

1 **H. B. 2514**

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3 (By Delegates Williams and Canterbury)  
4 [Introduced January 17, 2011; referred to the  
5 Committee on Energy, Industry and Labor, Economic  
6 Development and Small Business then the Judiciary.]  
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10 A BILL to amend and reenact §22-3-10 and §22-3-13 of the Code of  
11 West Virginia, 1931, as amended, all relating to requiring  
12 reclaimed strip mines to be populated by plants that are  
13 beneficial to the local bee population.

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

15 That §22-3-10 and §22-3-13 of the Code of West Virginia, 1931,  
16 as amended, be amended and reenacted, all to read as follows:

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

18 **§22-3-10. Reclamation plan requirements.**

19 (a) Each reclamation plan submitted as part of a surface  
20 mining permit application shall include, in the degree of detail  
21 necessary to demonstrate that reclamation required by this article  
22 can be accomplished, a statement of:

23 (1) The identification of the lands subject to surface mining  
24 over the estimated life of these operations and the size, sequence  
25 and timing of the operations for which it is anticipated that  
26 individual permits for mining will be sought;

1           (2) The condition of the land to be covered by the permit  
2 prior to any mining, including: (A) The uses existing at the time  
3 of the application and, if the land has a history of previous  
4 mining, the uses which preceded any mining; (B) the capability of  
5 the land prior to any mining to support a variety of uses, giving  
6 consideration to soil and foundation characteristics, topography  
7 and vegetation cover and, if applicable, a soil survey prepared  
8 pursuant to subdivision (15), subsection (a), section nine of this  
9 article; and (C) the best information available on the productivity  
10 of the land prior to mining, including appropriate classification  
11 as prime farmlands and the average yield of food, fiber, forage or  
12 wood products from the lands obtained under high levels of  
13 management;

14           (3) The use which is proposed to be made of the land following  
15 reclamation, including a discussion of the utility and capacity of  
16 the reclaimed land to support a variety of alternative uses,  
17 including, but not limited to, renewable and alternative energy  
18 uses, residential uses, highway uses, industrial uses, commercial  
19 uses, agricultural uses, public facility uses or recreational  
20 facility uses, and the relationship of the use to existing land use  
21 policies and plans and the comments of any owner of the surface,  
22 other state agencies and local governments which would have to  
23 initiate, implement, approve or authorize the proposed use of the  
24 land following reclamation;

25           (A) The post-mining land use proposed in any reclamation plan  
26 for lands proposed to be mined by surface mining methods shall

1 comport with the land use that is specified in the approved master  
2 land use plan for the area as provided in section nine, article  
3 two-a, chapter five-b of this code: *Provided*, That the secretary  
4 may approve an alternative post-mining land use where the applicant  
5 demonstrates that:

6 (i) The proposed post-mining land use is a higher and better  
7 use than the land use specified in the approved master land use  
8 plan;

9 (ii) Site-specific conditions make attainment of a post-mining  
10 land use which comports with the land use that is specified in the  
11 approved master land use plan for the area impractical; or

12 (iii) The post-mining land use specified in the approved  
13 master land use plan would substantially interfere with the future  
14 extraction of a mineable coal bed, as that term is defined in rules  
15 promulgated by the Tax Commissioner relating to the valuation of  
16 active or reserve coal property for ad valorem property tax  
17 purposes, 110 C.S.R. 1I-3 or a successor rule, from the land to be  
18 mined.

19 (B) Existing permits with approved reclamation plans may be  
20 modified by the operator through an appropriate permit revision to  
21 include a post-mining land use which comports with the land use  
22 that is specified in the approved master land use plan for the area  
23 as provided in section nine, article two-a, chapter five-b of this  
24 code;

25 (C) By complying with a master land use plan that has been  
26 approved in accordance with article two-a, chapter five-b of this

1 code, a post-mining land use satisfies the requirements for an  
2 alternative post-mining land use and satisfies the variance  
3 requirements set forth in subsection (c), section thirteen, article  
4 three, chapter twenty-two of this code if applicable to the  
5 proposed use;

6 (4) A detailed description of how the proposed post-mining  
7 land use is to be achieved and the necessary support activities  
8 which may be needed to achieve the proposed land use;

