Senate Bill No. 305

(By Senator Beach)

_____

[Introduced January 8, 2014; referred to the Committee on Natural Resources; and then to the Committee on the Judiciary.]

_____

A BILL to amend and reenact §22-2-9 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22-3-10 and §22-3-13 of said code, all relating generally to the Abandoned Mine Lands and Reclamation Act and Surface Coal Mining and Reclamation Act; and requiring certain reclamation for post-mining land use to utilize the Clements State Tree Nursery.

Be it enacted by the Legislature of West Virginia:

That §22-2-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §22-3-10 and §22-3-13 of said code be amended and reenacted, all to read as follows:

ARTICLE 2. ABANDONED MINE LANDS AND RECLAMATION ACT.

§22-2-9. General and miscellaneous powers and duties of director; cooperative agreements; injunctive relief; water

treatment plants and facilities; transfer of funds and interagency cooperation.

(a) The director is authorized to engage in any work and to do all things necessary and proper, including promulgation of rules, to implement and administer the provisions of this article.

(b) The director is authorized to engage in cooperative projects under this article with any other agency of the United States of America, any state, county or municipal agency or subdivision thereof.

(c) The director may request the Attorney General, who is hereby authorized to initiate, in addition to any other remedies provided ~~for~~ in this article, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this article.

(d) The director has the authority to construct and operate a plant or any facilities for the control and treatment of water pollution resulting from mine drainage. The extent of this control and treatment may be dependent upon the ultimate use of the water: *Provided,* That this subsection does not repeal or supersede any portion of the applicable federal or state water pollution control laws and no control or treatment under this section may be less than that required under any applicable federal or state water

pollution control law. The construction of any facilities may include major interceptors and other facilities appurtenant to the plant.

(e) The director shall require reclamation sites where reforestation is appropriate to be reforested with trees obtained from the Clements State Tree Nursery unless the director receives written certification from the State Tree Nursery that it cannot supply the trees needed.

~~(e)~~ (f) All departments, boards, commissions and agencies of the state shall cooperate with the director by providing technical expertise, personnel, equipment, materials and supplies to implement and administer the provisions of this article.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-10. Reclamation plan requirements.

(a) Each reclamation plan submitted as part of a surface mining permit application shall include, in the degree of detail necessary to demonstrate that reclamation required by this article can be accomplished, a statement of:

(1) The identification of the lands subject to surface mining over the estimated life of these operations and the size, sequence and timing of the operations for which it is anticipated that individual permits for mining will be sought;

(2) The condition of the land to be covered by the permit

prior to any mining, including: (A) The uses existing at the time of the application and, if the land has a history of previous mining, the uses which preceded any mining; (B) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography and vegetation cover and, if applicable, a soil survey prepared pursuant to subdivision (15), subsection (a), section nine of this article; and (C) the best information available on the productivity of the land prior to mining, including appropriate classification as prime farmlands and the average yield of food, fiber, forage or wood products from the lands obtained under high levels of management;

(3) The use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses, including, but not limited to, renewable and alternative energy uses, residential uses, highway uses, industrial uses, commercial uses, agricultural uses, public facility uses or recreational facility uses, and the relationship of the use to existing land use policies and plans and the comments of any owner of the surface, other state agencies and local governments which would have to initiate, implement, approve or authorize the proposed use of the land following reclamation: *Provided,* That if planting trees is

necessary to achieve the proposed post-mining land use, a statement that the trees will be obtained from the Clements State Tree Nursery, unless the State Tree Nursery provides written certification that it cannot supply the trees needed to satisfy the post-mining land use at a competitive cost;

(A) The post-mining land use proposed in any reclamation plan for lands proposed to be mined by surface mining methods shall comport with the land use that is specified in the approved master land use plan for the area as provided in section nine, article two-a, chapter five-b of this code: *Provided,* That the secretary may approve an alternative post-mining land use where the applicant demonstrates that:

(I) The proposed post-mining land use is a higher and better use than the land use specified in the approved master land use plan;

(ii) Site-specific conditions make attainment of a post-mining land use which comports with the land use that is specified in the approved master land use plan for the area impractical; or

(iii) The post-mining land use specified in the approved master land use plan would substantially interfere with the future extraction of a mineable coal bed, as that term is defined in rules promulgated by the Tax Commissioner relating to the valuation of active or reserve coal property for ad valorem property tax

purposes, 110 C.S.R. 1I-3 or a successor rule, from the land to be mined.

