

1 ENROLLED

2 COMMITTEE SUBSTITUTE

3 FOR

4 H. B. 4480

5
6 (By Delegates Craig and Skaff)

7 (By Request of the Department of Environmental Protection)

8 [Passed March 8, 2014; in effect ninety days from passage.]

9
10 AN ACT to amend and reenact §22-2-4 of the Code of West Virginia,
11 1931, as amended, relating to the Acid Mine Drainage and
12 Abatement Fund; investment of funds; retention of earnings;
13 and requiring restoration of interest earnings previously
14 defaulted into the state's general revenue account.

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

16 That §22-2-4 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

18 **ARTICLE 2. ABANDONED MINE LANDS AND RECLAMATION ACT.**

19 **§22-2-4. Abandoned land reclamation fund and objectives of fund;**
20 **lands eligible for reclamation.**

21 (a) All abandoned land reclamation funds available under Title
22 IV of the federal Surface Mining Control and Reclamation Act of
23 1977, as amended, private donations received, any state
24 appropriated or transferred funds, or funds received from the sale

1 of land by the secretary under this article shall be deposited with
2 the Treasurer of the State of West Virginia to the credit of the
3 Abandoned Land Reclamation Fund heretofore created, and expended
4 pursuant to the requirements of this article.

5 (b) Moneys in the fund may be used by the secretary for the
6 following:

7 (1) Reclamation and restoration of land and water resources
8 adversely affected by past coal surface-mining operations,
9 including, but not limited to, reclamation and restoration of
10 abandoned surface mine areas, abandoned coal processing areas and
11 abandoned coal processing waste areas; sealing and filling
12 abandoned deep mine entries and voids; planting of land adversely
13 affected by past coal surface-mining operations to prevent erosion
14 and sedimentation; prevention, abatement, treatment and control of
15 water pollution created by coal mine drainage, including
16 restoration of stream beds and construction and operation of water
17 treatment plants; prevention, abatement and control of burning coal
18 processing waste areas and burning coal in situ; prevention,
19 abatement and control of coal mine subsidence; and payment of
20 administrative expenses and all other necessary expenses incurred
21 to accomplish the purpose of this article: *Provided*, That all
22 expenditures from this fund shall reflect the following priorities
23 in the order stated:

24 (A) The protection of public health, safety, general welfare

1 and property from extreme danger of adverse effects of past
2 surface-mining practices;

3 (B) The protection of public health, safety and general
4 welfare from adverse effects of past coal surface-mining practices;

5 (C) The restoration of land and water resources and
6 environment previously degraded by adverse effects of past coal
7 surface-mining practices, including measures for the conservation
8 and development of soil, water (excluding channelization),
9 woodland, fish and wildlife, recreation resources and agricultural
10 productivity;

11 (D) Research and demonstration projects relating to the
12 development of surface-mining reclamation and water quality control
13 program methods and techniques;

14 (E) The protection, repair, replacement, construction or
15 enhancement of public facilities such as utilities, roads,
16 recreation and conservation facilities adversely affected by past
17 coal surface-mining practices; and

18 (F) The development of publicly owned land adversely affected
19 by past coal surface-mining practices, including land acquired as
20 provided in this article for recreation and historic purposes,
21 conservation and reclamation purposes and open space benefits.

22 (2) (A) The secretary may expend up to thirty percent of the
23 funds allocated to the state in any year through the grants made
24 available under paragraphs (1) and (5), subsection (g) of Section

1 402 of the federal Surface Mining Control and Reclamation Act of
2 1977, as amended, for the purpose of protecting, repairing,
3 replacing, constructing or enhancing facilities relating to water
4 supply, including water distribution facilities and treatment
5 plants, to replace water supplies adversely affected by coal
6 surface-mining practices.

7 (B) If the adverse effects on water supplies referred to in
8 this subdivision occurred both prior to and after August 3, 1977,
9 subsection (c) of this section does not prohibit the state from
10 using funds for the purposes of this subdivision if the secretary
11 determines that the adverse effects occurred predominantly prior to
12 August 3, 1977.

