

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3057

By Delegate Hansen

[Introduced January 25, 2023; Referred to the
Committee on Energy and Manufacturing then
Finance]

1 A BILL to amend and reenact §22-1-17 of the Code of West Virginia, 1931, as amended, and to
2 amend and reenact §22-3-11 of said code, all relating to revising surface mining
3 reclamation requirements; revising requirements for special reclamation fund account
4 reviews; revising mining bonding requirements to require the bond be set for actual
5 reclamation costs; creating conditions and limitations upon certain bonding companies to
6 assure viability of the special reclamation fund; requiring coordination between the tax
7 department and the department of environmental protection to assure accuracy in
8 reporting and correct payments into the surface mining special reclamation fund; and
9 requiring that mining operations keep payments to the special reclamation fund current as
10 a condition for receiving and retaining a mining permit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-17. Special reclamation fund advisory council.

1 (a) There is hereby created within the Department of Environmental Protection a special
2 reclamation fund advisory council. The council's purpose is to ensure the effective, efficient and
3 financially stable operation of the special reclamation fund. The special reclamation advisory
4 council shall consist of eight members, including the secretary of the Department of Environmental
5 Protection or his or her designee, the treasurer of the State of West Virginia or his or her designee,
6 the director of the national mine land reclamation center at West Virginia University and five
7 members to be appointed by the Governor with the advice and consent of the Senate.

8 (b) Each appointed member of the council shall be selected based on his or her ability to
9 serve on the council and effectuate its purposes. The Governor shall appoint, from a list of three
10 names submitted by the major trade association representing the coal industry regulated under
11 article three of this chapter, a member to represent the interests of the industry. The Governor shall
12 appoint, from a list of three names submitted by organizations advocating environmental
13 protection, one member to represent the interest of environmental protection organizations. The

14 Governor shall appoint, from a list of four names submitted by the coal mining industry and the
15 organizations advocating environmental protection, one member who, by training and profession,
16 is an actuary or an economist. The Governor shall appoint, from a list of three names submitted by
17 the united mine workers of America, one member to represent the interests of coal miners. The
18 Governor shall appoint a member to represent the interests of the general public.

19 (c) The terms of all members shall begin on July 1, 2002. The secretary shall be an ex
20 officio, nonvoting member and serve as chairperson of the council. The terms of the Governor's
21 appointees shall be for six years. Appointees may be reappointed to serve on the council. The
22 terms of the appointed members first taking office are to be expired as designated by the Governor
23 at the time of the nomination, two at the end of the second year, two at the end of the fourth year
24 and one at the end of the sixth year. As the original appointments expire, each subsequent
25 appointment will be for a full six-year term. Any appointed member whose term has expired shall
26 serve until a successor has been duly appointed and qualified. Any person appointed to fill a
27 vacancy is to serve only for the unexpired term.

28 (d) Appointed members of the council shall be paid the same compensation and expense
29 reimbursement as is provided for members of the Legislature pursuant to sections six and eight,
30 article two-a, chapter four of this code. Council members who are state employees or officials shall
31 be reimbursed for expenses in accordance with the applicable agency's policy.

32 (e) The council shall meet at the call of the chairperson or his or her designee, but not less
33 than once every six months. The secretary shall provide funds for necessary administrative and
34 technical services for the council from the special reclamation fund.

35 (f) The council shall, at a minimum:

36 (1) Study the effectiveness, efficiency and financial stability of the special reclamation fund
37 with an emphasis on development of a financial process that ensures long-term stability of the
38 special reclamation program;

39 (2) Identify and define problems associated with the special reclamation fund, including,

40 but not limited to, the enforcement of federal and state law, regulation and rules pertaining to
41 contemporaneous reclamation;

42 (3) Evaluate bond forfeiture collection, reclamation efforts at bond forfeiture sites and
43 compliance with approved reclamation plans as well as any modifications;

44 (4) Provide a forum for a full and fair discussion of issues relating to the special reclamation
45 fund;