9 (5) The engineering techniques proposed to be used in mining  
10 and reclamation and a description of the major equipment; a plan  
11 for the control of surface water drainage and of water  
12 accumulation; a plan, where appropriate, for backfilling, soil  
13 stabilization and compacting, grading, revegetation and a plan for  
14 soil reconstruction, replacement and stabilization pursuant to the  
15 performance standards in subdivision (7), subsection (b), section  
16 thirteen of this article for those food, forage and forest lands  
17 identified therein; and a statement as to how the operator plans to  
18 comply with each of the applicable requirements set out in section  
19 thirteen or fourteen of this article;

20 (6) A detailed estimated timetable for the accomplishment of  
21 each major step in the reclamation plan;

22 (7) The consideration which has been given to conducting  
23 surface mining operations in a manner consistent with surface owner  
24 plans and applicable state and local land use plans and programs;

25 (8) The steps to be taken to comply with applicable air and  
26 water quality laws and rules and any applicable health and safety

1 standards;

2 (9) The consideration which has been given to developing the  
3 reclamation plan in a manner consistent with local physical  
4 environmental and climatological conditions;

5 (10) All lands, interests in lands or options on the interests  
6 held by the applicant or pending bids on interests in lands by the  
7 applicant, which lands are contiguous to the area to be covered by  
8 the permit;

9 (11) A detailed description of the measures to be taken during  
10 the surface mining and reclamation process to assure the protection  
11 of:

12 (A) The quality of surface and groundwater systems, both on  
13 and off site, from adverse effects of the surface mining operation;

14 (B) The rights of present users to the water; and

15 (C) The quantity of surface and groundwater systems, both on  
16 and off-site, from adverse effects of the surface mining operation  
17 or to provide alternative sources of water where the protection of  
18 quantity cannot be assured.

19 (12) The results of tests borings which the applicant has made  
20 at the area to be covered by the permit or other equivalent  
21 information and data in a form satisfactory to the director,  
22 including the location of subsurface water and an analysis of the  
23 chemical properties, including acid-forming properties of the  
24 mineral and overburden: *Provided*, That information which pertains  
25 only to the analysis of the chemical and physical properties of the  
26 coal, except information regarding the mineral or elemental

1 contents which are potentially toxic in the environment, shall be  
2 kept confidential and not made a matter of public record;

3 (13) The consideration which has been given to maximize the  
4 utilization and conservation of the solid fuel resource being  
5 recovered so that re-affecting the land in the future can be  
6 minimized;

7 (14) A detailed layout of the plants that will be seeded, the  
8 time these plants will bloom and whether the mines will contain  
9 beehives maintained by beekeepers; and

10 ~~(14)~~ (15) Any other requirements as the director may prescribe  
11 by rule.

12 (b) A reclamation plan pending approval as of the effective  
13 date of this section may be amended by the operator to provide for  
14 a post-mining land use that comports with a master land use plan  
15 that has been approved in accordance with article two-a, chapter  
16 five-b of this code.

17 (c) The reclamation plan shall be available to the public for  
18 review except for those portions thereof specifically exempted in  
19 subsection (a) of this section.

20 (d) The amendments to this section by the first extraordinary  
21 session of the Legislature in 2009 are effective upon the approval  
22 of the corresponding amendments to West Virginia's state program,  
23 as that term is defined in the federal Surface Mining Control and  
24 Reclamation Act of 1977, 30 U.S.C. §1291, by the federal Office of  
25 Surface Mining Reclamation and Enforcement.

26 **§22-3-13. General environmental protection performance standards**

1                   **for surface mining; variances.**

2           (a) Any permit issued by the director pursuant to this article  
3 to conduct surface mining operations shall require that the surface  
4 mining operations meet all applicable performance standards of this  
5 article and other requirements set forth in legislative rules  
6 proposed by the director.