13 (3) The secretary may receive and retain up to ten percent of
14 the total of the grants made annually to the state under paragraphs
15 (1) and (5), subsection (g) of Section 402 of the federal Surface
16 Mining Control and Reclamation Act of 1977, as amended, if the
17 amounts are deposited to the credit of either:

18 (A) The special account in the State Treasury designated the
19 "Reclamation and Restoration Fund" is hereby continued. Moneys in
20 the fund may be expended by the secretary to achieve the priorities
21 stated in subdivision (1) of this subsection after September 30,
22 1995, and for associated administrative and personnel expenses; or

23 (B) The special account in the State Treasury designated the
24 "Acid Mine Drainage Abatement and Treatment Fund" is hereby

1 continued. Moneys in the fund may be expended by the secretary to
2 implement, in consultation with the United States soil conservation
3 service, acid mine drainage abatement and treatment plans approved
4 by the secretary of the United States Department of Interior and
5 for associated administrative and personnel expenses. The plans
6 shall provide for the comprehensive abatement of the causes and
7 treatment of the effects of acid mine drainage within qualified
8 hydrologic units affected by coal surface-mining practices. The
9 moneys accrued in this fund, any earnings thereon, and yield from
10 investments by the State Treasurer or West Virginia Investment
11 Management Board are reserved solely and exclusively for the
12 purposes set forth in this section of the code. Any interest
13 accrued on any moneys deposited into the Acid Mine Drainage
14 Abatement and Treatment Fund which previously defaulted from that
15 account into general revenue shall be credited back to the fund on
16 or before July 1, 2014.

17 (c) Except as provided for in this subsection, lands and water
18 eligible for reclamation or drainage abatement expenditures under
19 this article are those which were mined for coal or which were
20 affected by the mining, wastebanks, coal processing or other coal
21 mining processes, and abandoned or left in an inadequate
22 reclamation status prior to August 3, 1977, and for which there is
23 no continuing reclamation responsibility: *Provided*, That moneys
24 from the funds made available by the Secretary of the United States

1 Department of Interior pursuant to paragraphs (1) and (5),
2 subsection (g), Section 402 of the federal Surface Mining Control
3 and Reclamation Act of 1977, as amended, may be expended for the
4 reclamation or drainage abatement of a site that: (1) The
5 surface-mining operation occurred during the period beginning on
6 August 4, 1977, and ending on or before January 21, 1981, and that
7 any funds for reclamation or abatement which are available pursuant
8 to a bond or other financial guarantee or from any other source,
9 and not sufficient to provide for adequate reclamation or abatement
10 of the site; or (2) the surface-mining operation occurred during
11 the period beginning on August 4, 1977, and ending on or before
12 November 5, 1990, and that the surety of the surface-mining
13 operation became insolvent during that period, and as of November
14 5, 1990, funds immediately available from proceeding relating to
15 the insolvency or from any financial guarantees or other sources
16 are not sufficient to provide for adequate reclamation of the site:
17 *Provided, however,* That the secretary, with the concurrence of the
18 secretary of the United States Department of Interior, makes either
19 of the above-stated findings, and that the site is eligible, or
20 more urgent than the reclamation priorities set forth in paragraphs
21 (A) and (B), subdivision (1), subsection (b) of this section.

22 (d) One purpose of this article is to provide additional and
23 cumulative remedies to abate the pollution of the waters of the
24 state, and nothing contained in this article abridges or alters

1 rights of action or remedies now or hereafter existing, nor do any
2 provisions in this article or any act done by virtue of this
3 article estop the state, municipalities, public health officers or
4 persons as riparian owners or otherwise in the exercise of their
5 rights to suppress nuisances or to abate any pollution now or
6 hereafter existing or to recover damages.

7 (e) Where the Governor certifies that the above objectives of
8 the fund have been achieved and there is a need for construction of
9 specific public facilities in communities impacted by coal
10 development, and other sources of federal funds are inadequate and
11 the secretary of the United States Department of Interior concurs,
12 then the secretary may expend money from the fund for the
13 construction.