

**WEST VIRGINIA LEGISLATURE**  
**EIGHTY-SECOND LEGISLATURE**  
**REGULAR SESSION, 2015**



**ENROLLED**

**Senate Bill No. 502**

(BY SENATORS SYPOLT, FERNS, GAUNCH, KIRKENDOLL,  
LEONHARDT, PLYMALE, PREZIOSO AND STOLLINGS)

[PASSED MARCH 12, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

E N R O L L E D

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[Passed March 12, 2015; in effect ninety days from passage.]

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AN ACT to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating generally to surface mining and reclamation; bonding; special reclamation tax and funds; prohibited acts; bond liability; specifying retrospective eligibility of a mine operator to receive a tax credit for performing reclamation or remediation at a bond forfeiture site which otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special Reclamation Water Trust Fund; and specifying limitations.

*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 been

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

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

29 (c) (1) The form of the bond shall be approved by the  
30 secretary and may include, at the option of the operator,  
31 surety bonding, collateral bonding (including cash and  
32 securities), establishment of an escrow account, self bonding  
33 or a combination of these methods. If collateral bonding is  
34 used, the operator may elect to deposit cash or collateral  
35 securities or certificates as follows: Bonds of the United  
36 States or its possessions of the Federal Land Bank or of the

37 Homeowners' Loan Corporation; full faith and credit general  
38 obligation bonds of the state of West Virginia or other states  
39 and of any county, district or municipality of the state of  
40 West Virginia or other states; or certificates of deposit in a  
41 bank in this state, which certificates shall be in favor of the  
42 department. The cash deposit or market value of the  
43 securities or certificates shall be equal to or greater than the  
44 penal sum of the bond. The secretary shall, upon receipt of  
45 any deposit of cash, securities or certificates, promptly place  
46 the same with the Treasurer of the state of West Virginia  
47 whose duty it is to receive and hold the deposit in the name  
48 of the state in trust for the purpose for which the deposit is  
49 made when the permit is issued. The operator making the  
50 deposit is entitled, from time to time, to receive from the  
51 State Treasurer, upon the written approval of the secretary,  
52 the whole or any portion of any cash, securities or certificates  
53 so deposited, upon depositing with him or her in lieu thereof  
54 cash or other securities or certificates of the classes specified  
55 in this subsection having value equal to or greater than the  
56 sum of the bond.

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

64 (d) The secretary may accept the bond of the applicant  
65 itself without separate surety when the applicant  
66 demonstrates to the satisfaction of the secretary the existence  
67 of a suitable agent to receive service of process and a history  
68 of financial solvency and continuous operation sufficient for  
69 authorization to self insure.

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

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

76       (g) (1) The Special Reclamation Fund previously created  
77       is continued. The Special Reclamation Water Trust Fund is  
78       created within the state treasury into and from which moneys  
79       shall be paid for the purpose of assuring a reliable source of  
80       capital to reclaim and restore water treatment systems on  
81       forfeited sites. The moneys accrued in both funds, any  
82       interest earned thereon and yield from investments by the  
83       State Treasurer or West Virginia Investment Management  
84       Board are reserved solely and exclusively for the purposes set  
85       forth in this section and section seventeen, article one of this  
86       chapter. The funds shall be administered by the secretary  
87       who is authorized to expend the moneys in both funds for the  
88       reclamation and rehabilitation of lands which were subjected  
89       to permitted surface mining operations and abandoned after  
90       August 3, 1977, where the amount of the bond posted and  
91       forfeited on the land is less than the actual cost of  
92       reclamation, and where the land is not eligible for abandoned  
93       mine land reclamation funds under article two of this chapter.  
94       The secretary shall develop a long-range planning process for  
95       selection and prioritization of sites to be reclaimed so as to  
96       avoid inordinate short-term obligations of the assets in both  
97       funds of such magnitude that the solvency of either is  
98       jeopardized. The secretary may use both funds for the  
99       purpose of designing, constructing and maintaining water  
100       treatment systems when they are required for a complete  
101       reclamation of the affected lands described in this subsection.  
102       The secretary may also expend an amount not to exceed ten  
103       percent of the total annual assets in both funds to implement

104 and administer the provisions of this article and, as they apply  
105 to the Surface Mine Board, articles one and four, chapter  
106 twenty-two-b of this code.