7           (b) The following general performance standards are applicable  
8 to all surface mines and require the operation, at a minimum to:

9           (1) Maximize the utilization and conservation of the solid  
10 fuel resource being recovered to minimize re-affecting the land in  
11 the future through surface mining;

12           (2) Restore the land affected to a condition capable of  
13 supporting the uses which it was capable of supporting prior to any  
14 mining, or higher or better uses of which there is reasonable  
15 likelihood so long as the use or uses do not present any actual or  
16 probable hazard to public health or safety or pose any actual or  
17 probable threat of water diminution or pollution and the permit  
18 applicants' declared proposed land use following reclamation is not  
19 considered to be impractical or unreasonable, inconsistent with  
20 applicable land use policies and plans, involves unreasonable delay  
21 in implementation or is violative of federal, state or local law;

22           (3) Except as provided in subsection (c) of this section, with  
23 respect to all surface mines, backfill, compact where advisable to  
24 ensure stability or to prevent leaching of toxic materials, and  
25 grade in order to restore the approximate original contour:

26 *Provided*, That in surface mining which is carried out at the same

1 location over a substantial period of time where the operation  
2 transects the coal deposit, and the thickness of the coal deposits  
3 relative to the volume of the overburden is large and where the  
4 operator demonstrates that the overburden and other spoil and waste  
5 materials at a particular point in the permit area or otherwise  
6 available from the entire permit area is insufficient, giving due  
7 consideration to volumetric expansion, to restore the approximate  
8 original contour, the operator, at a minimum, shall backfill, grade  
9 and compact, where advisable, using all available overburden and  
10 other spoil and waste materials to attain the lowest practicable  
11 grade, but not more than the angle of repose, to provide adequate  
12 drainage and to cover all acid-forming and other toxic materials,  
13 in order to achieve an ecologically sound land use compatible with  
14 the surrounding region: *Provided, however,* That in surface mining  
15 where the volume of overburden is large relative to the thickness  
16 of the coal deposit and where the operator demonstrates that due to  
17 volumetric expansion the amount of overburden and other spoil and  
18 waste materials removed in the course of the mining operation is  
19 more than sufficient to restore the approximate original contour,  
20 the operator shall, after restoring the approximate contour,  
21 backfill, grade and compact, where advisable, the excess overburden  
22 and other spoil and waste materials to attain the lowest grade, but  
23 not more than the angle of repose, and to cover all acid-forming  
24 and other toxic materials, in order to achieve an ecologically  
25 sound land use compatible with the surrounding region and, the  
26 overburden or spoil shall be shaped and graded in a way as to



1 prevent slides, erosion and water pollution and revegetated in  
2 accordance with the requirements of this article: *Provided*  
3 *further*, That the director shall propose rules for legislative  
4 approval in accordance with article three, chapter twenty-nine-a of  
5 this code, governing variances to the requirements for return to  
6 approximate original contour or highwall elimination and where  
7 adequate material is not available from surface mining operations  
8 permitted after the effective date of this article for: (A)  
9 Underground mining operations existing prior to August 3, 1977; or  
10 (B) for areas upon which surface mining prior to July 1, 1977,  
11 created highwalls;

12 (4) Stabilize and protect all surface areas, including spoil  
13 piles, affected by the surface mining operation to effectively  
14 control erosion and attendant air and water pollution;

15 (5) Remove the topsoil from the land in a separate layer,  
16 replace it on the backfill area, or if not utilized immediately,  
17 segregate it in a separate pile from other spoil and, when the  
18 topsoil is not replaced on a backfill area within a time short  
19 enough to avoid deterioration of the topsoil, maintain a successful  
20 vegetative cover by quick growing plants or by other similar means  
21 in order to protect topsoil from wind and water erosion and keep it  
22 free of any contamination by other acid or toxic material:

23 *Provided*, That if topsoil is of insufficient quantity or of poor  
24 quality for sustaining vegetation, or if other strata can be shown  
25 to be more suitable for vegetation requirements, then the operator  
26 shall remove, segregate and preserve in a like manner any other

1 strata which is best able to support vegetation;

2       (6) Restore the topsoil or the best available subsoil which is  
3 best able to support vegetation;

