation, restoration
61 and abatement provisions for all permit areas which may be
62 in default at any time; and (B) provide a substantial eco-
63 nomic incentive for the permittee to comply with all recla-
64 mation provisions.

65 (d) The secretary may accept the bond of the applicant
66 itself without separate surety when the applicant demon-

67 strates to the satisfaction of the secretary the existence of a
68 suitable agent to receive service of process and a history of
69 financial solvency and continuous operation sufficient for
70 authorization to self insure.

71 (e) It is unlawful for the owner of surface or mineral
72 rights to interfere with the present operator in the discharge
73 of the operator's obligations to the state for the reclamation
74 of lands disturbed by the operator.

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

77 (g) The Special Reclamation Fund previously created is
78 continued. The Special Reclamation Water Trust Fund is
79 created within the State Treasury into and from which
80 moneys shall be paid for the purpose of assuring a reliable
81 source of capital to reclaim and restore water treatment
82 systems on forfeited sites. The moneys accrued in both funds,
83 any interest earned thereon and yield from investments by
84 the State Treasurer or West Virginia Investment Manage-
85 ment Board are reserved solely and exclusively for the
86 purposes set forth in this section and section seventeen,
87 article one of this chapter. The funds shall be administered
88 by the secretary who is authorized to expend the moneys in

89 both funds for the reclamation and rehabilitation of lands
90 which were subjected to permitted surface mining operations
91 and abandoned after August 3, 1977, where the amount of
92 the bond posted and forfeited on the land is less than the
93 actual cost of reclamation, and where the land is not eligible
94 for abandoned mine land reclamation funds under article
95 two of this chapter. The secretary shall develop a long-range
96 planning process for selection and prioritization of sites to be
97 reclaimed so as to avoid inordinate short-term obligations of
98 the assets in both funds of such magnitude that the solvency
99 of either is jeopardized. The secretary may use both funds for
100 the purpose of designing, constructing and maintaining
101 water treatment systems when they are required for a
102 complete reclamation of the affected lands described in this
103 subsection. The secretary may also expend an amount not to
104 exceed ten percent of the total annual assets in both funds to
105 implement and administer the provisions of this article and,
106 as they apply to the Surface Mine Board, articles one and
107 four, chapter twenty-two-b of this code.

108 (h) (1) For tax periods commencing on and after July 1,
109 ~~2009~~ 2012, every person conducting coal surface mining shall
110 remit a special reclamation tax of ~~fourteen and four-tenths~~

111 ~~cents~~ twenty-seven and nine-tenths per ton of clean coal
112 mined, the proceeds of which shall be allocated by the
113 secretary for deposit in the Special Reclamation Fund and
114 the Special Reclamation Water Trust Fund. Fifteen cents of
115 that amount shall be deposited into the Special Reclamation
116 Water Trust Fund. The tax shall be levied upon each ton of
117 clean coal severed or clean coal obtained from refuse pile
118 and slurry pond recovery or clean coal from other mining
119 methods extracting a combination of coal and waste material
120 as part of a fuel supply. Beginning with the tax period
121 commencing on July 1, 2009, and every two years thereafter,
122 the special reclamation tax shall be reviewed by the Legisla-
123 ture to determine whether the tax should be continued:
124 *Provided*, That the tax may not be reduced until the Special
125 Reclamation Fund and Special Reclamation Water Trust
126 Fund have sufficient moneys to meet the reclamation
127 responsibilities of the state established in this section.

128 (2) In managing the Special Reclamation Program, the
129 secretary shall: (A) Pursue cost-effective alternative water
130 treatment strategies; and (B) conduct formal actuarial
131 studies every two years and conduct informal reviews

132 annually on the Special Reclamation Fund and Special
133 Reclamation Water Trust Fund.

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

135 (A) Determine the feasibility of creating an alternate
136 program, on a voluntary basis, for financially sound opera-
137 tors by which those operators pay an increased tax into the
138 Special Reclamation Fund in exchange for a maximum per-
139 acre bond that is less than the maximum established in
140 subsection (a) of this section;

141 (B) Determine the feasibility of creating an incremental
142 bonding program by which operators can post a reclamation
143 bond for those areas actually disturbed within a permit area,
144 but for less than all of the proposed disturbance and obtain
145 incremental release of portions of that bond as reclamation
146 advances so that the released bond can be applied to ap-
147 proved future disturbance; and

148 (C) Determine the feasibility for sites requiring water
149 reclamation by creating a separate water reclamation
150 security account or bond for the costs so that the existing
151 reclamation bond in place may be released to the extent it
152 exceeds the costs of water reclamation.

153 (4) If the secretary determines that the alternative
154 program, the incremental bonding program or the water
155 reclamation account or bonding programs reasonably assure
156 that sufficient funds will be available to complete the
157 reclamation of a forfeited site and that the Special Reclama-
158 tion Fund will remain fiscally stable, the secretary is autho-
159 rized to propose legislative rules in accordance with article
160 three, chapter twenty-nine-a of this code to implement an
161 alternate program, a water reclamation account or bonding
162 program or other funding mechanisms or a combination
163 thereof.

164 (i) This special reclamation tax shall be collected by the
165 State Tax Commissioner in the same manner, at the same
166 time and upon the same tonnage as the minimum severance
167 tax imposed by article twelve-b, chapter eleven of this code
168 is collected: *Provided*, That under no circumstance shall the
169 special reclamation tax be construed to be an increase in
170 either the minimum severance tax imposed by said article or
171 the severance tax imposed by article thirteen of said chapter.

172 (j) Every person liable for payment of the special recla-
173 mation tax shall pay the amount due without notice or
174 demand for payment.

175 (k) The Tax Commissioner shall provide to the secretary
176 a quarterly listing of all persons known to be delinquent in
177 payment of the special reclamation tax. The secretary may
178 take the delinquencies into account in making determina-
179 tions on the issuance, renewal or revision of any permit.

180 (l) The Tax Commissioner shall deposit the moneys
181 collected with the Treasurer of the State of West Virginia to
182 the credit of the Special Reclamation Fund and Special
183 Reclamation Water Trust Fund.

184 (m) At the beginning of each quarter, the secretary shall
185 advise the State Tax Commissioner and the Governor of the
186 assets, excluding payments, expenditures and liabilities, in
187 both funds.

188 (n) To the extent that this section modifies any powers,
189 duties, functions and responsibilities of the department that
190 may require approval of one or more federal agencies or
191 officials in order to avoid disruption of the federal-state
192 relationship involved in the implementation of the federal
193 Surface Mining Control and Reclamation Act, 30 U. S. C.
194 §1270 by the state, the modifications will become effective
195 upon the approval of the modifications by the appropriate
196 federal agency or official.

(NOTE: The purpose of this bill is to continue and reimpose the special reclamation tax. It also increases the rate from 14.4 cents to 27.9 cents per ton of clean coal mined.

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

FINANCE COMMITTEE AMENDMENT

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Senate Bill No. 579—A BILL to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating to the special reclamation tax and funds of the Surface Coal Mining and Reclamation Act; continuing and reimposing the special reclamation tax on clean coal mined at an increased rate; and dedicating portion of special reclamation tax to Special Reclamation Water Trust Fund.