

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 427

FISCAL
NOTE

BY SENATORS BLAIR AND BOSO

[Introduced February 24, 2017; Referred
to the Committee on the Judiciary; and then to the
Committee on Finance]

1 A BILL to amend and reenact §22-2-4 of the Code of West Virginia, 1931, as amended; to amend
2 and reenact §22-3-11 of said code; to amend and reenact §22-4-22, §22-4-23 and §22-4-
3 26 of said code; to amend and reenact §22-6-29 of said code; to amend and reenact §22-
4 11-10 and §22-11-25 of said code; to amend and reenact §22-12-9 of said code; to amend
5 and reenact §22-14-18 and §22-14-19 of said code; to amend and reenact §22-15A-9 of
6 said code; to amend and reenact §22-16-12 of said code; to amend and reenact §22-17-
7 20, §22-17-21 and §22-17-22 of said code; to amend and reenact §22-18-22 of said code;
8 and to amend and reenact §22C-2-3 of said code, all relating to special revenue funds
9 administered or used by the Department of Environmental Protection; providing that
10 expenditures from certain funds are not authorized from collections but shall be authorized
11 only by line item appropriation by the Legislature; eliminating authorization for certain
12 funds to be expended for administrative purposes; the Abandoned Land Reclamation
13 Fund; the Special Reclamation Water Trust Fund; the Bond Pooling Fund; the Quarry
14 Reclamation Fund; the Quarry Inspection and Enforcement Fund; the Oil and Gas
15 Operating Permit and Processing Fund; the Oil and Gas Reclamation Fund; the Water
16 Quality Management Fund; the Natural Resources Game Fish and Aquatic Life Fund; the
17 Groundwater Protection Fund; the Groundwater Remediation Fund; the Dam Safety Fund;
18 the Dam Safety Rehabilitation Revolving Fund; the A. James Manchin Fund; the Closure
19 Cost Assistance Fund; the Underground Storage Tank Administrative Fund; the Leaking
20 Underground Storage Tank Response Fund; the Underground Storage Tank Insurance
21 Fund; the Hazardous Waste Management Fund; and the West Virginia Water Pollution
22 Control Revolving Fund.

Be it enacted by the Legislature of West Virginia:

1 That §22-2-4 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; that §22-3-11 of said code be amended and reenacted; that §22-4-22, §22-4-23 and
3 §22-4-26 of said code be amended and reenacted; that §22-6-29 of said code be amended and

4 reenacted; that §22-11-10 and §22-11-25 of said code be amended and reenacted; that §22-12-
5 9 of said code be amended and reenacted; that §22-14-18 and §22-14-19 of said code be
6 amended and reenacted; that §22-15A-9 of said code be amended and reenacted; that §22-16-
7 12 of said code be amended and reenacted; that §22-17-20, §22-17-21 and §22-17-22 of said
8 code be amended and reenacted; that §22-18-22 of said code be amended and reenacted; and
9 that §22C-2-3 of said code be amended and reenacted, all to read as follows:

CHAPTER 22: ENVIRONMENTAL RESOURCES.

ARTICLE 2. ABANDONED MINE LANDS AND RECLAMATION ACT.

§22-2-4. Abandoned Land Reclamation Fund and objectives of fund; lands eligible for reclamation.

1 (a) All abandoned land reclamation funds available under Title IV of the federal Surface
2 Mining Control and Reclamation Act of 1977, as amended, private donations received, any state
3 appropriated or transferred funds, or funds received from the sale of land by the secretary under
4 this article shall be deposited with the Treasurer of the State of West Virginia to the credit of the
5 abandoned land reclamation fund heretofore created, and expended pursuant to the requirements
6 of this article. Expenditures from the fund are not authorized from collections but shall only be
7 authorized by line item appropriation by the Legislature.

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

9 (1) Reclamation and restoration of land and water resources adversely affected by past
10 coal surface-mining operations, including, but not limited to, reclamation and restoration of
11 abandoned surface mine areas, abandoned coal processing areas and abandoned coal
12 processing waste areas; sealing and filling abandoned deep mine entries and voids; planting of
13 land adversely affected by past coal surface-mining operations to prevent erosion and
14 sedimentation; prevention, abatement, treatment and control of water pollution created by coal
15 mine drainage, including restoration of stream beds and construction and operation of water

16 treatment plants; prevention, abatement and control of burning coal processing waste areas and
17 burning coal in situ; prevention, abatement and control of coal mine subsidence; and payment of
18 administrative expenses and all other necessary expenses incurred to accomplish the purpose of
19 this article: *Provided*, That all expenditures from this fund shall reflect the following priorities in
20 the order stated:

21 (A) The protection of public health, safety, general welfare and property from extreme
22 danger of adverse effects of past surface-mining practices;

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

25 (C) The restoration of land and water resources and environment previously degraded by
26 adverse effects of past coal surface-mining practices, including measures for the conservation
27 and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation
28 resources and agricultural productivity;

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

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

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

37 (2)(A) The secretary may expend the funds allocated to the state in any year through the
38 grants made available under paragraphs (1) and (5), subsection (g) of Section 402 of the federal
39 Surface Mining Control and Reclamation Act of 1977, as amended, for the purpose of protecting,
40 repairing, replacing, constructing or enhancing facilities relating to water supply, including water
41 distribution facilities and treatment plants, to replace water supplies adversely affected by coal

42 surface-mining practices.

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

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

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

55 (B) The special account in the State Treasury designated the "Acid Mine Drainage
56 Abatement and Treatment Fund" is hereby continued. Moneys in the fund may be expended by
57 the secretary to implement, in consultation with the United States soil conservation service, acid
58 mine drainage abatement and treatment plans approved by the secretary of the United States
59 department of interior. ~~and for associated administrative and personnel expenses~~ The plans shall
60 provide for the comprehensive abatement of the causes and treatment of the effects of acid mine
61 drainage within qualified hydrologic units affected by coal surface-mining practices. The moneys
62 accrued in this fund, any earnings thereon, and yield from investments by the State Treasurer or
63 West Virginia Investment Management Board are reserved solely and exclusively for the
64 purposes set forth in this section of the code. Any interest accrued on any moneys deposited into
65 the Acid Mine Drainage Abatement and Treatment Fund which previously defaulted from that
66 account into general revenue shall be credited back to the fund on or before July 1, 2014.

67 (c) Except as provided ~~for~~ in this subsection, lands and water eligible for reclamation or

68 drainage abatement expenditures under this article are those which were mined for coal or which
69 were affected by the mining, wastebanks, coal processing or other coal mining processes, and
70 abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there
71 is no continuing reclamation responsibility: *Provided*, That moneys from the funds made available
72 by the secretary of the United States department of interior pursuant to paragraphs (1) and (5),
73 subsection (g), Section 402 of the federal Surface Mining Control and Reclamation Act of 1977,
74 as amended, may be expended for the reclamation or drainage abatement of a site that: (1) The
75 surface-mining operation occurred during the period beginning on August 4, 1977, and ending on
76 or before January 21, 1981, and that any funds for reclamation or abatement which are available
77 pursuant to a bond or other financial guarantee or from any other source, and not sufficient to
78 provide for adequate reclamation or abatement of the site; or (2) the surface-mining operation
79 occurred during the period beginning on August 4, 1977, and ending on or before November 5,
80 1990, and that the surety of the surface-mining operation became insolvent during that period,
81 and as of November 5, 1990, funds immediately available from proceeding relating to the
82 insolvency or from any financial guarantees or other sources are not sufficient to provide for
83 adequate reclamation of the site: *Provided, however*, That the secretary, with the concurrence of
84 the secretary of the United States department of interior, makes either of the above-stated
85 findings, and that the site is eligible, or more urgent than the reclamation priorities set forth in
86 paragraphs (A) and (B), subdivision (1), subsection (b) of this section.