107 (2) (A) A tax credit shall be granted against the tax  
108 imposed by subsection (i) of this section to any mine operator  
109 who performs reclamation or remediation at a bond forfeiture  
110 site which otherwise would have been reclaimed using funds  
111 from the Special Reclamation Fund or Special Reclamation  
112 Water Trust Fund. The credit authorized pursuant to this  
113 subdivision is retroactive and may be claimed for reclamation  
114 or remediation performed on or after January 1, 2012:  
115 *Provided*, That for reclamation or remediation performed  
116 prior to July 13, 2013, no tax credit may be granted unless a  
117 written application for the tax credit was submitted to the Tax  
118 Commissioner prior to September 1, 2014. The amount of  
119 credit shall be determined as provided in this section.

120 (B) The amount of a reclamation tax credit granted under  
121 this subsection shall be equal to the amount that the Tax  
122 Commissioner determines, based on the project costs, as  
123 shown in the records of the secretary, that would have been  
124 spent from the Special Reclamation Fund or Special  
125 Reclamation Water Trust Fund to accomplish the reclamation  
126 or remediation performed by the mine operator, including  
127 expenditures for water treatment.

128 (C) To claim the credit, the mine operator shall, from  
129 time to time, file with the Tax Commissioner a written  
130 application seeking the amount of the credit earned. Within  
131 thirty days of receipt of the application, the Tax  
132 Commissioner shall issue a certification of the amount of tax  
133 credit, if any, to be allocated to the eligible taxpayer. Should  
134 the amount of the credit certified be less than the amount  
135 applied for, the Tax Commissioner shall set forth in writing  
136 the reason for the difference. Should no certification be

137 issued within the thirty-day period, the application will be  
138 deemed certified. Any decision by the Tax Commissioner is  
139 appealable pursuant to the provisions of the West Virginia  
140 Tax Procedure and Administration Act set forth in article ten,  
141 chapter eleven of the code. Applications for certification of  
142 the proposed tax credit shall contain the information and be  
143 in the detail and form as required by the Tax Commissioner.

144 (h) The Tax Commissioner may promulgate rules for  
145 legislative approval pursuant to the provisions of article three,  
146 chapter twenty-nine-a of this code to carry out the purposes  
147 of this subdivision two, subsection (g) of this section.

148 (i) (1) *Rate, deposits and review.*

149 (A) For tax periods commencing on and after July 1,  
150 2009, every person conducting coal surface mining shall  
151 remit a special reclamation tax of fourteen and four-tenths  
152 cents per ton of clean coal mined, the proceeds of which shall  
153 be allocated by the secretary for deposit in the Special  
154 Reclamation Fund and the Special Reclamation Water Trust  
155 Fund.

156 (B) For tax periods commencing on and after July 1,  
157 2012, the rate of tax specified in paragraph (A) of this  
158 subdivision is discontinued and is replaced by the rate of tax  
159 specified in this paragraph. For tax periods commencing on  
160 and after July 1, 2012, every person conducting coal surface  
161 mining shall remit a special reclamation tax of twenty-seven  
162 and nine-tenths cents per ton of clean coal mined, the  
163 proceeds of which shall be allocated by the secretary for  
164 deposit in the Special Reclamation Fund and the Special  
165 Reclamation Water Trust Fund. Of that amount, fifteen cents  
166 per ton of clean coal mined shall be deposited into the Special  
167 Reclamation Water Trust Fund.