4       (7) Ensure that all prime farmlands are mined and reclaimed in  
5 accordance with the specifications for soil removal, storage,  
6 replacement and reconstruction established by the United States  
7 Secretary of Agriculture and the soil conservation service  
8 pertaining thereto. The operator, at a minimum, shall: (A)  
9 Segregate the A horizon of the natural soil, except where it can be  
10 shown that other available soil materials will create a final soil  
11 having a greater productive capacity, and if not utilized  
12 immediately, stockpile this material separately from other spoil,  
13 and provide needed protection from wind and water erosion or  
14 contamination by other acid or toxic material; (B) segregate the B  
15 horizon of the natural soil, or underlying C horizons or other  
16 strata, or a combination of the horizons or other strata that are  
17 shown to be both texturally and chemically suitable for plant  
18 growth and that can be shown to be equally or more favorable for  
19 plant growth than the B horizon, in sufficient quantities to create  
20 in the regraded final soil a root zone of comparable depth and  
21 quality to that which existed in the natural soil, and if not  
22 utilized immediately, stockpile this material separately from other  
23 spoil and provide needed protection from wind and water erosion or  
24 contamination by other acid or toxic material; (C) replace and  
25 regrade the root zone material described in paragraph (B) of this  
26 subdivision, with proper compaction and uniform depth over the

1 regraded spoil material; and (D) redistribute and grade in a  
2 uniform manner the surface soil horizon described in paragraph (A)  
3 of this subdivision;

4 (8) Create, if authorized in the approved surface mining and  
5 reclamation plan and permit, permanent impoundments of water on  
6 mining sites as part of reclamation activities in accordance with  
7 rules promulgated by the director;

8 (9) Where augering is the method of recovery, seal all auger  
9 holes with an impervious and noncombustible material in order to  
10 prevent drainage except where the director determines that the  
11 resulting impoundment of water in the auger holes may create a  
12 hazard to the environment or the public welfare and safety:  
13 *Provided*, That the director may prohibit auguring if necessary to  
14 maximize the utilization, recoverability or conservation of the  
15 mineral resources or to protect against adverse water quality  
16 impacts;

17 (10) Minimize the disturbances to the prevailing hydrologic  
18 balance at the mine site and in associated off site areas and to  
19 the quality and quantity of water in surface and groundwater  
20 systems both during and after surface mining operations and during  
21 reclamation by: (A) Avoiding acid or other toxic mine drainage by  
22 such measures as, but not limited to: (i) Preventing or removing  
23 water from contact with toxic producing deposits; (ii) treating  
24 drainage to reduce toxic content which adversely affects downstream  
25 water upon being released to water courses; and (iii) casing,  
26 sealing or otherwise managing boreholes, shafts and wells and keep

1 acid or other toxic drainage from entering ground and surface  
2 waters; (B) conducting surface mining operations so as to prevent  
3 to the extent possible, using the best technology currently  
4 available, additional contributions of suspended solids to  
5 streamflow or runoff outside the permit area, but in no event may  
6 contributions be in excess of requirements set by applicable state  
7 or federal law; (C) constructing an approved drainage system  
8 pursuant to paragraph (B) of this subdivision, prior to  
9 commencement of surface mining operations, the system to be  
10 certified by a person approved by the director to be constructed as  
11 designed and as approved in the reclamation plan; (D) avoiding  
12 channel deepening or enlargement in operations requiring the  
13 discharge of water from mines; (E) unless otherwise authorized by  
14 the director, cleaning out and removing temporary or large settling  
15 ponds or other siltation structures after disturbed areas are  
16 revegetated and stabilized, and depositing the silt and debris at  
17 a site and in a manner approved by the director; (F) restoring  
18 recharge capacity of the mined area to approximate premining  
19 conditions; and (G) any other actions prescribed by the director;

20 (11) With respect to surface disposal of mine wastes,  
21 tailings, coal processing wastes and other wastes in areas other  
22 than the mine working excavations, stabilize all waste piles in  
23 designated areas through construction in compacted layers,  
24 including the use of noncombustible and impervious materials if  
25 necessary, and assure the final contour of the waste pile will be  
26 compatible with natural surroundings and that the site will be

1 stabilized and revegetated according to the provisions of this  
2 article;

3 (12) Design, locate, construct, operate, maintain, enlarge,  
4 modify and remove or abandon, in accordance with standards and  
5 criteria developed pursuant to subsection (f) of this section, all  
6 existing and new coal mine waste piles consisting of mine wastes,  
7 tailings, coal processing wastes or other liquid and solid wastes,  
8 and used either temporarily or permanently as dams or embankments;