87 (d) One purpose of this article is to provide additional and cumulative remedies to abate
88 the pollution of the waters of the state, and nothing contained in this article abridges or alters
89 rights of action or remedies now or hereafter existing, nor do any provisions in this article or any
90 act done by virtue of this article estop the state, municipalities, public health officers or persons
91 as riparian owners or otherwise in the exercise of their rights to suppress nuisances or to abate
92 any pollution now or hereafter existing or to recover damages.

93 (e) Where the Governor certifies that the above objectives of the fund have been achieved

94 and there is a need for construction of specific public facilities in communities impacted by coal
95 development, and other sources of federal funds are inadequate and the secretary of the United
96 States department of interior concurs, then the secretary may expend money from the fund for
97 the construction.

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

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

19 (c)(1) The form of the bond shall be approved by the secretary and may include, at the

20 option of the operator, surety bonding, collateral bonding (including cash and securities),
21 establishment of an escrow account, self bonding or a combination of these methods. If collateral
22 bonding is used, the operator may elect to deposit cash or collateral securities or certificates as
23 follows: Bonds of the United States or its possessions of the Federal Land Bank or of the
24 Homeowners' Loan Corporation; full faith and credit general obligation bonds of the State of West
25 Virginia or other states and of any county, district or municipality of the State of West Virginia or
26 other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of
27 the department. The cash deposit or market value of the securities or certificates shall be equal
28 to or greater than the penal sum of the bond. The secretary shall, upon receipt of any deposit of
29 cash, securities or certificates, promptly place the same with the Treasurer of the State of West
30 Virginia whose duty it is to receive and hold the deposit in the name of the state in trust for the
31 purpose for which the deposit is made when the permit is issued. The operator making the deposit
32 is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the
33 secretary, the whole or any portion of any cash, securities or certificates so deposited, upon
34 depositing with him or her in lieu thereof cash or other securities or certificates of the classes
35 specified in this subsection having value equal to or greater than the sum of the bond.

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

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

44 (e) It is unlawful for the owner of surface or mineral rights to interfere with the present
45 operator in the discharge of the operator's obligations to the state for the reclamation of lands

46 disturbed by the operator.

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

49 (g)(1) The Special Reclamation Fund previously created is continued. The Special
50 Reclamation Water Trust Fund is created within the State Treasury into and from which moneys
51 shall be paid for the purpose of assuring a reliable source of capital to reclaim and restore water
52 treatment systems on forfeited sites: Provided, That expenditures from the fund are not authorized
53 from collections but shall only be authorized by line item appropriation by the Legislature. The
54 moneys accrued in both funds, any interest earned thereon and yield from investments by the
55 State Treasurer or West Virginia Investment Management Board are reserved solely and
56 exclusively for the purposes set forth in this section and section seventeen, article one of this
57 chapter. The funds shall be administered by the secretary who is authorized to expend the
58 moneys in both funds for the reclamation and rehabilitation of lands which were subjected to
59 permitted surface mining operations and abandoned after August 3, 1977, where the amount of
60 the bond posted and forfeited on the land is less than the actual cost of reclamation, and where
61 the land is not eligible for abandoned mine land reclamation funds under article two of this chapter.
62 The secretary shall develop a long-range planning process for selection and prioritization of sites
63 to be reclaimed so as to avoid inordinate short-term obligations of the assets in both funds of such
64 magnitude that the solvency of either is jeopardized. The secretary may use both funds for the
65 purpose of designing, constructing and maintaining water treatment systems when they are
66 required for a complete reclamation of the affected lands described in this subsection. The
67 secretary may also expend an amount not to exceed ten percent of the total annual assets in both
68 funds to implement and administer the provisions of this article and, as they apply to the Surface
69 Mine Board, articles one and four, chapter twenty-two-b of this code.

70 (2)(A) A tax credit shall be granted against the tax imposed by subsection (i) of this section
71 to any mine operator who performs reclamation or remediation at a bond forfeiture site which

72 otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special
73 Reclamation Water Trust Fund. The credit authorized pursuant to this subdivision is retroactive
74 and may be claimed for reclamation or remediation performed on or after January 1, 2012:
75 *Provided*, That for reclamation or remediation performed prior to July 13, 2013, no tax credit may
76 be granted unless a written application for the tax credit was submitted to the Tax Commissioner
77 prior to September 1, 2014. The amount of credit shall be determined as provided in this section.

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

83 (C) To claim the credit, the mine operator shall, from time to time, file with the Tax
84 Commissioner a written application seeking the amount of the credit earned. Within thirty days of
85 receipt of the application, the Tax Commissioner shall issue a certification of the amount of tax
86 credit, if any, to be allocated to the eligible taxpayer. Should the amount of the credit certified be
87 less than the amount applied for, the Tax Commissioner shall set forth in writing the reason for
88 the difference. Should no certification be issued within the thirty-day period, the application will be
89 deemed certified. Any decision by the Tax Commissioner is appealable pursuant to the provisions
90 of the West Virginia Tax Procedure and Administration Act set forth in article ten, chapter eleven
91 of the code. Applications for certification of the proposed tax credit shall contain the information
92 and be in the detail and form as required by the Tax Commissioner.

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

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

97 (A) For tax periods commencing on and after July 1, 2009, every person conducting coal

98 surface mining shall remit a special reclamation tax of fourteen and four-tenths cents per ton of
99 clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the
100 Special Reclamation Fund and the Special Reclamation Water Trust Fund.

101 (B) For tax periods commencing on and after July 1, 2012, the rate of tax specified in
102 paragraph (A) of this subdivision is discontinued and is replaced by the rate of tax specified in this
103 paragraph. For tax periods commencing on and after July 1, 2012, every person conducting coal
104 surface mining shall remit a special reclamation tax of twenty-seven and nine-tenths cents per
105 ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in
106 the Special Reclamation Fund and the Special Reclamation Water Trust Fund. Of that amount,
107 fifteen cents per ton of clean coal mined shall be deposited into the Special Reclamation Water
108 Trust Fund.

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

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

117 (2) In managing the special reclamation program, the secretary shall: (A) Pursue cost-
118 effective alternative water treatment strategies; and (B) conduct formal actuarial studies every two
119 years and conduct informal reviews annually on the Special Reclamation Fund and Special
120 Reclamation Water Trust Fund.

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

122 (A) Determine the feasibility of creating an alternate program, on a voluntary basis, for
123 financially sound operators by which those operators pay an increased tax into the Special

124 Reclamation Fund in exchange for a maximum per-acre bond that is less than the maximum
125 established in subsection (a) of this section;

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

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

134 (4) If the secretary determines that the alternative program, the incremental bonding
135 program or the water reclamation account or bonding programs reasonably assure that sufficient
136 funds will be available to complete the reclamation of a forfeited site and that the Special
137 Reclamation Fund will remain fiscally stable, the secretary is authorized to propose legislative
138 rules in accordance with article three, chapter twenty-nine-a of this code to implement an alternate
139 program, a water reclamation account or bonding program or other funding mechanisms or a
140 combination thereof.