(B) Existing permits with approved reclamation plans may be modified by the operator through an appropriate permit revision to include a post-mining land use which comports with the land use that is specified in the approved master land use plan for the area as provided in section nine, article two-a, chapter five-b of this code;

(C) By complying with a master land use plan that has been approved in accordance with article two-a, chapter five-b of this code, a post-mining land use satisfies the requirements for an alternative post-mining land use and satisfies the variance requirements set forth in subsection (c), section thirteen, article three, chapter twenty-two of this code if applicable to the proposed use;

(4) A detailed description of how the proposed post-mining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(5) The engineering techniques proposed to be used in mining and reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan, where appropriate, for backfilling, soil stabilization and compacting, grading, revegetation and a plan for

soil reconstruction, replacement and stabilization pursuant to the performance standards in subdivision (7), subsection (b), section thirteen of this article for those food, forage and forest lands identified therein; and a statement as to how the operator plans to comply with each of the applicable requirements set out in section thirteen or fourteen of this article;

(6) A detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(7) The consideration which has been given to conducting surface mining operations in a manner consistent with surface owner plans and applicable state and local land use plans and programs;

(8) The steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards;

(9) The consideration which has been given to developing the reclamation plan in a manner consistent with local physical environmental and climatological conditions;

(10) All lands, interests in lands or options on the interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

(11) A detailed description of the measures to be taken during the surface mining and reclamation process to assure the protection

of:

(A) The quality of surface and groundwater systems, both on and off site, from adverse effects of the surface mining operation;

(B) The rights of present users to the water; and

(C) The quantity of surface and groundwater systems, both on and off site, from adverse effects of the surface mining operation or to provide alternative sources of water where the protection of quantity cannot be assured;

(12) The results of tests borings which the applicant has made at the area to be covered by the permit or other equivalent information and data in a form satisfactory to the director, including the location of subsurface water and an analysis of the chemical properties, including acid-forming properties of the mineral and overburden: *Provided,* That information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding the mineral or elemental contents which are potentially toxic in the environment, shall be kept confidential and not made a matter of public record;

(13) The consideration which has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future can be minimized; and

(14) Any other requirements as the director may prescribe by

rule.

(b) A reclamation plan pending approval as of the effective date of this section may be amended by the operator to provide for a post-mining land use that comports with a master land use plan that has been approved in accordance with article two-a, chapter five-b of this code.

(c) The reclamation plan shall be available to the public for review except for those portions thereof specifically exempted in subsection (a) of this section.

(d) The amendments to this section by the first extraordinary session of the Legislature in 2009 are effective upon the approval of the corresponding amendments to West Virginia's state program, as that term is defined in the federal Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. §1291, by the federal Office of Surface Mining Reclamation and Enforcement.

§22-3-13. General environmental protection performance standards for surface mining; variances.

(a) Any permit issued by the director pursuant to this article to conduct surface mining operations shall require that the surface mining operations meet all applicable performance standards of this article and other requirements set forth in legislative rules proposed by the director.

(b) The following general performance standards are applicable

to all surface mines and require the operation, at a minimum to:

(1) Maximize the utilization and conservation of the solid fuel resource being recovered to minimize reaffecting the land in the future through surface mining;

(2) Restore the land affected to a condition capable of supporting the uses which it was capable of supporting prior to any mining, or higher or better uses of which there is reasonable likelihood so long as the use or uses do not present any actual or probable hazard to public health or safety or pose any actual or probable threat of water diminution or pollution and the permit applicants' declared proposed land use following reclamation is not considered to be impractical or unreasonable, inconsistent with applicable land use policies and plans, involves unreasonable delay in implementation or is violative of federal, state or local law;

(3) Except as provided in subsection (c) of this section, with respect to all surface mines, backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials, and grade in order to restore the approximate original contour: *Provided,* That in surface mining which is carried out at the same location over a substantial period of time where the operation transects the coal deposit, and the thickness of the coal deposits relative to the volume of the overburden is large and where the operator demonstrates that the overburden and other spoil and waste

materials at a particular point in the permit area or otherwise available from the entire permit area is insufficient, giving due consideration to volumetric expansion, to restore the approximate original contour, the operator, at a minimum, shall backfill, grade and compact, where advisable, using all available overburden and other spoil and waste materials to attain the lowest practicable grade, but not more than the angle of repose, to provide adequate drainage and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region: *Provided, however,* That in surface mining where the volume of overburden is large relative to the thickness of the coal deposit and where the operator demonstrates that due to volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour, the operator shall, after restoring the approximate contour, backfill, grade and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade, but not more than the angle of repose, and to cover all acid-forming and other toxic materials, in order to achieve an ecologically sound land use compatible with the surrounding region and, the overburden or spoil shall be shaped and graded in a way as to prevent slides, erosion and water pollution and revegetated in

accordance with the requirements of this article: *Provided further,* That the director shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, governing variances to the requirements for return to approximate original contour or highwall elimination and where adequate material is not available from surface mining operations permitted after the effective date of this article for: (A) Underground mining operations existing prior to August 3, 1977; or (B) for areas upon which surface mining prior to July 1, 1977, created highwalls;