9 (13) Refrain from surface mining within five hundred feet of  
10 any active and abandoned underground mines in order to prevent  
11 breakthroughs and to protect health or safety of miners: *Provided,*  
12 That the director shall permit an operator to mine near, through or  
13 partially through an abandoned underground mine or closer to an  
14 active underground mine if: (A) The nature, timing and sequencing  
15 of the approximate coincidence of specific surface mine activities  
16 with specific underground mine activities are coordinated jointly  
17 by the operators involved and approved by the director; and (B) the  
18 operations will result in improved resource recovery, abatement of  
19 water pollution or elimination of hazards to the health and safety  
20 of the public: *Provided, however,* That any breakthrough which does  
21 occur shall be sealed;

22 (14) Ensure that all debris, acid-forming materials, toxic  
23 materials or materials constituting a fire hazard are treated or  
24 buried and compacted, or otherwise disposed of in a manner designed  
25 to prevent contamination of ground or surface waters, and that  
26 contingency plans are developed to prevent sustained combustion:

1 *Provided*, That the operator shall remove or bury all metal, lumber,  
2 equipment and other debris resulting from the operation before  
3 grading release;

4 (15) Ensure that explosives are used only in accordance with  
5 existing state and federal law and the rules promulgated by the  
6 director, which shall include provisions to:

7 (A) Maintain for a period of at least three years and make  
8 available for public inspection, upon written request, a log  
9 detailing the location of the blasts, the pattern and depth of the  
10 drill holes, the amount of explosives used per hole and the order  
11 and length of delay in the blasts; and

12 (B) Require that all blasting operations be conducted by  
13 persons certified by the office of explosives and blasting.

14 (16) Ensure that all reclamation efforts proceed in an  
15 environmentally sound manner and as contemporaneously as  
16 practicable with the surface mining operations. Time limits shall  
17 be established by the director requiring backfilling, grading and  
18 planting to be kept current: *Provided*, That where surface mining  
19 operations and underground mining operations are proposed on the  
20 same area, which operations must be conducted under separate  
21 permits, the director may grant a variance from the requirement  
22 that reclamation efforts proceed as contemporaneously as  
23 practicable to permit underground mining operations prior to  
24 reclamation:

25 (A) If the director finds in writing that:

26 (i) The applicant has presented, as part of the permit

1 application, specific, feasible plans for the proposed underground  
2 mining operations;

3 (ii) The proposed underground mining operations are necessary  
4 or desirable to assure maximum practical recovery of the mineral  
5 resource and will avoid multiple disturbance of the surface;

6 (iii) The applicant has satisfactorily demonstrated that the  
7 plan for the underground mining operations conforms to requirements  
8 for underground mining in the jurisdiction and that permits  
9 necessary for the underground mining operations have been issued by  
10 the appropriate authority;

11 (iv) The areas proposed for the variance have been shown by  
12 the applicant to be necessary for the implementing of the proposed  
13 underground mining operations;

14 (v) No substantial adverse environmental damage, either  
15 on-site or off-site, will result from the delay in completion of  
16 reclamation as required by this article; and

17 (vi) Provisions for the off-site storage of spoil will comply  
18 with subdivision (22), subsection (b) of this section;

19 (B) If the director has promulgated specific rules to govern  
20 the granting of the variances in accordance with the provisions of  
21 this subparagraph and has imposed any additional requirements as  
22 the director considers necessary;

23 (C) If variances granted under the provisions of this  
24 paragraph are reviewed by the director not more than three years  
25 from the date of issuance of the permit: *Provided*, That the  
26 underground mining permit shall terminate if the underground

1 operations have not commenced within three years of the date the  
2 permit was issued, unless extended as set forth in subdivision (3),  
3 section eight of this article; and

4 (D) If liability under the bond filed by the applicant with  
5 the director pursuant to subsection (b), section eleven of this  
6 article is for the duration of the underground mining operations  
7 and until the requirements of subsection (g), section eleven and  
8 section twenty-three of this article have been fully complied with;

9 (17) Ensure that the construction, maintenance and post-mining  
10 conditions of access and haul roads into and across the site of  
11 operations will control or prevent erosion and siltation, pollution  
12 of water, damage to fish or wildlife or their habitat, or public or  
13 private property: *Provided*, That access roads constructed for and  
14 used to provide infrequent service to surface facilities, such as  
15 ventilators or monitoring devices, are exempt from specific  
16 construction criteria provided adequate stabilization to control  
17 erosion is achieved through alternative measures;