46 (5) Contract with a qualified actuary who shall make a determination as to the special
47 reclamation fund's fiscal soundness. This determination shall be completed on December 31,
48 2004, and every ~~four~~ two years thereafter. The review is to include an evaluation of the present
49 and prospective assets and liabilities of the special reclamation fund. The review shall include
50 collecting and analyzing data from United States Energy Information Administration and other
51 reputable sources and include analysis of long-term production trends and their anticipated impact
52 on special reclamation fund collections and stability. The analysis shall also include viability of
53 existing bonding liabilities of existing mining operations and their potential to enter into bond
54 forfeiture or bankruptcy; and

55 (6) Study and recommend to the Legislature alternative approaches to the current funding
56 scheme of the special reclamation fund, considering revisions which will assure future proper
57 reclamation of all mine sites and continued financial viability of the state's coal industry.

58 (g) On or before January 1, 2003, and every year thereafter, the council shall submit to the
59 Legislature and the Governor a report on the adequacy of the special reclamation tax and the
60 fiscal condition of the special reclamation fund. The report shall, at a minimum, contain:

61 (1) A recommendation as to whether or not any adjustments to the special reclamation tax
62 should be made considering the cost, timeliness and adequacy of bond forfeiture reclamation,
63 including water treatment;

64 (2) A discussion of the council's required study issues as set forth in subsection (f) of this
65 section; and

66 (3) The availability of federal abandoned mine lands funds for West Virginia reclamation
67 projects.

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)~~(1)~~ 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~~ adequate to assure that reclamation is completed if the
8 permittee cannot fulfill reclamation duties mandated as a condition of receiving the permit. The
9 bond shall cover: (1) The entire permit area; or (2) that increment of land within the permit area
10 upon which the operator will initiate and conduct surface mining and reclamation operations within
11 the initial term of the permit. If the operator chooses to use incremental bonding, as succeeding
12 increments of surface mining and reclamation operations are to be initiated and conducted within
13 the permit area, the operator shall file with the secretary an additional bond or bonds to cover the
14 increments in accordance with this section. ~~Provided, however, That once~~ Once the operator has
15 chosen to proceed with bonding either the entire permit area or with incremental bonding, the
16 operator shall continue bonding in that manner for the term of the permit

17 (2) For any new bond issued after July 1, 2023, entities issuing new bonds for mining
18 operations may not hold bonds in exceed 33% of total bonded amounts issued in this state.

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

22 (c)(1) The form of the bond shall be approved by the secretary and may include, at the
23 option of the operator, surety bonding, collateral bonding (including cash and securities),
24 establishment of an escrow account, ~~self bonding~~ or a combination of these methods. If collateral
25 bonding is used, the operator may elect to deposit cash or collateral securities or certificates as
26 follows: Bonds of the United States or its possessions of the Federal Land Bank or of the
27 Homeowners' Loan Corporation; full faith and credit general obligation bonds of the State of West
28 Virginia or other states and of any county, district or municipality of the State of West Virginia or
29 other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of
30 the department. The cash deposit or market value of the securities or certificates shall be equal to
31 or greater than the penal sum of the bond. The secretary shall, upon receipt of any deposit of cash,
32 securities, or certificates, promptly place the same with the Treasurer of the State of West Virginia
33 whose duty it is to receive and hold the deposit in the name of the state in trust for the purpose for
34 which the deposit is made when the permit is issued. The operator making the deposit is entitled,
35 from time to time, to receive from the State Treasurer, upon the written approval of the secretary,
36 the whole or any portion of any cash, securities, or certificates so deposited, upon depositing with
37 him or her in lieu thereof cash or other securities or certificates of the classes specified in this
38 subsection having value equal to or greater than the sum of the bond.

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

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

47 (e) (d) It is unlawful for the owner of surface or mineral rights to interfere with the present

48 operator in the discharge of the operator's obligations to the state for the reclamation of lands
49 disturbed by the operator.