(4) Stabilize and protect all surface areas, including spoil piles, affected by the surface mining operation to effectively control erosion and attendant air and water pollution;

(5) Remove the topsoil from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and, when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful vegetative cover by quick growing plants or by other similar means in order to protect topsoil from wind and water erosion and keep it free of any contamination by other acid or toxic material: *Provided,* That if topsoil is of insufficient quantity or of poor quality for sustaining vegetation, or if other strata can be shown

to be more suitable for vegetation requirements, then the operator shall remove, segregate and preserve in a like manner any other strata which is best able to support vegetation;

(6) Restore the topsoil or the best available subsoil which is best able to support vegetation;

(7) Ensure that all prime farmlands are mined and reclaimed in accordance with the specifications for soil removal, storage, replacement and reconstruction established by the United States secretary of agriculture and the soil conservation service pertaining thereto. The operator, at a minimum, shall: (A) Segregate the A horizon of the natural soil, except where it can be shown that other available soil materials will create a final soil having a greater productive capacity, and if not utilized immediately, stockpile this material separately from other spoil, and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (B) segregate the B horizon of the natural soil, or underlying C horizons or other strata, or a combination of the horizons or other strata that are shown to be both texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of comparable depth and quality to that which existed in the natural soil, and if not

utilized immediately, stockpile this material separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material; (C) replace and regrade the root zone material described in paragraph (B) of this subdivision, with proper compaction and uniform depth over the regraded spoil material; and (D) redistribute and grade in a uniform manner the surface soil horizon described in paragraph (A) of this subdivision;

(8) Create, if authorized in the approved surface mining and reclamation plan and permit, permanent impoundments of water on mining sites as part of reclamation activities in accordance with rules promulgated by the director;

(9) Where augering is the method of recovery, seal all auger holes with an impervious and noncombustible material in order to prevent drainage except where the director determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public welfare and safety: *Provided,* That the director may prohibit augering if necessary to maximize the utilization, recoverability or conservation of the mineral resources or to protect against adverse water quality impacts;

(10) Minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated off-site areas and to

the quality and quantity of water in surface and groundwater systems both during and after surface mining operations and during reclamation by: (A) Avoiding acid or other toxic mine drainage by such measures as, but not limited to: (i) Preventing or removing water from contact with toxic producing deposits; (ii) treating drainage to reduce toxic content which adversely affects downstream water upon being released to water courses; and (iii) casing, sealing or otherwise managing boreholes, shafts and wells and keep acid or other toxic drainage from entering ground and surface waters; (B) conducting surface mining operations so as to prevent to the extent possible, using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area, but in no event may contributions be in excess of requirements set by applicable state or federal law; (C) constructing an approved drainage system pursuant to paragraph (B) of this subdivision, prior to commencement of surface mining operations, the system to be certified by a person approved by the director to be constructed as designed and as approved in the reclamation plan; (D) avoiding channel deepening or enlargement in operations requiring the discharge of water from mines; (E) unless otherwise authorized by the director, cleaning out and removing temporary or large settling ponds or other siltation structures after disturbed areas are

revegetated and stabilized, and depositing the silt and debris at a site and in a manner approved by the director; (F) restoring recharge capacity of the mined area to approximate premining conditions; and (G) any other actions prescribed by the director;

(11) With respect to surface disposal of mine wastes, tailings, coal processing wastes and other wastes in areas other than the mine working excavations, stabilize all waste piles in designated areas through construction in compacted layers, including the use of noncombustible and impervious materials if necessary, and assure the final contour of the waste pile will be compatible with natural surroundings and that the site will be stabilized and revegetated according to the provisions of this article;

(12) Design, locate, construct, operate, maintain, enlarge, modify and remove or abandon, in accordance with standards and criteria developed pursuant to subsection (f) of this section, all existing and new coal mine waste piles consisting of mine wastes, tailings, coal processing wastes or other liquid and solid wastes, and used either temporarily or permanently as dams or embankments;