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

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

148 (l) The Tax Commissioner shall provide to the secretary a quarterly listing of all persons
149 known to be delinquent in payment of the special reclamation tax. The secretary may take the

150 delinquencies into account in making determinations on the issuance, renewal or revision of any
151 permit.

152 (m) The Tax Commissioner shall deposit the moneys collected with the Treasurer of the
153 State of West Virginia to the credit of the Special Reclamation Fund and Special Reclamation
154 Water Trust Fund.

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

157 (o) To the extent that this section modifies any powers, duties, functions and
158 responsibilities of the department that may require approval of one or more federal agencies or
159 officials in order to avoid disruption of the federal-state relationship involved in the implementation
160 of the federal Surface Mining Control and Reclamation Act, 30 U. S. C. §1270 by the state, the
161 modifications will become effective upon the approval of the modifications by the appropriate
162 federal agency or official.

ARTICLE 4. QUARRY RECLAMATION ACT.

§22-4-22. Bond Pooling Fund.

1 (a) Quarry operators who have operated for five years without a serious violation under
2 previous West Virginia mining law or the provisions of this article, in lieu of the bonding
3 requirements of section twenty of this article, shall contribute to the "Bond Pooling Fund," as
4 provided in this section.

5 (b) For each quarry, permittees contributing to the pool shall make an initial payment to
6 the fund of \$50 for each acre currently disturbed plus each acre estimated to be newly disturbed
7 during the next ensuing year. Thereafter, the permittee shall make an annual payment of \$12.50
8 for each disturbed acre plus each acre estimated to be newly disturbed during the next ensuing
9 year. The payments shall continue until the permittee has paid into the Bond Pooling Fund a total
10 of \$1,000 for each disturbed acre.

11 (c) There is hereby created in the State Treasury a special revenue fund known as the

12 "Bond Pooling Fund." ~~The fund shall operate as a special fund whereby all deposits and payments~~
13 ~~thereto do not expire to the General Revenue Fund, but shall remain in the fund and be available~~
14 ~~for expenditure in succeeding fiscal years Expenditures from the fund are not authorized from~~
15 ~~collections but are to be made only in accordance with appropriation by the Legislature.~~ This fund
16 shall consist of fees collected by the director in accordance with the provisions of this article.
17 Interests of moneys from this fund shall be deposited in the Quarry Reclamation Fund as
18 established in section twenty-three of subsection (b) of this section. Interest earned on moneys in
19 this fund shall be deposited in the Quarry Reclamation Fund as established in section twenty-
20 three of this article.

21 (d) No annual bond pooling fund deposits may be collected from permittees where the
22 Permit Bond Pooling Fund deposits divided by the number of disturbed acres bonded is equal to
23 or greater than one thousand per acre.

24 (e) Permittee deposits into the Bond Pooling Fund shall be released under any of the
25 following conditions:

26 (1) On completion of the quarrying and reclamation, and after all permit requirements have
27 been fully complied with, the director shall return all bond pooling fund deposits to the permittee
28 consistent with the bonding release requirements of section twenty-one of this article.

29 (2) When the bond pooling fund balance for a permittee exceeds \$1,000 for each disturbed
30 acre and each acre estimated to be disturbed during the next ensuing year the director shall return
31 the excess funds to the permittee.

32 (f) The interest transferred to the Quarry Reclamation Fund under subsection (c) of this
33 section shall be used to reclaim abandoned quarry lands as provided in section twenty-three of
34 this article.

35 (g) If a permit is revoked pursuant to this article the payments that the permittee has made
36 to the Bond Pooling Fund for that permit shall be forfeited. The director shall use those forfeited
37 payments for the reclamation of the quarry to which it applied.

38 (h) If the cost of reclamation exceeds the amount of payments the permittee shall be liable
39 for the reclamation costs that exceed the permittee's payments to the Bond Pooling Fund.

§22-4-23. Quarry Reclamation Fund.

1 (a) All funds received by the division from forfeiture of bonds, civil administrative penalties,
2 or interest from the Bond Pooling Fund shall be deposited into a special interest-bearing account
3 in the State Treasury designated the Quarry Reclamation Fund. The Quarry Reclamation Fund
4 shall be used by the division for reclamation of abandoned quarries. Expenditures from the fund
5 are not authorized from collections but are to be made only in accordance with appropriation by
6 the Legislature.

7 (b) If the forfeiture of a performance bond or bonding pool fund payments exceeds the
8 cost of reclamation for which the liability was charged, any excess amount shall be deposited into
9 the Quarry Reclamation Fund.

10 (c) Reclamation projects that are to be financed by the Quarry Reclamation Fund shall be
11 designed by the division.

12 (d) The director shall administer and approve all expenditures from the Quarry
13 Reclamation Fund.

14 (e) The division shall compile a list of abandoned quarries in the state and rank them in
15 order of need for reclamation.

§22-4-26. Required fees, Quarry Inspection and Enforcement Fund.

1 The permit application fee is \$1,000. The fee for the original permit is \$1,000. The permit
2 renewal fee of \$500 shall be submitted with the renewal application and a progress report map.
3 The fee for transferring a permit is \$500. The fee for a minor permit modification is \$200 and for
4 major modifications, \$500. There is hereby created in the State Treasury a special revenue fund
5 known as the Quarry Inspection and Enforcement Fund. ~~The fund shall operate as a special fund~~
6 ~~whereby all deposits and payments thereto do not expire to the General Revenue Fund, but shall~~
7 ~~remain in the fund and be available for expenditure in succeeding fiscal years~~ This fund shall

8 consist of fees collected by the director in accordance with the provisions of this section, as well
9 as interest earned on investments made from moneys deposited in the fund. Expenditures from
10 the fund are not authorized from collections but are to be made only in accordance with
11 appropriation by the Legislature. Moneys from this fund shall be expended by the director for the
12 administration, permitting, enforcement, inspection, monitoring and other activities required by
13 this article.

**ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION;
ENFORCEMENT.**

§22-6-29. Operating Permit and Processing Fund; Special Reclamation Fund; fees.

1 (a) There is hereby continued within the Treasury of the State of West Virginia the special
2 fund known as the Oil and Gas Operating Permit and Processing Fund, and the secretary shall
3 depo~~s~~osit with the State Treasurer to the credit of such special fund all fees collected under the
4 provisions of subdivision ten, subsection (c), section two of this article. Expenditures from the fund
5 are not authorized from collections but are to be made only in accordance with appropriation by
6 the Legislature.

7 The Oil and Gas Operating Permit and Processing Fund shall be administered by the
8 secretary for the purposes of carrying out the provisions of this chapter.

9 The secretary shall make an annual report to the Governor and to the Legislature on the
10 use of the fund, and shall make a detailed accounting of all expenditures from the Oil and Gas
11 Operating Permit and Processing Fund.

12 (b) In addition to any other fees required by the provisions of this article, every applicant
13 for a permit to drill a well shall, before the permit is issued, pay to the secretary a special
14 reclamation fee of \$150 for each activity for which a well work application is required to be filed:
15 *Provided,* That a special reclamation fee shall not be assessed for plugging activities. Such
16 special reclamation fee shall be paid at the time the application for a drilling permit is filed with

17 the secretary and the payment of such reclamation fee shall be a condition precedent to the
18 issuance of said permit.