18 (18) Refrain from the construction of roads or other access  
19 ways up a stream bed or drainage channel or in proximity to the  
20 channel so as to significantly alter the normal flow of water;

21 (19) Establish on the regraded areas, and all other lands  
22 affected, a diverse, effective and permanent vegetative cover of  
23 the same seasonal variety native to the area of land to be affected  
24 or of a fruit, grape or berry producing variety suitable for human  
25 consumption and capable of self-regeneration and plant succession  
26 at least equal in extent of cover to the natural vegetation of the



1 area, except that introduced species may be used in the  
2 revegetation process where desirable or when necessary to achieve  
3 the approved post-mining land use plan;

4 (20) Assume the responsibility for successful revegetation, as  
5 required by subdivision (19) of this subsection, for a period of  
6 not less than five growing seasons, as defined by the director,  
7 after the last year of augmented seeding, fertilizing, irrigation  
8 or other work in order to assure compliance with subdivision (19)  
9 of this subsection: *Provided*, That when the director issues a  
10 written finding approving a long-term agricultural post-mining land  
11 use as a part of the mining and reclamation plan, the director may  
12 grant exception to the provisions of subdivision (19) of this  
13 subsection: *Provided, however*, That when the director approves an  
14 agricultural post-mining land use, the applicable five growing  
15 seasons of responsibility for revegetation begins on the date of  
16 initial planting for the agricultural post-mining land use;

17 On lands eligible for remining assume the responsibility for  
18 successful revegetation, as required by subdivision (19) of this  
19 subsection, for a period of not less than two growing seasons, as  
20 defined by the director after the last year of augmented seeding,  
21 fertilizing, irrigation or other work in order to assure compliance  
22 with subdivision (19) of this subsection;

23 (21) Protect off-site areas from slides or damage occurring  
24 during surface mining operations and not deposit spoil material or  
25 locate any part of the operations or waste accumulations outside  
26 the permit area: *Provided*, That spoil material may be placed

1 outside the permit area, if approved by the director after a  
2 finding that environmental benefits will result from the placing of  
3 spoil material outside the permit area;

4 (22) Place all excess spoil material resulting from  
5 surface-mining activities in a manner that: (A) Spoil is  
6 transported and placed in a controlled manner in position for  
7 concurrent compaction and in a way as to assure mass stability and  
8 to prevent mass movement; (B) the areas of disposal are within the  
9 bonded permit areas and all organic matter is removed immediately  
10 prior to spoil placements; (C) appropriate surface and internal  
11 drainage system or diversion ditches are used to prevent spoil  
12 erosion and movement; (D) the disposal area does not contain  
13 springs, natural water courses or wet weather seeps, unless lateral  
14 drains are constructed from the wet areas to the main under drains  
15 in a manner that filtration of the water into the spoil pile will  
16 be prevented; (E) if placed on a slope, the spoil is placed upon  
17 the most moderate slope among those upon which, in the judgment of  
18 the director, the spoil could be placed in compliance with all the  
19 requirements of this article, and is placed, where possible, upon,  
20 or above, a natural terrace, bench or berm, if placement provides  
21 additional stability and prevents mass movement; (F) where the toe  
22 of the spoil rests on a downslope, a rock toe buttress, of  
23 sufficient size to prevent mass movement, is constructed; (G) the  
24 final configuration is compatible with the natural drainage pattern  
25 and surroundings and suitable for intended uses; (H) the design of  
26 the spoil disposal area is certified by a qualified registered

1 professional engineer in conformance with professional standards;  
2 and (I) all other provisions of this article are met: *Provided,*  
3 That where the excess spoil material consists of at least eighty  
4 percent, by volume, sandstone, limestone or other rocks that do not  
5 slake in water and will not degrade to soil material, the director  
6 may approve alternate methods for disposal of excess spoil  
7 material, including fill placement by dumping in a single lift, on  
8 a site specific basis: *Provided, however,* That the services of a  
9 qualified registered professional engineer experienced in the  
10 design and construction of earth and rockfill embankment are  
11 utilized: *Provided further,* That the approval may not be  
12 unreasonably withheld if the site is suitable;