50 (f) ~~(e)~~ All bond releases shall be accomplished in accordance with §22-3-23 of this code.

51 ~~(g)~~ (f) (1) The Special Reclamation Fund previously created is continued. The Special
52 Reclamation Water Trust Fund is created within the state treasury into and from which moneys
53 shall be paid for the purpose of assuring a reliable source of capital and operating expenses for the
54 treatment of water discharges from forfeited sites where the secretary has obtained or applied for
55 an NPDES permit as of the effective date of this article. The moneys accrued in both funds, any
56 interest earned thereon and yield from investments by the State Treasurer or West Virginia
57 Investment Management Board are reserved solely and exclusively for the purposes set forth in
58 this section and §22-1-17 of this code.

59 (2) The funds shall be administered by the secretary who is authorized to expend the
60 moneys in both funds for the reclamation and rehabilitation of lands which were subjected to
61 permitted surface mining operations and abandoned after August 3, 1977, where the amount of
62 the bond posted and forfeited on the land is less than the actual cost of reclamation, and where the
63 land is not eligible for abandoned mine land reclamation funds under §22-2-1 *et seq.* of this code.
64 The secretary may also expend an amount not to exceed 10 percent of the total annual assets in
65 both funds to implement and administer the provisions of this article and, as they apply to the
66 Surface Mine Board, §22B-1-1 *et seq.* and §22B-1-4 *et seq.* of this code.

67 (3)(A) A tax credit shall be granted against the tax imposed by subsection (i) of this section
68 to any mine operator who performs reclamation or remediation at a bond forfeiture site which
69 otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special
70 Reclamation Water Trust Fund. The credit authorized pursuant to this subdivision is retroactive
71 and may be claimed for reclamation or remediation performed on or after January 1, 2012:
72 *Provided*, That for reclamation or remediation performed prior to July 13, 2013, no tax credit may
73 be granted unless a written application for the tax credit was submitted to the Tax Commissioner

74 prior to September 1, 2014. The amount of credit shall be determined as provided in this section.

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

80 (C) To claim the credit, the mine operator shall, from time to time, file with the Tax
81 Commissioner a written application seeking the amount of the credit earned. Within 30 days of
82 receipt of the application, the Tax Commissioner shall issue a certification of the amount of tax
83 credit, if any, to be allocated to the eligible taxpayer. Should the amount of the credit certified be
84 less than the amount applied for, the Tax Commissioner shall set forth in writing the reason for the
85 difference. Should no certification be issued within the 30-day period, the application shall be
86 considered certified. Any decision by the Tax Commissioner is appealable pursuant to the
87 provisions of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1 *et seq.*
88 of this code. Applications for certification of the proposed tax credit shall contain the information
89 and be in the detail and form as required by the Tax Commissioner.

90 (4) The Tax Commissioner shall monthly forward to the Secretary the total monthly
91 tonnage of coal produced reported by each person conducting surface mining in this state. The
92 Secretary shall reconcile the amounts of coal tonnage produced reported by the permittee to the
93 Tax Commissioner with the amounts paid to the special reclamation fund as provided in this
94 section and report any discrepancies to the Tax Commissioner. If any discrepancy is identified, it
95 is a rebuttable presumption that the highest amount reported to either agency is the amount of coal
96 tonnage produced.

97 ~~(h)~~ (g) The Tax Commissioner may promulgate rules for legislative approval pursuant to
98 §29A-3-1 *et seq.* of this code to carry out the purposes of this subdivision two, subsection (g) of
99 this section.

100 (†) (h) (1) Rate, deposits, and review.

101 (A) For tax periods commencing on and after July 1, 2009, every person conducting coal
102 surface mining shall remit a special reclamation tax of 14 and four-tenths cents per ton of clean
103 coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special
104 Reclamation Fund and the Special Reclamation Water Trust Fund.