19 There is hereby continued within the Treasury of the State of West Virginia the special
20 fund known as the Oil and Gas Reclamation Fund, and the secretary shall deposit with the State
21 Treasurer to the credit of such special fund all special reclamation fees collected. The proceeds
22 of any bond forfeited under the provisions of this article shall inure to the benefit of and shall be
23 deposited in such Oil and Gas Reclamation Fund. Expenditures from the fund are not authorized
24 from collections but are to be made only in accordance with appropriation by the Legislature.

25 The Oil and Gas Reclamation Fund shall be administered by the secretary. The secretary
26 shall cause to be prepared plans for the reclaiming and plugging of abandoned wells which have
27 not been reclaimed or plugged or which have been improperly reclaimed or plugged. The
28 secretary, as funds become available in the Oil and Gas Reclamation Fund, shall reclaim and
29 properly plug wells in accordance with said plans and specifications and in accordance with the
30 provisions of this article relating to the reclaiming and plugging of wells and all rules promulgated
31 thereunder. Such funds may also be utilized for the purchase of abandoned wells, where such
32 purchase is necessary, and for the reclamation of such abandoned wells, and for any engineering,
33 administrative and research costs as may be necessary to properly effectuate the reclaiming and
34 plugging of all wells, abandoned or otherwise.

35 The secretary may avail the division of any federal funds provided on a matching basis
36 that may be made available for the purpose of reclaiming or plugging any wells.

37 The secretary shall make an annual report to the Governor and to the Legislature setting
38 forth the number of wells reclaimed or plugged through the use of the oil and gas reclamation
39 fund provided for herein. Such report shall identify each such reclamation and plugging project,
40 state the number of wells reclaimed or plugged thereby, show the county wherein such wells are
41 located and shall make a detailed accounting of all expenditures from the Oil and Gas
42 Reclamation Fund.

43 All wells shall be reclaimed or plugged by contract entered into by the secretary on a
44 competitive bid basis as provided for under the provisions of article three, chapter five-a of this
45 code and the rules promulgated thereunder.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-10. Water quality management fund established; permit application fees; annual permit fees; dedication of proceeds; rules.

1 (a) The special revenue fund designated the "Water Quality Management Fund"
2 established in the State Treasury on July 1, 1989 is hereby continued.

3 (b) The permit application fees and annual permit fees established and collected pursuant
4 to this section; any interest or surcharge assessed and collected by the secretary; interest
5 accruing on investments and deposits of the fund; and any other moneys designated by the
6 secretary shall be deposited into the Water Quality Management Fund. Expenditures from the
7 fund are not authorized from collections but are to be made only in accordance with appropriation
8 by the Legislature. The secretary shall expend the proceeds of the Water Quality Management
9 Fund for the review of initial permit applications, renewal permit applications and permit issuance
10 activities.

11 (c) The secretary shall propose for promulgation, legislative rules in accordance with the
12 provisions of chapter twenty-nine-a of this code, to establish a schedule of application fees for all
13 applications except for surface coal mining operations as defined in article three of this chapter.
14 The appropriate fee shall be submitted by the applicant to the department with the application
15 filed pursuant to this article for any state water pollution control permit or national pollutant
16 discharge elimination system permit. The schedule of application fees shall be designed to
17 establish reasonable categories of permit application fees based upon the complexity of the
18 permit application review process required by the department pursuant to the provisions of this
19 article and the rules promulgated under this article: *Provided*, That no initial application fee may
20 exceed \$15,000 for any facility nor may any permit renewal application fee exceed \$5,000. The

21 department may not process any permit application pursuant to this article until the required
22 permit application fee has been received.

23 (d) The secretary shall propose for promulgation legislative rules in accordance with the
24 provisions of chapter twenty-nine-a of this code, to establish a schedule of permit fees to be
25 assessed annually upon each person holding a state water pollution control permit or national
26 pollutant discharge elimination system permit issued pursuant to this article except for permits
27 held by surface coal mining operations as defined in article three of this chapter. Each person
28 holding a permit shall pay the prescribed annual permit fee to the department pursuant to the
29 rules promulgated under this section: *Provided*, That no person holding a permit for a home
30 aerator of six hundred gallons and under shall be required to pay an annual permit fee. The
31 schedule of annual permit fees shall be designed to establish reasonable categories of annual
32 permit fees based upon the relative potential of categories or permits to degrade the waters of
33 the state: *Provided, however*, That no annual permit fee may exceed \$5,000. The secretary may
34 declare any permit issued pursuant to this article void when the annual permit fee is more than
35 ninety days past due pursuant to the rules promulgated under this section. Voiding of the permit
36 will only become effective upon the date the secretary mails, by certified mail, written notice to
37 the permittee's last known address notifying the permittee that the permit has been voided.

38 (e) The secretary shall file a quarterly report with the Joint Committee on Government and
39 Finance setting forth the fees established and collected pursuant to this section.

40 (f) On July 1, 2002, and each year thereafter, a \$1,000 fee shall be assessed for permit
41 applications and renewals submitted pursuant to this article for surface coal mining operations,
42 as defined in article three of this chapter. On July 1, 2002, and each year thereafter, a \$500 fee
43 shall be assessed for application for permit modifications submitted pursuant to this article for
44 surface coal mining operations, as defined in article three of this chapter. Beginning July 1, 2002
45 and every year thereafter, an annual permit fee shall be assessed on the issuance anniversary
46 dates of all permits issued pursuant to this article for surface coal mining operations as defined in

47 article three of this chapter. The annual permit fee shall be collected as follows: Five hundred
48 dollars for the fiscal year beginning on July 1, 2002 and \$1,000 for each fiscal year thereafter.

§22-11-25. Civil liability; Natural Resources Game Fish and Aquatic Life Fund; use of funds.

1 If any loss of game fish or aquatic life results from a person or persons' failure or refusal
2 to discharge any duty imposed upon such person by this article, section seven, article six of this
3 chapter or article eleven-a of this chapter, either the West Virginia Division of Natural Resources
4 or the Division Department of Environmental Protection, or both jointly may initiate a civil action
5 on behalf of the State of West Virginia to recover from such person or persons causing such loss
6 a sum equal to the cost of replacing such game fish or aquatic life. Any moneys so collected shall
7 be deposited in a special revenue fund entitled "Natural Resources Game Fish and Aquatic Life
8 Fund" and shall be expended as hereinafter provided. Expenditures from the fund are not
9 authorized from collections but are to be made only in accordance with appropriation by the
10 Legislature. The fund shall be expended to stock waters of this state with game fish and aquatic
11 life. Where feasible, the Director of the Division of Natural Resources shall use any sum collected
12 in accordance with the provisions of this section to stock waters in the area in which the loss
13 resulting in the collection of such sum occurred. Any balance of such sum shall remain in said
14 fund and be expended to stock state-owned and operated fishing lakes and ponds, wherever
15 located in this state, with game fish and aquatic life.

ARTICLE 12. GROUNDWATER PROTECTION ACT.