(13) Refrain from surface mining within five hundred feet of any active and abandoned underground mines in order to prevent breakthroughs and to protect health or safety of miners: *Provided,* That the director shall permit an operator to mine near, through or

partially through an abandoned underground mine or closer to an active underground mine if: (A) The nature, timing and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are coordinated jointly by the operators involved and approved by the director; and (B) the operations will result in improved resource recovery, abatement of water pollution or elimination of hazards to the health and safety of the public: *Provided, however,* That any breakthrough which does occur shall be sealed;

(14) Ensure that all debris, acid-forming materials, toxic materials or materials constituting a fire hazard are treated or buried and compacted, or otherwise disposed of in a manner designed to prevent contamination of ground or surface waters, and that contingency plans are developed to prevent sustained combustion: *Provided,* That the operator shall remove or bury all metal, lumber, equipment and other debris resulting from the operation before grading release;

(15) Ensure that explosives are used only in accordance with existing state and federal law and the rules promulgated by the director, which shall include provisions to:

(A) Maintain for a period of at least three years and make available for public inspection, upon written request, a log detailing the location of the blasts, the pattern and depth of the

drill holes, the amount of explosives used per hole and the order and length of delay in the blasts; and

(B) Require that all blasting operations be conducted by persons certified by the office of explosives and blasting.

(16) Ensure that all reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface mining operations. Time limits shall be established by the director requiring backfilling, grading and planting to be kept current: *Provided,* That where surface mining operations and underground mining operations are proposed on the same area, which operations must be conducted under separate permits, the director may grant a variance from the requirement that reclamation efforts proceed as contemporaneously as practicable to permit underground mining operations prior to reclamation:

(A) If the director finds in writing that:

(i) The applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(ii) The proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the mineral resource and will avoid multiple disturbance of the surface;

(iii) The applicant has satisfactorily demonstrated that the

plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction and that permits necessary for the underground mining operations have been issued by the appropriate authority;

(iv) The areas proposed for the variance have been shown by the applicant to be necessary for the implementing of the proposed underground mining operations;

(v) No substantial adverse environmental damage, either on-site or off-site, will result from the delay in completion of reclamation as required by this article; and

(vi) Provisions for the off-site storage of spoil will comply with subdivision (22), subsection (b) of this section;

(B) If the director has promulgated specific rules to govern the granting of the variances in accordance with the provisions of this subparagraph and has imposed any additional requirements as the director considers necessary;

(C) If variances granted under the provisions of this paragraph are reviewed by the director not more than three years from the date of issuance of the permit: *Provided,* That the underground mining permit shall terminate if the underground operations have not commenced within three years of the date the permit was issued, unless extended as set forth in subdivision (3), section eight of this article; and

(D) If liability under the bond filed by the applicant with the director pursuant to subsection (b), section eleven of this article is for the duration of the underground mining operations and until the requirements of subsection (g), section eleven and section twenty-three of this article have been fully complied with;

(17) Ensure that the construction, maintenance and post-mining conditions of access and haul roads into and across the site of operations will control or prevent erosion and siltation, pollution of water, damage to fish or wildlife or their habitat, or public or private property: *Provided,* That access roads constructed for and used to provide infrequent service to surface facilities, such as ventilators or monitoring devices, are exempt from specific construction criteria provided adequate stabilization to control erosion is achieved through alternative measures;

(18) Refrain from the construction of roads or other access ways up a stream bed or drainage channel or in proximity to the channel so as to significantly alter the normal flow of water;

(19) Establish on the regraded areas, and all other lands affected, a diverse, effective and permanent vegetative cover of the same seasonal variety native to the area of land to be affected or of a fruit, grape or berry producing variety suitable for human consumption and capable of self-regeneration and plant succession at least equal in extent of cover to the natural vegetation of the

area, except that introduced species may be used in the revegetation process where desirable or when necessary to achieve the approved post-mining land use plan;

(20) Assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than five growing seasons, as defined by the director, after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection: *Provided,* That when the director issues a written finding approving a long-term agricultural post-mining land use as a part of the mining and reclamation plan, the director may grant exception to the provisions of subdivision (19) of this subsection: *Provided, however,* That when the director approves an agricultural post-mining land use, the applicable five growing seasons of responsibility for revegetation begins on the date of initial planting for the agricultural post-mining land use;

