

1 **H. B. 2826**

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3 (By Delegates Phillips, R., Poling, D., Skaff, Diserio,  
4 Campbell, White, Boggs, Stowers, Tomblin,  
5 Eldridge and Marcum)

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[Introduced March 5, 2013; referred to the

8 Committee on Energy, Industry and Labor, Economic Development and

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Small Business then the Judiciary.]

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11 A BILL to amend and reenact §22-3-11 of the Code of West Virginia,

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1931, as amended, relating to the state's jurisdiction over

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reclaimed sites of bond-forfeited surface mining operations.

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

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That §22-3-11 of the Code of West Virginia, 1931, as amended,

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be amended and reenacted to read as follows:

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

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**§22-3-11. Bonds; amount and method of bonding; bonding**

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**requirements; special reclamation tax and funds;**

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**prohibited acts; period of bond liability;**

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**termination of the state's jurisdiction over**

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**reclaimed sites of bond-forfeited former surface**

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**mining operations.**

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(a) After a surface mining permit application has been

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

22 (b) The period of liability for bond coverage begins with

1 issuance of a permit and continues for the full term of the permit  
2 plus any additional period necessary to achieve compliance with the  
3 requirements in the reclamation plan of the permit.

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

1 made when the permit is issued. The operator making the deposit is  
2 entitled, from time to time, to receive from the State Treasurer,  
3 upon the written approval of the secretary, the whole or any  
4 portion of any cash, securities or certificates so deposited, upon  
5 depositing with him or her in lieu thereof cash or other securities  
6 or certificates of the classes specified in this subsection having  
7 value equal to or greater than the sum of the bond.

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

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

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

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

3 (g) The Special Reclamation Fund previously created is  
4 continued. The Special Reclamation Water Trust Fund is created  
5 within the State Treasury into and from which moneys shall be paid  
6 for the purpose of assuring a reliable source of capital to reclaim  
7 and restore water treatment systems on forfeited sites. The moneys  
8 accrued in both funds, any interest earned thereon and yield from  
9 investments by the State Treasurer or West Virginia Investment  
10 Management Board are reserved solely and exclusively for the  
11 purposes set forth in this section and section seventeen, article  
12 one of this chapter. The funds shall be administered by the  
13 secretary who is authorized to expend the moneys in both funds for  
14 the reclamation and rehabilitation of lands which were subjected to  
15 permitted surface mining operations and abandoned after August 3,  
16 1977, where the amount of the bond posted and forfeited on the land  
17 is less than the actual cost of reclamation, and where the land is  
18 not eligible for abandoned mine land reclamation funds under  
19 article two of this chapter. The secretary shall develop a long-  
20 range planning process for selection and prioritization of sites to  
21 be reclaimed so as to avoid inordinate short-term obligations of  
22 the assets in both funds of such magnitude that the solvency of

1 either is jeopardized. The secretary may use both funds for the  
2 purpose of designing, constructing and maintaining water treatment  
3 systems when they are required for a complete reclamation of the  
4 affected lands described in this subsection. The secretary may  
5 also expend an amount not to exceed ten percent of the total annual  
6 assets in both funds to implement and administer the provisions of  
7 this article and, as they apply to the Surface Mine Board, articles  
8 one and four, chapter twenty-two-b of this code.

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

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

16 (B) For tax periods commencing on and after July 1, 2012, the  
17 rate of tax specified in paragraph (A) of this subdivision is  
18 discontinued and is replaced by the rate of tax specified in this  
19 paragraph (B). For tax periods commencing on and after July 1,  
20 2012, every person conducting coal surface mining shall remit a  
21 special reclamation tax of twenty-seven and nine-tenths cents per  
22 ton of clean coal mined, the proceeds of which shall be allocated

1 by the secretary for deposit in the Special Reclamation Fund and  
2 the Special Reclamation Water Trust Fund. Of that amount, fifteen  
3 cents per ton of clean coal mined shall be deposited into the  
4 Special Reclamation Water Trust Fund.

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

9 (D) Beginning with the tax period commencing on July 1, 2009,  
10 and every two years thereafter, the special reclamation tax shall  
11 be reviewed by the Legislature to determine whether the tax should  
12 be continued: *Provided*, That the tax may not be reduced until the  
13 Special Reclamation Fund and Special Reclamation Water Trust Fund  
14 have sufficient moneys to meet the reclamation responsibilities of  
15 the state established in this section.

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

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

22 (A) Determine the feasibility of creating an alternate

1 program, on a voluntary basis, for financially sound operators by  
2 which those operators pay an increased tax into the Special  
3 Reclamation Fund in exchange for a maximum per-acre bond that is  
4 less than the maximum established in subsection (a) of this  
5 section;

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

12 (C) Determine the feasibility for sites requiring water  
13 reclamation by creating a separate water reclamation security  
14 account or bond for the costs so that the existing reclamation bond  
15 in place may be released to the extent it exceeds the costs of  
16 water reclamation.

17 (4) If the secretary determines that the alternative program,  
18 the incremental bonding program or the water reclamation account or  
19 bonding programs reasonably assure that sufficient funds will be  
20 available to complete the reclamation of a forfeited site and that  
21 the Special Reclamation Fund will remain fiscally stable, the  
22 secretary is authorized to propose legislative rules in accordance

1 with article three, chapter twenty-nine-a of this code to implement  
2 an alternate program, a water reclamation account or bonding  
3 program or other funding mechanisms or a combination thereof.

4 (I) This special reclamation tax shall be collected by the  
5 State Tax Commissioner in the same manner, at the same time and  
6 upon the same tonnage as the minimum severance tax imposed by  
7 article twelve-b, chapter eleven of this code is collected:  
8 *Provided*, That under no circumstance shall the special reclamation  
9 tax be construed to be an increase in either the minimum severance  
10 tax imposed by said article or the severance tax imposed by article  
11 thirteen of said chapter.

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

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

19 (l) The Tax Commissioner shall deposit the moneys collected  
20 with the Treasurer of the State of West Virginia to the credit of  
21 the Special Reclamation Fund and Special Reclamation Water Trust  
22 Fund.

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

4 (n) To the extent that this section modifies any powers,  
5 duties, functions and responsibilities of the department that may  
6 require approval of one or more federal agencies or officials in  
7 order to avoid disruption of the federal-state relationship  
8 involved in the implementation of the federal Surface Mining  
9 Control and Reclamation Act, 30 U.S.C. § 1270 by the state, the  
10 modifications will become effective upon the approval of the  
11 modifications by the appropriate federal agency or official.

12 (o) As of the effective date of this subsection, the state no  
13 longer has jurisdiction over and obligations to the reclaimed sites  
14 of bond-forfeited former surface mining operations upon which: (1)  
15 The warranty period on the state's reclamation contract for the  
16 site expired on or before January 15, 2002; and (2) effluent  
17 limitations that had applied to the site under 40 C.F.R. Part 434  
18 were being met, and no further state funds shall be expended  
19 thereon. The secretary shall propose legislative rules in  
20 accordance with the provisions of chapter twenty-nine-a of this  
21 code to establish a procedure for terminating the state's  
22 jurisdiction over bond-forfeited former surface mining operations

1 that do not meet the above criteria.

NOTE: The purpose of this bill is to terminate the state's jurisdiction over reclaimed bond-forfeited surface mining operations if the land reclamation was completed prior to January 15, 2002 and the site met the effluent limitations set forth in 40 C.F.R. Part 434 and to direct the secretary to propose legislative rules establishing a process to terminate the state's jurisdiction over reclaimed bond-forfeited surface mining sites that do not meet the criteria established herein.

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