**§22-12-9. Groundwater protection fees authorized; director to promulgate rules; dedication
of fee proceeds; Groundwater Protection Fund established; Groundwater
Remediation Fund established.**

1 (a) The Director of the Division Department of Environmental Protection shall promulgate
2 legislative rules in accordance with the provisions of chapter twenty-nine-a of this code
3 establishing a schedule of groundwater protection fees applicable to persons who own or operate
4 facilities or conduct activities subject to the provisions of this article. The schedule of fees shall

5 be calculated by the director to recover the reasonable and necessary costs of implementing the
6 provisions of this article as it relates to a particular facility or activity. In addition, the fee may
7 include an appropriate assessment of other program costs not otherwise attributable to any
8 particular facility or activity. Such fees in the aggregate shall not exceed \$1 million per year and
9 shall be deposited into the Groundwater Protection Fund established pursuant to this article:
10 *Provided*, That any unexpended balance in the Groundwater Protection Fund at the end of each
11 fiscal year may, by an act of the Legislature, be transferred to the Groundwater Remediation Fund
12 created by this article. *Provided, however, That if no action is taken to transfer the unexpended*
13 ~~balance to the remediation fund, such moneys shall not be transferred to the General Revenue~~
14 ~~Fund, but shall remain in the groundwater protection fund~~ Such fees imposed by this section are
15 in addition to all other fees and taxes levied by law. The director shall require such fees to be paid
16 at the time of certification pursuant to section eight of this article, or at such more frequent time
17 as the director may deem to be appropriate. The director may withhold certification pursuant to
18 section eight of this article where such fees have not been timely paid.

19 (b) The Director of the Division Department of Environmental Protection shall also
20 promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this
21 code establishing a schedule of groundwater remediation fees which in the aggregate shall not
22 exceed \$250,000. Such groundwater remediation fees shall be assessed over a time period not
23 to exceed two years from effective date of such rules and shall be deposited into the Groundwater
24 Remediation Fund established pursuant to this article. Such fees shall be assessed against
25 persons who own or operate facilities or conduct activities subject to the provisions of this article
26 in proportion to the groundwater protection fees assessed pursuant to subsection (a) of this
27 section for the year in which such groundwater remediation fees, or any portion thereof, are
28 assessed.

29 (c) The following two special revenue accounts are continued in the State Treasury:
30 (1) The "Groundwater Protection Fund", the moneys of which shall be expended by the

31 director in the ~~administration~~, certification, enforcement, inspection, monitoring, planning,
32 research and other activities of the environmental quality board, Division Department of
33 Environmental Protection, Bureau for Public Health and Department of Agriculture in accordance
34 with legislative rules promulgated pursuant to the provisions of chapter twenty-nine-a of this code:
35 Provided, That expenditures from the fund are not authorized from collections but are to be made
36 only in accordance with appropriation by the Legislature. The moneys, including the interest
37 thereon, in said fund shall be kept and maintained by the director and expended without
38 appropriation by the Legislature for the purpose of implementing the provisions of this article. The
39 director may withhold the payment of any such moneys to any agency whose groundwater
40 protection program has been determined by the director, in consultation with the groundwater
41 coordinating committee, not to be sufficient to satisfy the requirements of this article and where
42 such agency has failed to adequately address such determination within the time period specified
43 by the director. At the end of each fiscal year, any unexpended balance of said fund shall may
44 ~~not~~ be transferred to the General Revenue Fund, ~~but shall remain in the groundwater protection~~
45 ~~fund~~.

46 (2) The "Groundwater Remediation Fund", the moneys of which, to the extent that moneys
47 are available, shall be expended by the director for the purposes of investigation, clean-up and
48 remedial action intended to identify, minimize or mitigate damage to the environment, natural
49 resources, public and private water supplies, surface waters and groundwaters and the public
50 health, safety and general welfare which may result from contamination of groundwater or the
51 related environment: Provided, That expenditures from the fund are not authorized from
52 collections but are to be made only in accordance with appropriation by the Legislature. The
53 director or other authorized agency officials are authorized to recover through civil action or
54 Cooperative agreements with responsible persons the full amount of any and all Groundwater
55 Remediation Fund moneys expended pursuant to this article. All moneys expended from such
56 fund which are so recovered shall be deposited in such fund. The director may expend moneys

57 from said fund and the interest thereon without necessity of appropriation by the Legislature. All
58 civil penalties and assessments of civil administrative penalties collected pursuant to this article
59 shall be deposited into the said fund. In addition, said fund may receive proceeds from any gifts,
60 grants, contributions or other moneys accruing to the state which are specifically designated for
61 inclusion in the fund.

ARTICLE 14. DAM CONTROL ACT.

§22-14-18. Continuation of Dam Safety Fund; components of fund.

1 (a) The special fund designated the Dam Safety Fund hereinafter referred to as "the fund"
2 shall be continued.

3 (b) All certificate application fees and annual registration fee assessments, any interest or
4 surcharge assessed and collected by the department, interest accruing on investments and
5 deposits of the fund, and any other moneys designated by the department shall be paid into the
6 fund. Accrual of funds shall not exceed \$300.000 per year, exclusive of application fees.
7 Expenditures from the fund are not authorized from collections but are to be made only in
8 accordance with appropriation by the Legislature. The department shall expend the proceeds of
9 the fund for the review of applications, inspection of dams, payment of costs of remedial
10 emergency actions and enforcement of the provisions of this article.

§22-14-19. Dam Safety Rehabilitation Revolving Fund established; disbursement of fund moneys.

1 (a) There is created in the State Treasury a special revenue fund known as the Dam Safety
2 Rehabilitation Revolving Fund. The fund shall be comprised of money allocated to the state by
3 the federal government expressly for the purposes of establishing and maintaining a state Dam
4 Safety Rehabilitation Revolving Fund. The fund shall also include all receipts from loans made by
5 the fund, any moneys appropriated by the Legislature, all income from the investment of moneys
6 held in the fund and all other moneys designated for deposit to the fund from any source, public
7 or private. ~~The fund shall operate as a special revenue fund and all deposits and payments into~~

8 ~~the fund do not expire to the General Revenue Fund, but shall remain in the account and be~~
9 ~~available for expenditure in succeeding fiscal years~~ Expenditures from the fund are not authorized
10 from collections but are to be made only in accordance with appropriation by the Legislature.

11 (b) The fund, to the extent that money is available, shall be used solely to make loans to
12 persons who own an interest in a deficient dam on the list of deficient dams created pursuant to
13 section twenty of this article to finance the engineering, design, alteration, improvement, repair,
14 breaching or removal of the deficient dam necessary to correct or remove the deficiencies and
15 other activities as authorized by a federal grant, a legislative appropriation or by the secretary
16 pursuant to section twenty-two of this article. ~~The fund may also be used to defray costs incurred~~
17 ~~by the department or the authority in administering the provisions of this subsection~~

18 (c) The secretary, in consultation with the authority, shall promulgate rules, in accordance
19 with the provisions of article three, chapter twenty-nine-a of this code, to govern the disbursement
20 of moneys from the fund, establish a state deficient dams rehabilitation assistance program to
21 direct the distribution of loans from the fund, establish criteria for eligibility to receive loans from
22 the fund and establish the terms and conditions of the loans, including interest rates and
23 repayment terms. The secretary may initially promulgate rules or amendments to rules as
24 emergency rules pursuant to the provisions of said article.

25 (d) The secretary and the authority may employ qualified officers, agents, advisors and
26 consultants and other persons necessary to carry out the administration and management of the
27 fund.

28 (e) The authority shall propose rules for legislative approval in accordance with the
29 provisions of article three, chapter twenty-nine-a of this code to govern the pledge of loans to
30 secure bonds of the authority.

31 (f) Disbursements from the fund shall be authorized for payment in writing by the director
32 of the authority or the director's designee. Moneys in the fund shall not be commingled with other
33 money of the authority.

ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.

§22-15A-9. Creation of the A. James Manchin Fund; proceeds from sale of waste tires; fee on issuance of certificate of title.