13 (23) Meet any other criteria necessary to achieve reclamation  
14 in accordance with the purposes of this article, taking into  
15 consideration the physical, climatological and other  
16 characteristics of the site;

17 (24) To the extent possible, using the best technology  
18 currently available, minimize disturbances and adverse impacts of  
19 the operation on fish, wildlife and related environmental values,  
20 and achieve enhancement of these resources where practicable;

21 (25) Seed the surface mine with plants that will bloom at peak  
22 times of dearth and that are beneficial to the local bee  
23 population; and

24 ~~(25)~~ (26) Retain a natural barrier to inhibit slides and  
25 erosion on permit areas where outcrop barriers are required:  
26 *Provided,* That constructed barriers may be allowed where: (A)

1 Natural barriers do not provide adequate stability; (B) natural  
2 barriers would result in potential future water quality  
3 deterioration; and (C) natural barriers would conflict with the  
4 goal of maximum utilization of the mineral resource: *Provided,*  
5 *however,* That at a minimum, the constructed barrier shall be of  
6 sufficient width and height to provide adequate stability and the  
7 stability factor shall equal or exceed that of the natural outcrop  
8 barrier: *Provided further,* That where water quality is paramount,  
9 the constructed barrier shall be composed of impervious material  
10 with controlled discharge points.

11 (c) (1) The director may prescribe procedures pursuant to  
12 which he or she may permit surface mining operations for the  
13 purposes set forth in subdivision (3) of this subsection.

14 (2) Where an applicant meets the requirements of subdivisions  
15 (3) and (4) of this subsection, a permit without regard to the  
16 requirement to restore to approximate original contour set forth in  
17 subsection (b) or (d) of this section may be granted for the  
18 surface mining of coal where the mining operation will remove an  
19 entire coal seam or seams running through the upper fraction of a  
20 mountain, ridge or hill, except as provided in subparagraph (A),  
21 subdivision (4) of this subsection, by removing all of the  
22 overburden and creating a level plateau or a gently rolling contour  
23 with no highwalls remaining, and capable of supporting post-mining  
24 uses in accordance with the requirements of this subsection.

25 (3) In cases where an industrial, commercial, agricultural,  
26 commercial forestry, residential, or public facility including

1 recreational uses is proposed for the post-mining use of the  
2 affected land, the director may grant a permit for a surface mining  
3 operation of the nature described in subdivision (2) of this  
4 subsection where: (A) The proposed post-mining land use is  
5 determined to constitute an equal or better use of the affected  
6 land, as compared with premining use; (B) the applicant presents  
7 specific plans for the proposed post-mining land use and  
8 appropriate assurances that the use will be: (i) Compatible with  
9 adjacent land uses; (ii) practicable with respect to achieving the  
10 proposed use; (iii) obtainable according to data regarding expected  
11 need and market; (iv) supported by commitments from public agencies  
12 where appropriate; (v) practicable with respect to private  
13 financial capability for completion of the proposed use; (vi)  
14 planned pursuant to a schedule attached to the reclamation plan so  
15 as to integrate the mining operation and reclamation with the  
16 post-mining land use; and (vii) designed by a person approved by  
17 the director in conformance with standards established to assure  
18 the stability, drainage and configuration necessary for the  
19 intended use of the site; (C) the proposed use would be compatible  
20 with adjacent land uses, and existing state and local land use  
21 plans and programs; (D) the director provides the county commission  
22 of the county in which the land is located and any state or federal  
23 agency which the director, in his or her discretion, determines to  
24 have an interest in the proposed use, an opportunity of not more  
25 than sixty days to review and comment on the proposed use; and (E)  
26 all other requirements of this article will be met.