On lands eligible for remining assume the responsibility for successful revegetation, as required by subdivision (19) of this subsection, for a period of not less than two growing seasons, as defined by the director after the last year of augmented seeding, fertilizing, irrigation or other work in order to assure compliance with subdivision (19) of this subsection;

(21) Protect off-site areas from slides or damage occurring

during surface mining operations and not deposit spoil material or locate any part of the operations or waste accumulations outside the permit area: *Provided,* That spoil material may be placed outside the permit area, if approved by the director after a finding that environmental benefits will result from the placing of spoil material outside the permit area;

(22) Place all excess spoil material resulting from surface-mining activities in a manner that: (A) Spoil is transported and placed in a controlled manner in position for concurrent compaction and in a way as to assure mass stability and to prevent mass movement; (B) the areas of disposal are within the bonded permit areas and all organic matter is removed immediately prior to spoil placements; (C) appropriate surface and internal drainage system or diversion ditches are used to prevent spoil erosion and movement; (D) the disposal area does not contain springs, natural water courses or wet weather seeps, unless lateral drains are constructed from the wet areas to the main under drains in a manner that filtration of the water into the spoil pile will be prevented; (E) if placed on a slope, the spoil is placed upon the most moderate slope among those upon which, in the judgment of the director, the spoil could be placed in compliance with all the requirements of this article, and is placed, where possible, upon, or above, a natural terrace, bench or berm, if placement provides

additional stability and prevents mass movement; (F) where the toe of the spoil rests on a downslope, a rock toe buttress, of sufficient size to prevent mass movement, is constructed; (G) the final configuration is compatible with the natural drainage pattern and surroundings and suitable for intended uses; (H) the design of the spoil disposal area is certified by a qualified registered professional engineer in conformance with professional standards; and (I) all other provisions of this article are met: *Provided,* That where the excess spoil material consists of at least eighty percent, by volume, sandstone, limestone or other rocks that do not slake in water and will not degrade to soil material, the director may approve alternate methods for disposal of excess spoil material, including fill placement by dumping in a single lift, on a site specific basis: *Provided, however,* That the services of a qualified registered professional engineer experienced in the design and construction of earth and rockfill embankment are utilized: *Provided further,* That the approval may not be unreasonably withheld if the site is suitable;

(23) Meet any other criteria necessary to achieve reclamation in accordance with the purposes of this article, taking into consideration the physical, climatological and other characteristics of the site;

(24) To the extent possible, using the best technology

currently available, minimize disturbances and adverse impacts of the operation on fish, wildlife and related environmental values, and achieve enhancement of these resources where practicable; and

(25) Retain a natural barrier to inhibit slides and erosion on permit areas where outcrop barriers are required: *Provided,* That constructed barriers may be allowed where: (A) Natural barriers do not provide adequate stability; (B) natural barriers would result in potential future water quality deterioration; and (C) natural barriers would conflict with the goal of maximum utilization of the mineral resource: *Provided, however,* That at a minimum, the constructed barrier shall be of sufficient width and height to provide adequate stability and the stability factor shall equal or exceed that of the natural outcrop barrier: *Provided further,* That where water quality is paramount, the constructed barrier shall be composed of impervious material with controlled discharge points.

(c) (1) The director may prescribe procedures pursuant to which he or she may permit surface mining operations for the purposes set forth in subdivision (3) of this subsection.

(2) Where an applicant meets the requirements of subdivisions (3) and (4) of this subsection, a permit without regard to the requirement to restore to approximate original contour set forth in subsection (b) or (d) of this section may be granted for the surface mining of coal where the mining operation will remove an

entire coal seam or seams running through the upper fraction of a mountain, ridge or hill, except as provided in subparagraph (A), subdivision (4) of this subsection, by removing all of the overburden and creating a level plateau or a gently rolling contour with no highwalls remaining, and capable of supporting post-mining uses in accordance with the requirements of this subsection.

(3) In cases where an industrial, commercial, agricultural, commercial forestry, residential, or public facility including recreational uses is proposed for the post-mining use of the affected land, the director may grant a permit for a surface mining operation of the nature described in subdivision (2) of this subsection where: (A) The proposed post-mining land use is determined to constitute an equal or better use of the affected land, as compared with premining use; (B) the applicant presents specific plans for the proposed post-mining land use and appropriate assurances that the use will be: (i) Compatible with adjacent land uses; (ii) practicable with respect to achieving the proposed use; (iii) obtainable according to data regarding expected need and market; (iv) supported by commitments from public agencies where appropriate; (v) practicable with respect to private financial capability for completion of the proposed use; (vi) planned pursuant to a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the