1 (a) There is continued in the State Treasury a special revenue fund known as the A. James
2 Manchin Fund. All moneys appropriated, deposited or accrued in this fund shall be used
3 exclusively for remediation of waste tire piles as required by this article, for the tire disposal
4 program established under section ten of this article or for the purposes of subsection (h), section
5 ten of this article or for the purposes of subsection (c), section eleven of this article. Expenditures
6 from the fund are not authorized from collections but are to be made only in accordance with
7 appropriation by the Legislature. The Commissioner of the Division of Highways shall work with
8 and may use moneys in the fund to contract with the Secretary of the Department of
9 Environmental Protection to accomplish the remediation of waste tire piles. The fund consists of
10 the proceeds from the sale of waste tires; fees collected by the Division of Motor Vehicles as
11 provided in section sixteen, article ten, chapter seventeen-a of this code; any federal, state or
12 private grants; legislative appropriations; loans; and any other funding source available for waste
13 tire remediation. Any unprogrammed balance remaining in the fund at the end of any state fiscal
14 year shall be transferred to the State Road Fund.

15 (b) No further collections or deposits shall be made after the Commissioner of the Division
16 of Highways certifies to the Governor and the Legislature that the remediation of all waste tire
17 piles that were determined by the commissioner to exist on July 1, 2001, has been completed and
18 that all infrastructure bonds issued by the Water Development Authority pursuant to section
19 seventeen-a, article fifteen-a, chapter thirty-one of this code have been paid in full or legally
20 defeased.

21 (c) If infrastructure bonds are not issued by the Water Development Authority pursuant to

22 section seventeen-a, article fifteen-a, chapter thirty-one of this code to finance infrastructure
23 projects relating to waste tire processing facilities located in this state on or before December 31,
24 2006, all further collections and deposits to the A. James Manchin Fund which are not
25 programmed for remediation or disposal shall be transferred to the State Road Fund at the end
26 of each fiscal year.

ARTICLE 16. SOLID WASTE LANDFILL CLOSURE ASSISTANCE PROGRAM.

§22-16-12. Solid Waste Facility Closure Cost Assistance Fund; closure extension; reporting requirements.

1 (a) The Closure Cost Assistance Fund continues as a special revenue account in the State
2 Treasury. ~~The fund operates as a special fund in which all deposits and payments do not expire~~
3 ~~to the General Revenue Fund, but remain in the account and are available for expenditure in the~~
4 ~~succeeding fiscal year~~ Expenditures from the fund are not authorized from collections but are to
5 be made only in accordance with appropriation by the Legislature. Separate subaccounts may be
6 established within the special account for the purpose of identification of various revenue
7 resources and payment of specific obligations.

8 (b) Interest earned on any money in the fund shall be deposited to the credit of the fund.

9 (c) The fund consists of the following:

10 (1) Moneys collected and deposited in the State Treasury which are specifically
11 designated by Acts of the Legislature for inclusion in the fund, including moneys collected and
12 deposited into the fund pursuant to section four of this article;

13 (2) Contributions, grants and gifts from any source, both public and private, which may be
14 used by the secretary for any project or projects;

15 (3) Amounts repaid by permittees pursuant to section eighteen, article fifteen of this
16 chapter; and

17 (4) All interest earned on investments made by the state from moneys deposited in this
18 fund.

19 (d) The Solid Waste Management Board, upon written approval of the secretary, has the
20 authority to pledge all or part of the revenues paid into the Closure Cost Assistance Fund as
21 needed to meet the requirements of any revenue bond issue or issues of the Solid Waste
22 Management Board authorized by this article, including the payment of principal of, interest and
23 redemption premium, if any, on the revenue bonds and the establishing and maintaining of a
24 reserve fund or funds for the payment of the principal of, interest and redemption premium, if any,
25 on the revenue bond issue or issues where other moneys pledged may be insufficient. Any pledge
26 of moneys in the Closure Cost Assistance Fund for revenue bonds is a prior and superior charge
27 on the fund over the use of any of the moneys in the fund to pay for the cost of any project on a
28 cash basis. Expenditures from the fund, other than for the retirement of revenue bonds, may only
29 be made in accordance with this article.

30 (e) The amounts deposited in the fund may be expended only on the cost of projects as
31 provided in sections three and fifteen of this article, as provided in subsection (f) of this section
32 and for payment of bonds and notes issued pursuant to section five of this article. No more than
33 two percent of the annual deposits to the fund may be used for administrative purposes.

34 (f) Notwithstanding any provision of this article, upon request of the Solid Waste
35 Management Board, and with the approval of the projects by the Secretary of the Department of
36 Environmental Protection, the secretary may pledge and place into escrow accounts up to an
37 aggregate of \$2 million of the fund to satisfy two years debt service requirement that permittees of
38 publicly owned landfills and transfer stations are required to meet in order to obtain loans. Pledges
39 shall be made on a project-by-project basis, may not exceed \$500,000 for a project and are made
40 available after loan commitments are received. The secretary may pledge funds for a loan only
41 when the following conditions are met:

42 (1) The proceeds of the loan are used only to perform construction of a transfer station or
43 a composite liner system that is required to meet title forty-seven, series thirty-eight, solid waste
44 management rules;

45 (2) The permittee dedicates all yearly debt service revenue, as determined by the Public
46 Service Commission, to meet the repayment schedule of the loan, before it uses available
47 revenue for any other purpose; and

48 (3) That any funds pledged may only be paid to the lender if the permittee is in default on
49 the loan.

50 (g) Notwithstanding any provision of this code to the contrary, the Elkins-Randolph County
51 Landfill, located in Randolph County, and the Webster County Landfill, located in Webster County,
52 are eligible for funds from the Solid Waste Facility Closure Cost Assistance Fund necessary to
53 complete their closure upon the filing of appropriate application. Upon the filing of an appropriate
54 application, the Department of Environmental Protection shall work with the applicant to ensure
55 the application meets the department's requirements.

56 (h) The Department of Environmental Protection is required to file, by January 1 of each
57 year, an annual report with the Joint Committee on Government and Finance providing details on
58 the manner in which the landfill closure assistance funds were expended for the prior fiscal year.

59 (i) The Prichard Landfill in Wayne County is eligible for funds from the Closure Cost
60 Assistance Fund necessary to complete post closure maintenance and monitoring upon the filing
61 of an appropriate application. In the event of a permit transfer, neither the state nor the Wayne
62 County Economic Development Authority or entity may assume any liability from the private
63 landfill other than post closure maintenance and monitoring costs.

ARTICLE 17. UNDERGROUND STORAGE TANK ACT.

§22-17-20. Appropriation of funds; Underground Storage Tank Administrative Fund.

1 (a) The secretary shall collect annual registration fees from owners of underground
2 storage tanks. The registration fee collected under this section may not exceed \$65 per tank per
3 year. All such registration fees and the net proceeds of all fines, penalties and forfeitures collected
4 under this article including accrued interest shall be paid into the State Treasury into a special

5 revenue fund designated the "Underground Storage Tank Administrative Fund" to be used to
6 defray the cost of administering this article in accordance with rules promulgated pursuant to
7 section six of this article. Expenditures from the fund are not authorized from collections but are
8 to be made only in accordance with appropriation by the Legislature. The secretary shall
9 promulgate an emergency rule in accordance with article three, chapter twenty-nine-a of this
10 code, implementing the increase in registration fees. This fee of up to \$65 is effective for the fiscal
11 year ending June 30, 2004.

12 (b) The total fee assessed shall be sufficient to assure a balance in the fund not to exceed
13 \$1 million at the beginning of each year.