1           (4) In granting any permit pursuant to this subsection, the  
2 director shall require that: (A) A natural barrier be retained to  
3 inhibit slides and erosion on permit areas where outcrop barriers  
4 are required: *Provided*, That constructed barriers may be allowed  
5 where: (i) Natural barriers do not provide adequate stability;  
6 (ii) natural barriers would result in potential future water  
7 quality deterioration; and (iii) natural barriers would conflict  
8 with the goal of maximum utilization of the mineral resource:  
9 *Provided, however*, That at a minimum, the constructed barrier shall  
10 be sufficient in width and height to provide adequate stability and  
11 the stability factor shall equal or exceed that of the natural  
12 outcrop barrier: *Provided further*, That where water quality is  
13 paramount, the constructed barrier shall be composed of impervious  
14 material with controlled discharge points; (B) the reclaimed area  
15 is stable; (C) the resulting plateau or rolling contour drains  
16 inward from the out slopes except at specific points; (D) no damage  
17 will be done to natural watercourses; (E) spoil will be placed on  
18 the mountaintop bench as is necessary to achieve the planned  
19 post-mining land use: *And provided further*, That all excess spoil  
20 material not retained on the mountaintop shall be placed in  
21 accordance with the provisions of subdivision (22), subsection (b)  
22 of this section; and (F) ensure stability of the spoil retained on  
23 the mountaintop and meet the other requirements of this article.

24           (5) All permits granted under the provisions of this  
25 subsection shall be reviewed not more than three years from the  
26 date of issuance of the permit; unless the applicant affirmatively

1 demonstrates that the proposed development is proceeding in  
2 accordance with the terms of the approved schedule and reclamation  
3 plan.

4 (d) In addition to those general performance standards  
5 required by this section, when surface mining occurs on slopes of  
6 twenty degrees or greater, or on lesser slopes as may be defined by  
7 rule after consideration of soil and climate, no debris, abandoned  
8 or disabled equipment, spoil material or waste mineral matter will  
9 be placed on the natural downslope below the initial bench or  
10 mining cut: *Provided*, That soil or spoil material from the initial  
11 cut of earth in a new surface mining operation may be placed on a  
12 limited specified area of the downslope below the initial cut if  
13 the permittee can establish to the satisfaction of the director  
14 that the soil or spoil will not slide and that the other  
15 requirements of this section can still be met.

16 (e) The director may propose rules for legislative approval in  
17 accordance with article three, chapter twenty-nine-a of this code,  
18 that permit variances from the approximate original contour  
19 requirements of this section: *Provided*, That the watershed control  
20 of the area is improved: *Provided, however*, That complete  
21 backfilling with spoil material is required to completely cover the  
22 highwall, which material will maintain stability following mining  
23 and reclamation.

24 (f) The director shall propose rules for legislative approval  
25 in accordance with article three, chapter twenty-nine-a of this  
26 code, for the design, location, construction, maintenance,

1 operation, enlargement, modification, removal and abandonment of  
2 new and existing coal mine waste piles. In addition to engineering  
3 and other technical specifications, the standards and criteria  
4 developed pursuant to this subsection shall include provisions for  
5 review and approval of plans and specifications prior to  
6 construction, enlargement, modification, removal or abandonment;  
7 performance of periodic inspections during construction; issuance  
8 of certificates of approval upon completion of construction;  
9 performance of periodic safety inspections; and issuance of notices  
10 and orders for required remedial or maintenance work or affirmative  
11 action: *Provided*, That whenever the director finds that any coal  
12 processing waste pile constitutes an imminent danger to human life,  
13 he or she may, in addition to all other remedies and without the  
14 necessity of obtaining the permission of any person prior or  
15 present who operated or operates a pile or the landowners involved,  
16 enter upon the premises where any coal processing waste pile exists  
17 and may take or order to be taken any remedial action that may be  
18 necessary or expedient to secure the coal processing waste pile and  
19 to abate the conditions which cause the danger to human life:  
20 *Provided, however*, That the cost reasonably incurred in any  
21 remedial action taken by the director under this subsection may be  
22 paid for initially by funds appropriated to the division for these  
23 purposes, and the sums expended shall be recovered from any  
24 responsible operator or landowner, individually or jointly, by suit  
25 initiated by the Attorney General at the request of the director.  
26 For purposes of this subsection "operates" or "operated" means to



1 enter upon a coal processing waste pile, or part of a coal  
2 processing waste pile, for the purpose of disposing, depositing,  
3 dumping coal processing wastes on the pile or removing coal  
4 processing waste from the pile, or to employ a coal processing  
5 waste pile for retarding the flow of or for the impoundment of  
6 water.

NOTE: The purpose of this bill is to require reclaimed strip mines to be populated by plants that are beneficial to the local bee population.

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