post-mining land use; ~~and~~ (vii) designed by a person approved by the director in conformance with standards established to assure the stability, drainage and configuration necessary for the intended use of the site; and (viii) if planting trees is necessary to achieve the proposed post-mining land use, a statement that the trees will be obtained from the Clements State Tree Nursery, unless the State Tree Nursery provides written certification that it cannot supply the trees needed to satisfy the post-mining land use at a competitive cost;(C) the proposed use would be compatible with adjacent land uses, and existing state and local land use plans and programs; (D) the director provides the county commission of the county in which the land is located and any state or federal agency which the director, in his or her discretion, determines to have an interest in the proposed use, an opportunity of not more than sixty days to review and comment on the proposed use; and (E) all other requirements of this article will be met.

(4) In granting any permit pursuant to this subsection, the director shall require that: (A) A natural barrier be retained to inhibit slides and erosion on permit areas where outcrop barriers are required: *Provided,* That constructed barriers may be allowed where: (i) Natural barriers do not provide adequate stability; (ii) natural barriers would result in potential future water quality deterioration; and (iii) natural barriers would conflict

with the goal of maximum utilization of the mineral resource: *Provided, however,* That, at a minimum, the constructed barrier shall be sufficient in width and height to provide adequate stability and the stability factor shall equal or exceed that of the natural outcrop barrier: *Provided further,* That where water quality is paramount, the constructed barrier shall be composed of impervious material with controlled discharge points; (B) the reclaimed area is stable; (C) the resulting plateau or rolling contour drains inward from the outslopes except at specific points; (D) no damage will be done to natural watercourses; (E) spoil will be placed on the mountaintop bench as is necessary to achieve the planned post-mining land use: *And provided further,* That all excess spoil material not retained on the mountaintop shall be placed in accordance with the provisions of subdivision (22), subsection (b) of this section; and (F) ensure stability of the spoil retained on the mountaintop and meet the other requirements of this article.

(5) All permits granted under the provisions of this subsection shall be reviewed not more than three years from the date of issuance of the permit; unless the applicant affirmatively demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

(d) In addition to those general performance standards required by this section, when surface mining occurs on slopes of twenty degrees or greater, or on lesser slopes as may be defined by rule after consideration of soil and climate, no debris, abandoned or disabled equipment, spoil material or waste mineral matter will be placed on the natural downslope below the initial bench or mining cut: *Provided,* That soil or spoil material from the initial cut of earth in a new surface mining operation may be placed on a limited specified area of the downslope below the initial cut if the permittee can establish to the satisfaction of the director that the soil or spoil will not slide and that the other requirements of this section can still be met.

(e) The director may propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, that permit variances from the approximate original contour requirements of this section: *Provided,* That the watershed control of the area is improved: *Provided, however,* That complete backfilling with spoil material is required to completely cover the highwall, which material will maintain stability following mining and reclamation.

(f) The director shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, for the design, location, construction, maintenance,

operation, enlargement, modification, removal and abandonment of new and existing coal mine waste piles. In addition to engineering and other technical specifications, the standards and criteria developed pursuant to this subsection shall include provisions for review and approval of plans and specifications prior to construction, enlargement, modification, removal or abandonment; performance of periodic inspections during construction; issuance of certificates of approval upon completion of construction; performance of periodic safety inspections; and issuance of notices and orders for required remedial or maintenance work or affirmative action: *Provided,* That whenever the director finds that any coal processing waste pile constitutes an imminent danger to human life, he or she may, in addition to all other remedies and without the necessity of obtaining the permission of any person prior or present who operated or operates a pile or the landowners involved, enter upon the premises where any coal processing waste pile exists and may take or order to be taken any remedial action that may be necessary or expedient to secure the coal processing waste pile and to abate the conditions which cause the danger to human life: *Provided, however,* That the cost reasonably incurred in any remedial action taken by the director under this subsection may be paid for initially by funds appropriated to the division for these purposes, and the sums expended shall be recovered from any

responsible operator or landowner, individually or jointly, by suit initiated by the Attorney General at the request of the director. For purposes of this subsection "operates" or "operated" means to enter upon a coal processing waste pile, or part of a coal processing waste pile, for the purpose of disposing, depositing, dumping coal processing wastes on the pile or removing coal processing waste from the pile, or to employ a coal processing waste pile for retarding the flow of or for the impoundment of water.

NOTE: The purpose of this bill is to require certain reclamation for post-mining land use to utilize the Clements State Tree Nursery.

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