14 (c) Any amount received pursuant to subsection (a) of this section which exceeds the
15 annual balance required in subsection (b) of this section shall be deposited into the Leaking
16 Underground Storage Tank Response Fund established pursuant to this article to be used for the
17 purposes set forth for expenditure of moneys in the fund.

18 (d) The net proceeds of all fines, penalties and forfeitures collected under this article shall
19 be appropriated as directed by article XII, section 5 of the Constitution of West Virginia. For the
20 purposes of this section, the net proceeds of such fines, penalties and forfeitures are the proceeds
21 remaining after deducting from the proceeds those sums appropriated by the Legislature for
22 defraying the cost of administering this article. In making the appropriation for defraying the cost
23 of administering this article, the Legislature shall first take into account the sums included in the
24 special fund prior to deducting additional sums as may be needed from the civil fines, civil
25 penalties and forfeitures collected pursuant to this article. At the end of each fiscal year any
26 unexpended balance of the collected civil fines, civil penalties, forfeitures and registration fees
27 shall not be transferred to the General Revenue Fund. ~~but shall remain in the fund~~

28 (e) The secretary shall submit an annual report to the Joint Committee on Government
29 and Finance on or before January 1 each year providing information as to the status of the
30 Underground Storage Tank Fund, the registration fees or forfeitures collected and any fines and

31 penalties assessed pursuant to this article, the amount of net proceeds of fines, penalties and
32 forfeitures paid into the fund and information as to the progress of the underground storage tank
33 program in the protection of human health and the environment.

§22-17-21. Leaking Underground Storage Tank Response Fund.

1 (a) Each underground petroleum storage tank owner within this state shall pay an annual
2 fee, if assessed by the director, to establish a fund to assure adequate response to leaking
3 underground petroleum storage tanks. The fees assessed pursuant to this section shall not
4 exceed \$25 per tank per year. The proceeds of such assessment shall be paid into the State
5 Treasury into a special fund designated "the Leaking Underground Storage Tank Response
6 Fund", which is hereby continued. Expenditures from the fund are not authorized from collections
7 but are to be made only in accordance with appropriation by the Legislature.

8 (b) Each owner of an underground petroleum storage tank subject to a fee assessment
9 under subsection (a) of this section shall pay a fee based on the number of underground
10 petroleum storage tanks he or she owns. The director shall vary the fees annually to a level
11 necessary to produce a fund of at least \$750,000 at the beginning of each calendar year taking
12 into account those amounts deposited in the fund pursuant to subsection (c), section twenty of
13 this article. In no event shall the fees assessed in this section be set to produce revenues
14 exceeding \$250,000 in any year.

15 (c) When the unobligated balance of the Leaking Underground Storage Tank Response
16 Fund exceeds \$1 million at the end of a calendar year, fee assessment under this section shall
17 cease until such time as the unobligated balance at the end of any year is less than \$750,000.

18 (d) At the end of each fiscal year, any unexpended balance including accrued interest of
19 such collected fees shall ~~not~~ be transferred to the General Revenue Fund ~~but shall remain in the~~
20 ~~fund.~~

21 (e) The director is authorized to enter into agreements and contracts and to expend the
22 moneys in the fund for the following purposes:

23 (1) Responding to underground petroleum storage tank releases when, based on readily
24 available information, the director determines that immediate action may prevent or mitigate
25 significant risk of harm to human health, safety or the environment from regulated substances in
26 situations for which no federal funds are immediately available for such response, cleanup or
27 containment: *Provided*, That the director shall apply for and diligently pursue available federal
28 funds for such releases at the earliest possible time.

29 (2) Reimbursing any person for reasonable cleanup costs incurred with the authorization
30 of the director in responding to an underground petroleum storage tank release.

31 (3) Reimbursing any person for reasonable costs incurred with the authorization of the
32 director responding to perceived, potential or threatened releases from underground petroleum
33 storage tanks where response activities do not indicate that any release has occurred.

34 (4) Financing the nonfederal share of the cleanup and site reclamation activities pursuant
35 to Subtitle I of the federal Resource Conservation and Recovery Act, as amended, as well as
36 future operation and maintenance costs for these sites: *Provided*, That no portion of the moneys
37 in the Leaking Underground Storage Tank Response Fund shall be used for defraying the costs
38 of administering this article.

39 (5) Financing the nonfederal share of costs incurred in compensating third parties,
40 including payment of judgments, for bodily injury and property damage, caused by release of
41 petroleum into the environment from an underground storage tank.

§22-17-22. Underground Storage Tank Insurance Fund.

1 (a) The secretary may establish an Underground Storage Tank Insurance Fund for the
2 purpose of satisfying the financial responsibility requirements established pursuant to section ten
3 of this article. In addition to the capitalization fee to be assessed against all owners or operators
4 of underground storage tanks provided by subdivision (6), subsection (b), section six of this article,
5 the secretary shall promulgate rules establishing an annual financial responsibility assessment to
6 be assessed on and paid by owners or operators of underground storage tanks who are unable

7 to obtain insurance or otherwise meet the financial responsibility requirements established
8 pursuant to section ten of this article. Assessments shall be paid into the State Treasury into a
9 special fund designated the Underground Storage Tank Insurance Fund. Expenditures from the
10 fund are not authorized from collections but are to be made only in accordance with appropriation
11 by the Legislature.

12 (b) At the end of each fiscal year, any unexpended balance of such assessment shall ~~not~~
13 be transferred to the General Revenue Fund ~~but shall remain in the Underground Storage Tank~~
14 ~~Insurance Fund~~. Upon the effective date of the enactment of the amendment to this section
15 passed during the 2007 regular session of the West Virginia Legislature, the Underground
16 Storage Tank Insurance Fund shall cease to operate as an insurance fund. Any remaining assets
17 of the fund shall be administered by the secretary pursuant to subsections (c), (d), (e), (f), (g) and
18 (h) of this section. Because the fund was intended to be self funding, the secretary is not bound
19 by any terms, limitations or conditions contained in any insurance policies issued by the fund, but
20 in no case may reimburse any person for an amount in excess of the limits of liability.

21 (c) *Legislative Findings Regarding Cessation of the Fund.* -- The Underground Storage
22 Tank Insurance Fund was established by the Legislature to assist storage tank owners who were
23 mandated by federal law to have insurance but were unable to find insurance in the private
24 market, and was funded solely by assessments of policyholders paid to the fund. Policies were
25 issued from the years 1990 to 2000. As private insurance coverage became available and a
26 number of the insured left the business, premiums paid into the fund decreased. These factors,
27 combined with greater than anticipated remediation costs at sites remediated during the fund's
28 solvency, caused claims against the fund to exceed moneys collected. As a result, the fund
29 became insolvent. Although the fund was not intended to and does not create any legal obligation
30 for the state for any claims made against the fund, it is the sense of the Legislature that to the
31 extent public funds are determined by the Legislature to be available, they may be appropriated
32 to assist individuals with the remediation of these sites and to prevent potential adverse

33 environmental impacts and harm to human health that could result from a failure to remediate.
34 This assistance by the state in funding these remediations would be intended to provide an option
35 for the insured to fulfill their legal duty to reclaim these sites and the Department of Environmental
36 Protection may not assume any legal liability for remediation of these sites beyond the assistance
37 provided pursuant to subsections (d), (e), (f), (g) and (h) of this section.

