

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2955**

4 (By Delegates Caputo and Barker)

5
6 (Originating in the House Committee on Finance.)

7
8 [February 24, 2011]

9
10 A BILL to amend and reenact §22-3-7, §22-3-8 and §22-3-19 of the
11 Code of West Virginia, 1931, as amended, all relating to
12 environmental resources; surface coal mining and reclamation
13 act; and fees assessed to coal mining operators by the
14 Division of Mining and Reclamation.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §22-3-7, §22-3-8 and §22-3-19 of the Code of West
17 Virginia, 1931, as amended, be amended and reenacted to read as
18 follows:

19 **ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.**

20 **§22-3-7. Notice of intention to prospect, requirements therefor;**
21 **bonding; secretary's authority to deny or limit;**
22 **postponement of reclamation; prohibited acts;**
23 **exceptions.**

1 (a) Any person intending to prospect for coal in an area not
2 covered by a surface-mining permit, in order to determine the
3 location, quantity or quality of a natural coal deposit, making
4 feasibility studies or for any other purpose, shall file with the
5 ~~director~~ secretary, at least fifteen days prior to commencement of
6 any disturbance associated with prospecting, a notice of intention
7 to prospect, which notice shall include a description of the
8 prospecting area, the period of supposed prospecting and ~~such~~ any
9 other information as required by rules promulgated pursuant to this
10 section: *Provided*, That prior to the commencement of ~~such~~
11 prospecting, the ~~director~~ secretary may issue an order denying or
12 limiting permission to prospect where the ~~director~~ secretary finds
13 that prospecting operations will damage or destroy a unique natural
14 area, or will cause serious harm to water quality, or that the
15 operator has failed to satisfactorily reclaim other prospecting
16 sites, or that there has been an abuse of prospecting by previous
17 prospecting operations in the area.

18 (b) Notice of intention to prospect shall be made in writing
19 on forms prescribed by the ~~director~~ secretary and shall be signed
20 and verified by the applicant. The notice shall be accompanied by:
21 (1) A United States Geological Survey topographic map showing by
22 proper marking the crop line and the name, where known, of the seam
23 or seams to be prospected; ~~and~~ (2) a filing fee of \$2000; and (3)
24 a bond, or cash, or collateral securities or certificates of the

1 same type and form and in the same manner as provided in section
2 eleven of this article, in the amount of five hundred dollars per
3 acre or fraction thereof for the total estimated disturbed area.

4 If ~~such~~ a bond is used, it shall be payable to the State of West
5 Virginia and conditioned that the operator faithfully perform the
6 requirements of this article as they relate to backfilling and
7 revegetation of the disturbed area.

8 (c) Any person prospecting under the provisions of this
9 section shall ensure that ~~such~~ the prospecting operation is
10 conducted in accordance with the performance standards in section
11 thirteen of this article for all lands disturbed in explorations,
12 including excavations, roads, drill holes, and the removal of
13 necessary facilities and equipment.

14 (d) Information submitted to the ~~director~~ secretary pursuant
15 to this section as confidential, concerning trade secrets or
16 privileged commercial or financial information, which relates to
17 the competitive rights of the person or entity intended to prospect
18 the described area, is not available for public examination.

19 (e) Any person who conducts any prospecting activities which
20 substantially disturb the natural land surface in violation of this
21 section or rules issued pursuant thereto is subject to the
22 provisions of sections sixteen and seventeen of this article.

23 (f) ~~No~~ An operator ~~shall~~ may not remove more than two hundred
24 fifty tons of coal without the specific written approval of the

1 ~~director~~ secretary. Such approval shall be requested by the
2 operator on forms prescribed by the ~~director~~ secretary. The
3 ~~director~~ secretary shall promulgate rules governing such operations
4 and setting forth information required in the application for
5 approval. Each such application shall be accompanied by a \$2000
6 filing fee.

7 (g) The bond accompanying said notice of intention to prospect
8 shall be released by the ~~director~~ secretary when the operator
9 demonstrates that a permanent species of vegetative cover is
10 established.

11 (h) ~~In the event~~ If an operator desires to mine the area
12 currently being prospected, and has requested and received an
13 appropriate surface mine application (S.M.A.) number, the ~~director~~
14 secretary may permit the postponement of the reclamation of the
15 area prospected. Any part of a prospecting operation, where
16 reclamation has not been postponed as provided above, shall be
17 reclaimed within a period of three months from disturbance.