105 (B) For tax periods commencing on and after July 1, 2012, the rate of tax specified in
106 paragraph (A) of this subdivision is discontinued and is replaced by the rate of tax specified in this
107 paragraph. For tax periods commencing on and after July 1, 2012, every person conducting coal
108 surface mining shall remit a special reclamation tax of 27 and nine-tenths cents per ton of clean
109 coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special
110 Reclamation Fund and the Special Reclamation Water Trust Fund. Of that amount, 15 cents per
111 ton of clean coal mined shall be deposited into the Special Reclamation Water Trust Fund.

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

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

120 (2) In managing the special reclamation program, the secretary shall: (A) Pursue cost-
121 effective alternative water treatment strategies; (B) conduct formal actuarial studies every two
122 years and conduct informal reviews annually on the Special Reclamation Fund and Special
123 Reclamation Water Trust Fund; and (C) develop and maintain a database to track existing
124 reclamation liabilities (including water treatment) at coal mining operations in the state that were
125 permitted after August 3, 1977. This information is to be updated on a quarterly basis beginning

126 July 2022 to ensure that actuarial studies of the special reclamation fund and special reclamation
127 water trust fund are informed by current data.

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

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

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

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

141 (4) If the secretary determines that the alternative program, the incremental bonding
142 program or the water reclamation account or bonding programs reasonably assure that sufficient
143 funds will be available to complete the reclamation of a forfeited site and that the Special
144 Reclamation Fund will remain fiscally stable, the secretary may propose legislative rules in
145 accordance with §29A-3-1 *et seq.* of this code to implement an alternate program, a water
146 reclamation account or bonding program or other funding mechanisms or a combination thereof.

147 ~~(j)~~ (i) This special reclamation tax shall be collected by the Tax Commissioner in the same
148 manner, at the same time and upon the same tonnage as the minimum severance tax imposed by
149 §11-12B-1 *et seq.* of this code is collected: *Provided*, That under no circumstance may the special
150 reclamation tax be construed to be an increase in either the minimum severance tax imposed by
151 that article or the severance tax imposed by §11-13-1 *et seq.* of this code.

152 ~~(k)~~ (j) Every person liable for payment of the special reclamation tax shall pay the amount
153 due without notice or demand for payment.

154 ~~(l)~~ (k) The Tax Commissioner shall provide to the secretary a quarterly listing of all persons
155 known to be delinquent in payment of the special reclamation tax. The secretary ~~may take the~~
156 ~~delinquencies into account in making determinations on the issuance, renewal, or revision of any~~
157 ~~permit may not issue, renew or revise any permit without requiring payment of all delinquent~~
158 ~~amounts owed to the special reclamation fund prior to or within a reasonable time of issuance,~~
159 ~~renewal or revision of a permit. If the secretary authorizes a permit of a person delinquent in~~
160 ~~payment of special reclamation taxes, the Secretary shall condition the permit on timely payment~~
161 ~~of delinquent amounts and suspend the permit if the person fails to repay delinquent amounts as~~
162 ~~agreed to by the Secretary.~~

163 ~~(m)~~ (l) The Tax Commissioner shall deposit the moneys collected with the Treasurer of the
164 State of West Virginia to the credit of the Special Reclamation Fund and Special Reclamation
165 Water Trust Fund.

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

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

NOTE: The purpose of this bill is to implement changes in the West Virginia Surface Coal Mining and Reclamation Act recommended by the West Virginia Legislature's Post Audit Division to facilitate compliance with state and federal mining and reclamation laws to assure that bonding and reclamation requirements are adequate to assure that post mining reclamation is completed and paid for by coal mining operators and does not become a

financial liability to state taxpayers; requiring greater review of stability of special reclamation fund; revising bonding requirements to require the bond be set for actual reclamation costs; providing conditions upon bonding companies to assure viability of the special reclamation fund; requiring coordination between the Tax Department and the Department of Environmental Protection to assure accuracy in reporting and correct payments into the surface mining special reclamation fund; and requiring that mining operations keep payments to the special reclamation fund current as a condition for receiving and retaining a mining permit.

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