38 (d) The secretary shall request that the Governor include in each budget submitted to the
39 Legislature funding to cause remediation of these existing sites as identified by the secretary. The
40 secretary shall submit a proposal to undertake or cause to be undertaken these remediations to
41 the Joint Committee of Government and Finance by November 1, 2007. The secretary's proposal
42 shall provide, at a minimum, budget amounts needed each year for completing these remediation
43 activities by December 31, 2009, but in no case later than December 31, 2012.

44 (e) The secretary shall also request funding to reimburse insured persons and vendors
45 who have incurred costs not yet reimbursed as of the effective date of this section by the fund for
46 work undertaken at insured sites previously authorized by the secretary.

47 (f) Any agreements with insured persons for payment of remediations shall provide that,
48 prior to any remediation activities on any site or for reimbursement for expenses previously
49 incurred, an agreement be executed that provides that the insured person or persons agree that
50 the site will be remediated pursuant to either subsection (g) or (h) of this section.

51 (g) The secretary may cause remediation of an insured site to a voluntary remediation
52 standard as provided in article twenty-two of this chapter, including any appropriate land-use
53 covenant and other deed restrictions and any other conditions as established by the secretary
54 prior to payment for any costs associated with a site remediation.

55 (h) If an insured person demonstrates to the secretary that it is more cost effective to clean
56 up a site through an alternative program or method that will result in remediation at a standard
57 equal to or greater than provided for in subsection (g) of this section, then the secretary may, as
58 an alternative, authorize use of that method or program. The secretary may place any appropriate

59 requirements upon the insured person as a condition for undertaking a remediation by an
60 alternative program or method.

ARTICLE 18. HAZARDOUS WASTE MANAGEMENT ACT.

§22-18-22. Appropriation of funds; Hazardous Waste Management Fund.

1 (a) The net proceeds of all fines, penalties and forfeitures collected under this article shall
2 be appropriated as directed by section five, article XII of the Constitution of West Virginia. For the
3 purposes of this section, the net proceeds of the fines, penalties and forfeitures are considered
4 the proceeds remaining after deducting therefrom those sums appropriated by the Legislature for
5 defraying the cost of administering this article. All permit application fees collected under this
6 article shall be paid into the State Treasury into a special fund designated the Hazardous Waste
7 Management Fund. Expenditures from the fund are not authorized from collections but are to be
8 made only in accordance with appropriation by the Legislature. In making the appropriation for
9 defraying the cost of administering this article, the Legislature shall first take into account the
10 sums included in that special fund prior to deducting additional sums as may be needed from the
11 fines, penalties and forfeitures collected pursuant to this article.

12 (b) Effective on July 1, 2003, there is imposed an annual certification fee for facilities that
13 manage hazardous waste, as defined by the federal Resource Conservation and Recovery Act,
14 as amended. The secretary shall propose a rule for legislative approval in accordance with the
15 provisions of article three, chapter twenty-nine-a of this code to establish the certification fee. The
16 rule shall be a product of a negotiated rule-making process with the facilities subject to the rule.
17 The rule shall, at a minimum, establish different fee rates for facilities based on criteria established
18 in the rule. The total amount of fees generated raise no more funds than are necessary and
19 adequate to meet the matching requirements for all federal grants which support the hazardous
20 waste management program, but shall not exceed \$700,000 per year.

21 (c) The revenues collected from the annual certification fee shall be deposited in the State

22 Treasury to the credit of the Hazardous Waste Management Fee Fund, which is continued.
23 Moneys of the fund, together with any interest or other return earned on the fund, shall be
24 expended to meet the matching requirements of federal grant programs which support the
25 hazardous waste management program. Expenditures from the fund are for the purposes set
26 forth in this article and are not authorized from collections, but are to be made only in accordance
27 with appropriation by the Legislature and in accordance with the provisions of article three,
28 chapter twelve of this code and upon the fulfillment of the provisions set forth in article two, chapter
29 five-a of this code. Amounts collected which are found, from time to time, to exceed the funds
30 needed for purposes set forth in this article may be transferred to other accounts by appropriation
31 of the Legislature.

32 (d) The fee provided in subsection (b) of this section and the fund established in subsection
33 (c) of this section shall terminate on June 30, 2020. The department shall, by December 31 of
34 each year, report to the Joint Committee on Government and Finance regarding moneys collected
35 into the Hazardous Waste Management Fee Fund and expenditures by the agency, including any
36 federal matching moneys received and providing an accounting on the collection of the fee by
37 type of permit activity, funds being expended and current and future projected balances of the
38 fund.

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS,

AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 2. WATER POLLUTION CONTROL REVOLVING FUND ACT.

§22C-2-3. West Virginia Water Pollution Control Revolving Fund; disbursement of fund moneys; administration of the fund.

1 (a) Under the direction of the Division Department of Environmental Protection, the water
2 development authority shall establish, administer and manage a permanent and perpetual fund,
3 to be known as the "West Virginia Water Pollution Control Revolving Fund." The fund shall be

4 comprised of moneys appropriated to the fund by the Legislature, moneys allocated to the state
5 by the federal government expressly for the purposes of establishing and maintaining a state
6 Water Pollution Control Revolving Fund, all receipts from loans made from the fund to local
7 entities, all income from the investment of moneys held in the fund, and all other sums designated
8 for deposits to the fund from any source, public or private. Expenditures from the fund are not
9 authorized from collections but are to be made only in accordance with appropriation by the
10 Legislature. Moneys in the fund shall be used solely to make loans to local entities to finance or
11 refinance the costs of a project: *Provided, That moneys in the fund shall be utilized to defray the*
12 ~~costs incurred by the authority and the Division of Environmental Protection in administering the~~
13 ~~provisions of this article: Provided, however,~~ That moneys in the fund shall be used to make grants
14 for projects to the extent allowed or authorized by federal law.

15 (b) The Director of the Division Department of Environmental Protection, in consultation
16 with the authority, shall promulgate legislative rules in accordance with the provisions of article
17 three, chapter twenty-nine-a of this code, to:

18 (1) Govern the disbursement of moneys from the fund; and

19 (2) Establish a state Water Pollution Control Revolving Fund program to direct the
20 distribution of grants or loans from the fund to particular local entities and establish the interest
21 rates and repayment terms of the loans.

22 (c) In order to carry out the administration and management of the fund, the authority is
23 authorized to employ officers, employees, agents, advisers and consultants, including attorneys,
24 financial advisers, engineers, other technical advisers and public accountants and,
25 notwithstanding any provisions of this code to the contrary, to determine their duties and
26 compensation without the approval of any other agency or instrumentality.

27 (d) The authority shall promulgate legislative rules in accordance with the provisions of
28 article three, chapter twenty-nine-a of this code to govern the pledge of loans to secure bonds of
29 the authority.

30 (e) All moneys belonging to the fund shall be kept in appropriate depositories and secured
31 in conformance with this code. Disbursements from the fund shall be authorized for payment by
32 the director of the authority or the director's designee. Any depository or officer of the depository
33 to which moneys of the fund are paid shall act as trustee of the moneys and shall hold and apply
34 them solely for the purposes for which the moneys are provided under this article. Moneys in the
35 fund shall not be commingled with other money of the authority. If not needed for immediate use
36 or disbursement, moneys in the fund may be invested or reinvested by the authority in obligations
37 or securities which are considered lawful investments for public funds under this code.

NOTE: The purpose of this bill is to convert certain nonappropriated special revenue funds administered by the Department of Environmental Protection into appropriated special revenue funds.

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