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

173       (D) Beginning with the tax period commencing on July  
174       1, 2009, and every two years thereafter, the special  
175       reclamation tax shall be reviewed by the Legislature to  
176       determine whether the tax should be continued: *Provided*,  
177       That the tax may not be reduced until the Special  
178       Reclamation Fund and Special Reclamation Water Trust  
179       Fund have sufficient moneys to meet the reclamation  
180       responsibilities of the state established in this section.

181       (2) In managing the Special Reclamation Program, the  
182       secretary shall: (A) Pursue cost-effective alternative water  
183       treatment strategies; and (B) conduct formal actuarial studies  
184       every two years and conduct informal reviews annually on  
185       the Special Reclamation Fund and Special Reclamation  
186       Water Trust Fund.

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

188       (A) Determine the feasibility of creating an alternate  
189       program, on a voluntary basis, for financially sound operators  
190       by which those operators pay an increased tax into the  
191       Special Reclamation Fund in exchange for a maximum per-  
192       acre bond that is less than the maximum established in  
193       subsection (a) of this section;

194       (B) Determine the feasibility of creating an incremental  
195       bonding program by which operators can post a reclamation  
196       bond for those areas actually disturbed within a permit area,  
197       but for less than all of the proposed disturbance and obtain  
198       incremental release of portions of that bond as reclamation



199 advances so that the released bond can be applied to  
200 approved future disturbance; and

201 (C) Determine the feasibility for sites requiring water  
202 reclamation by creating a separate water reclamation security  
203 account or bond for the costs so that the existing reclamation  
204 bond in place may be released to the extent it exceeds the  
205 costs of water reclamation.

206 (4) If the secretary determines that the alternative  
207 program, the incremental bonding program or the water  
208 reclamation account or bonding programs reasonably assure  
209 that sufficient funds will be available to complete the  
210 reclamation of a forfeited site and that the Special  
211 Reclamation Fund will remain fiscally stable, the secretary is  
212 authorized to propose legislative rules in accordance with  
213 article three, chapter twenty-nine-a of this code to implement  
214 an alternate program, a water reclamation account or bonding  
215 program or other funding mechanisms or a combination  
216 thereof.

217 (j) This special reclamation tax shall be collected by the  
218 Tax Commissioner in the same manner, at the same time and  
219 upon the same tonnage as the minimum severance tax  
220 imposed by article twelve-b, chapter eleven of this code is  
221 collected: *Provided*, That under no circumstance shall the  
222 special reclamation tax be construed to be an increase in  
223 either the minimum severance tax imposed by said article or  
224 the severance tax imposed by article thirteen of said chapter.

225 (k) Every person liable for payment of the special  
226 reclamation tax shall pay the amount due without notice or  
227 demand for payment.

228 (l) The Tax Commissioner shall provide to the secretary  
229 a quarterly listing of all persons known to be delinquent in

230 payment of the special reclamation tax. The secretary may  
231 take the delinquencies into account in making determinations  
232 on the issuance, renewal or revision of any permit.

233 (m) The Tax Commissioner shall deposit the moneys  
234 collected with the Treasurer of the state of West Virginia to  
235 the credit of the Special Reclamation Fund and Special  
236 Reclamation Water Trust Fund.

237 (n) At the beginning of each quarter, the secretary shall  
238 advise the Tax Commissioner and the Governor of the assets,  
239 excluding payments, expenditures and liabilities, in both  
240 funds.

241 (o) To the extent that this section modifies any powers,  
242 duties, functions and responsibilities of the department that  
243 may require approval of one or more federal agencies or  
244 officials in order to avoid disruption of the federal-state  
245 relationship involved in the implementation of the federal  
246 Surface Mining Control and Reclamation Act, 30 U. S. C.  
247 §1270 by the state, the modifications will become effective  
248 upon the approval of the modifications by the appropriate  
249 federal agency or official.



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman Senate Committee*

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*Chairman House Committee*

Originated in the Senate.

In effect ninety days from passage.

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*Clerk of the Senate*

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*Clerk of the House of Delegates*

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*President of the Senate*

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*Speaker of the House of Delegates*

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The within ..... this the .....

Day of ....., 2015.

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*Governor*