18 (i) For the purpose of this section, the word "prospect" or
19 "prospecting" does not include core drilling related solely to
20 taxation or highway construction.

21 **§22-3-8. Prohibition of surface mining without a permit; permit**
22 **requirements; successor in interest; duration of**
23 **permits; proof of insurance; termination of permits;**
24 **permit fees.**

1 (a) No person may engage in surface mining operations unless
2 he or she has first obtained a permit from the ~~director~~ secretary
3 in accordance with the following:

4 (1) All permits issued pursuant to the requirements of this
5 article shall be issued for a term not to exceed five years:

6 *Provided*, That if the applicant demonstrates that a specified
7 longer term is reasonably needed to allow the applicant to obtain
8 necessary financing for equipment and the opening of the operation,
9 and if the application is full and complete for the specified
10 longer term, the ~~director~~ secretary may extend a permit for a
11 longer term: *Provided, however*, That subject to the prior approval
12 of the ~~director~~ secretary, with the approval being subject to the
13 provisions of subsection (c), section eighteen of this article, a
14 successor in interest to a permittee who applies for a new permit,
15 or transfer of a permit, within thirty days of succeeding to the
16 interest and who is able to obtain the bond coverage of the
17 original permittee, may continue surface mining and reclamation
18 operations according to the approved mining and reclamation plan of
19 the original permittee until the successor's permit application or
20 application for transfer is granted or denied.

21 (2) Proof of insurance is required on an annual basis.

22 (3) A permit terminates if the permittee has not commenced the
23 surface mining operations covered by the permit within three years
24 of the date the permit was issued: *Provided*, That the ~~director~~

1 secretary may grant reasonable extensions of time upon a timely
2 showing that the extensions are necessary by reason of litigation
3 precluding commencement, or threatening substantial economic loss
4 to the permittee, or by reason of conditions beyond the control and
5 without the fault or negligence of the permittee: *Provided,*
6 *however,* That with respect to coal to be mined for use in a
7 synthetic fuel facility or specific major electric-generating
8 facility, the permittee shall be considered to have commenced
9 surface mining operations at the time the construction of the
10 synthetic fuel or generating facility is initiated.

11 (4) Each application for a new surface mining permit filed
12 pursuant to this article shall be accompanied by a fee of ~~\$1,000~~
13 \$3,500. All permit fees and renewal fees provided in this section
14 or elsewhere in this article shall be collected by the ~~director~~
15 secretary and deposited with the Treasurer of the State of West
16 Virginia to the credit of the Operating Permit Fees Fund and shall
17 be used, upon requisition of the ~~director~~ secretary, for the
18 administration of this article.

19 (5) Prior to the issuance of any permit, the ~~director~~
20 secretary shall ascertain from the Commissioner of the Division of
21 Labor whether the applicant is in compliance with section fourteen,
22 article five, chapter twenty-one of this code. Upon issuance of
23 the permit, the ~~director~~ secretary shall forward a copy to the
24 Commissioner of the Division of Labor, who shall assure continued

1 compliance under the permit.

2 (6) (A) Prior to the issuance of any permit the ~~director~~
3 secretary shall ascertain from the Executive Director of Workforce
4 West Virginia and the Insurance Commissioner whether the applicant
5 is in compliance with the provisions of section six-c, article two,
6 chapter twenty-one-a of this code and section five, article two,
7 chapter twenty-three of this code with regard to any required
8 subscription to the Unemployment Compensation Fund or to the
9 Workers' Compensation Fund, the payment of premiums and other
10 charges to the fund, the timely filing of payroll reports and the
11 maintenance of adequate deposits. If the applicant is delinquent
12 or defaulted, or has been terminated by the executive director or
13 the Insurance Commissioner, the permit may not be issued until the
14 applicant returns to compliance or is restored by the executive
15 director or the Insurance Commissioner under a reinstatement
16 agreement: *Provided*, That in all inquiries the Executive Director
17 of Workforce West Virginia and the Insurance Commissioner shall
18 make response to the Department of Environmental Protection within
19 fifteen calendar days; otherwise, failure to respond timely is
20 considered to indicate the applicant is in compliance and the
21 failure will not be used to preclude issuance of the permit.

