

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 462

FISCAL
NOTE

BY SENATORS PHILLIPS AND SMITH

[Introduced January 21, 2022; referred
to the Committee on Energy, Industry, and Mining;
and then to the Committee on Finance]

1 A BILL to amend and reenact §22-11-10 of the Code of West Virginia, 1931, as amended, relating
2 to coal mining; and changing fees for permitting actions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

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 established
2 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. The secretary shall
7 expend the proceeds of the Water Quality Management Fund for the review of initial permit
8 applications, renewal permit applications, and permit issuance activities.

9 (c) The secretary shall propose for promulgation, legislative rules in accordance with the
10 provisions of § 29A-1-1 *et seq.* of this code, to establish a schedule of application fees for all
11 applications except for surface coal mining operations as defined in § 22-3-13 of this code. The
12 appropriate fee shall be submitted by the applicant to the department with the application filed
13 pursuant to this article for any state water pollution control permit or national pollutant discharge
14 elimination system permit. The schedule of application fees shall be designed to establish
15 reasonable categories of permit application fees based upon the complexity of the permit
16 application review process required by the department pursuant to the provisions of this article
17 and the rules promulgated under this article: *Provided*, That no initial application fee may exceed
18 \$15,000 for any facility nor may any permit renewal application fee exceed \$5,000. The

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

21 (d) The secretary shall propose for promulgation legislative rules in accordance with the
22 provisions of § 29A-1-1 *et seq.* of this code to establish a schedule of permit fees to be assessed
23 annually upon each person holding a state water pollution control permit or national pollutant
24 discharge elimination system permit issued pursuant to this article except for permits held by
25 surface coal mining operations as defined in § 22-3-1 *et seq.* of this code. Each person holding a
26 permit shall pay the prescribed annual permit fee to the department pursuant to the rules
27 promulgated under this section: *Provided*, That no person holding a permit for a home aerator of
28 600 gallons and under shall be required to pay an annual permit fee. The schedule of annual
29 permit fees shall be designed to establish reasonable categories of annual permit fees based
30 upon the relative potential of categories or permits to degrade the waters of the state: *Provided*,
31 *however*, That no annual permit fee may exceed \$5,000. The secretary may declare any permit
32 issued pursuant to this article void when the annual permit fee is more than 90 days past due
33 pursuant to the rules promulgated under this section. Voiding of the permit will only become
34 effective upon the date the secretary mails, by certified mail, written notice to the permittee's last
35 known address notifying the permittee that the permit has been voided.

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

38 (f) On July 1, ~~2002~~ 2022, and each year thereafter, a \$1,000 fee shall be assessed for
39 permit applications and a \$3,000 fee shall be assessed for permit renewals submitted pursuant
40 to this article for surface coal mining operations, as defined in §22-3-1 *et seq.* of this code. On
41 July 1, ~~2002~~ 2022, and each year thereafter, a ~~\$500~~ \$2,000 fee shall be assessed for application
42 for permit major modifications and a \$1,000 fee for permit minor modifications submitted pursuant
43 to this article for surface coal mining operations, as defined in § 22-3-1 *et seq.* of this code. On
44 July 1, 2022, and each year thereafter, a \$3,000 fee shall be assessed for application for permit

45 reissuance and a \$2,000 fee for permit transfer submitted pursuant to this article for surface coal
46 mining operations, as defined in §22-3-1 et seq. of this code. Beginning July 1, ~~2002~~ 2022, and
47 every year thereafter, an annual permit fee of \$2,000 shall be assessed on the issuance
48 anniversary dates of all permits issued pursuant to this article for surface coal mining operations
49 as defined in § 22-3-1 et seq. of this code. ~~The annual permit fee shall be collected as follows:~~
50 ~~\$500 for the fiscal year beginning on July 1, 2002, and \$1,000 for each fiscal year thereafter~~ On
51 July 1, 2022, and each year thereafter, a \$500 fee for an application for the water quality
52 certification that seeks certification of activities covered by the United States Army Corps of
53 Engineers permits issued in accordance with 33 U.S.C. § 1344 and 33 C.F.R. Parts 323 or 330
54 may be issued a certification in accordance with the legislative rules entitled Rules for Individual
55 State Certification of Activities Requiring a Federal Permit, 47 C.F.R. 5A. For all other categories
56 of permitting actions pursuant to this article related to surface coal mining operations, the
57 secretary shall propose for promulgation legislative rules in accordance with the provisions of
58 §29A-1-1 et seq. of this code to establish a schedule of permitting fees.

NOTE: The purpose of this bill is to ensure full, adequate funding for the operation of the Department of Environmental Protection's Division of Mining and Reclamation.

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