22 (B) It is a requirement of this article that each operator
23 maintain continued compliance with the provisions of section five,
24 article two, chapter twenty-three of this code and section six-c,

1 article two, chapter twenty-one-a of this code and provide proof of
2 compliance to the ~~director~~ secretary on a quarterly basis.

3 **§22-3-19. Permit revision and renewal requirements; incidental**
4 **boundary revisions; requirements for transfer;**
5 **assignment and sale of permit rights; and operator**
6 **reassignment; and procedures to obtain inactive**
7 **status.**

8 (a) (1) Any valid permit issued pursuant to this article
9 carries with it the right of successive renewal upon expiration
10 with respect to areas within the boundaries of the existing permit.

11 The holders of the permit may apply for renewal and the renewal
12 shall be issued: *Provided*, That on application for renewal, the
13 burden is on the opponents of renewal, unless it is established
14 that and written findings by the ~~director~~ secretary are made that:

15 (A) The terms and conditions of the existing permit are not being
16 satisfactorily met: *Provided, however*, That if the permittee is
17 required to modify operations pursuant to mining or reclamation
18 requirements which become applicable after the original date of
19 permit issuance, the permittee shall be provided an opportunity to
20 submit a schedule allowing a reasonable period to comply with such
21 revised requirements; (B) the present surface-mining operation is
22 not in compliance with the applicable environmental protection
23 standards of this article; (C) the renewal requested substantially

1 jeopardizes the operator's continuing responsibility on existing
2 permit areas; (D) the operator has not provided evidence that the
3 bond in effect for said operation will continue in effect for any
4 renewal requested as required pursuant to sections eleven or twelve
5 of this article; or (E) any additional revised or updated
6 information as required pursuant to rules promulgated by the
7 ~~director~~ secretary has not been provided.

8 (2) If an application for renewal of a valid permit includes
9 a proposal to extend the surface-mining operation beyond the
10 boundaries authorized in the existing permit, that portion of the
11 application for renewal which addresses any new land area is
12 subject to the full standards of this article, which includes, but
13 is not limited to: (A) Adequate bond; (B) a map showing the
14 disturbed area and facilities; and (C) a reclamation plan.

15 (3) Any permit renewal shall be for a term not to exceed the
16 period of time for which the original permit was issued.
17 Application for permit renewal shall be made at least one hundred
18 twenty days prior to the expiration of the valid permit.

19 (4) Any renewal application for an active permit shall be on
20 forms prescribed by the ~~director~~ secretary and shall be accompanied
21 by a filing fee of ~~two thousand dollars~~ \$3,000. The application
22 shall contain such information as the ~~director~~ secretary requires
23 pursuant to rule.

24 (b) (1) During the term of the permit, the permittee may submit

1 to the ~~director~~ secretary an application for a revision of the
2 permit, together with a revised reclamation plan.

3 (2) An application for a significant revision of a permit is
4 subject to all requirements of this article and rules promulgated
5 pursuant thereto and shall be accompanied by a filing fee of \$2000.

6 (3) Any extension to an area already covered by the permit,
7 except incidental boundary revisions, shall be made by application
8 for another permit. If the permittee desires to add the new area
9 to his or her existing permit in order to have existing areas and
10 new areas under one permit, the ~~director~~ secretary may so amend the
11 original permit: *Provided*, That the application for the new area
12 is subject to all procedures and requirements applicable to
13 applications for original permits under this article and a filing
14 fee of \$550.

15 (c) The ~~director~~ secretary shall review outstanding permits of
16 a five-year term before the end of the third year of the permit.
17 Other permits shall be reviewed within the time established by
18 rules. The ~~director~~ secretary may require reasonable revision or
19 modification of the permit following review: *Provided*, That such
20 revision or modification shall be based upon written findings and
21 shall be preceded by notice to the permittee of an opportunity for
22 hearing.

23 (d) No transfer, assignment or sale of the rights granted
24 under any permit issued pursuant to this article ~~shall~~ may be made

1 without the prior written approval of the ~~director~~ secretary,
2 application for which shall be accompanied by a filing fee of
3 \$1,500 for transfer or \$1,500 for assignment.

4 (e) Each request for inactive status shall be submitted on
5 forms prescribed by the secretary, shall be accompanied by a filing
6 fee of \$2000, and shall be granted in accordance with the procedure
7 established in the *Surface Mining and Reclamation Rule.*

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