

COMMITTEE SUBSTITUTE

FOR

# **H. B. 2955**

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(BY DELEGATES CAPUTO AND BARKER)

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(Originating in the House Committee on Finance.)  
[February 24, 2011]

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

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

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

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

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

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

16 water quality, or that the operator has failed to satisfactorily  
17 reclaim other prospecting sites, or that there has been an  
18 abuse of prospecting by previous prospecting operations in  
19 the area.

20 (b) Notice of intention to prospect shall be made in  
21 writing on forms prescribed by the ~~director~~ secretary and  
22 shall be signed and verified by the applicant. The notice  
23 shall be accompanied by: (1) A United States Geological  
24 Survey topographic map showing by proper marking the crop  
25 line and the name, where known, of the seam or seams to be  
26 prospected; ~~and~~ (2) a filing fee of \$2000; and (3) a bond, or  
27 cash, or collateral securities or certificates of the same type  
28 and form and in the same manner as provided in section  
29 eleven of this article, in the amount of five hundred dollars  
30 per acre or fraction thereof for the total estimated disturbed  
31 area. If ~~such a~~ a bond is used, it shall be payable to the State  
32 of West Virginia and conditioned that the operator faithfully  
33 perform the requirements of this article as they relate to  
34 backfilling and revegetation of the disturbed area.

35 (c) Any person prospecting under the provisions of this  
36 section shall ensure that ~~such~~ the prospecting operation is  
37 conducted in accordance with the performance standards in  
38 section thirteen of this article for all lands disturbed in  
39 explorations, including excavations, roads, drill holes, and  
40 the removal of necessary facilities and equipment.

41 (d) Information submitted to the ~~director~~ secretary  
42 pursuant to this section as confidential, concerning trade  
43 secrets or privileged commercial or financial information,  
44 which relates to the competitive rights of the person or entity  
45 intended to prospect the described area, is not available for  
46 public examination.

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

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

54 approval of the ~~director~~ secretary. Such approval shall be  
55 requested by the operator on forms prescribed by the ~~director~~  
56 secretary. The ~~director~~ secretary shall promulgate rules  
57 governing such operations and setting forth information  
58 required in the application for approval. Each such  
59 application shall be accompanied by a \$2000 filing fee.

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

64 (h) ~~In the event~~ If an operator desires to mine the area  
65 currently being prospected, and has requested and received  
66 an appropriate surface mine application (S.M.A.) number, the  
67 ~~director~~ secretary may permit the postponement of the  
68 reclamation of the area prospected. Any part of a  
69 prospecting operation, where reclamation has not been  
70 postponed as provided above, shall be reclaimed within a  
71 period of three months from disturbance.

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

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

1 (a) No person may engage in surface mining operations  
2 unless he or she has first obtained a permit from the ~~director~~  
3 secretary 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  
8 obtain necessary financing for equipment and the opening of  
9 the operation, and if the application is full and complete for  
10 the specified longer term, the ~~director~~ secretary may extend  
11 a permit for a longer term: *Provided, however*, That subject  
12 to the prior approval of the ~~director~~ secretary, with the  
13 approval being subject to the provisions of subsection (c),

14 section eighteen of this article, a successor in interest to a  
15 permittee who applies for a new permit, or transfer of a  
16 permit, within thirty days of succeeding to the interest and  
17 who is able to obtain the bond coverage of the original  
18 permittee, may continue surface mining and reclamation  
19 operations according to the approved mining and reclamation  
20 plan of the original permittee until the successor's permit  
21 application or application for transfer is granted or denied.

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

23 (3) A permit terminates if the permittee has not  
24 commenced the surface mining operations covered by the  
25 permit within three years of the date the permit was issued:  
26 *Provided*, That the ~~director~~ secretary may grant reasonable  
27 extensions of time upon a timely showing that the extensions  
28 are necessary by reason of litigation precluding  
29 commencement, or threatening substantial economic loss to  
30 the permittee, or by reason of conditions beyond the control  
31 and without the fault or negligence of the permittee:  
32 *Provided, however*, That with respect to coal to be mined for

33 use in a synthetic fuel facility or specific major electric-  
34 generating facility, the permittee shall be considered to have  
35 commenced surface mining operations at the time the  
36 construction of the synthetic fuel or generating facility is  
37 initiated.

38 (4) Each application for a new surface mining permit  
39 filed pursuant to this article shall be accompanied by a fee of  
40 ~~\$1,000~~ \$3,500. All permit fees and renewal fees provided in  
41 this section or elsewhere in this article shall be collected by  
42 the ~~director~~ secretary and deposited with the Treasurer of the  
43 State of West Virginia to the credit of the Operating Permit  
44 Fees Fund and shall be used, upon requisition of the ~~director~~  
45 secretary, for the administration of this article.

46 (5) Prior to the issuance of any permit, the ~~director~~  
47 secretary shall ascertain from the Commissioner of the  
48 Division of Labor whether the applicant is in compliance  
49 with section fourteen, article five, chapter twenty-one of this  
50 code. Upon issuance of the permit, the ~~director~~ secretary  
51 shall forward a copy to the Commissioner of the Division of



52 Labor, who shall assure continued compliance under the  
53 permit.

54 (6) (A) Prior to the issuance of any permit the ~~director~~  
55 secretary shall ascertain from the Executive Director of  
56 Workforce West Virginia and the Insurance Commissioner  
57 whether the applicant is in compliance with the provisions of  
58 section six-c, article two, chapter twenty-one-a of this code  
59 and section five, article two, chapter twenty-three of this  
60 code with regard to any required subscription to the  
61 Unemployment Compensation Fund or to the Workers'  
62 Compensation Fund, the payment of premiums and other  
63 charges to the fund, the timely filing of payroll reports and  
64 the maintenance of adequate deposits. If the applicant is  
65 delinquent or defaulted, or has been terminated by the  
66 executive director or the Insurance Commissioner, the permit  
67 may not be issued until the applicant returns to compliance  
68 or is restored by the executive director or the Insurance  
69 Commissioner under a reinstatement agreement: *Provided,*  
70 That in all inquiries the Executive Director of Workforce

71 West Virginia and the Insurance Commissioner shall make  
72 response to the Department of Environmental Protection  
73 within fifteen calendar days; otherwise, failure to respond  
74 timely is considered to indicate the applicant is in compliance  
75 and the failure will not be used to preclude issuance of the  
76 permit.

77 (B) It is a requirement of this article that each operator  
78 maintain continued compliance with the provisions of section  
79 five, article two, chapter twenty-three of this code and  
80 section six-c, article two, chapter twenty-one-a of this code  
81 and provide proof of compliance to the ~~director~~ secretary on  
82 a quarterly basis.

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

1 (a) (1) Any valid permit issued pursuant to this article  
2 carries with it the right of successive renewal upon expiration  
3 with respect to areas within the boundaries of the existing  
4 permit. The holders of the permit may apply for renewal and

5 the renewal shall be issued: *Provided*, That on application  
6 for renewal, the burden is on the opponents of renewal,  
7 unless it is established that and written findings by the  
8 ~~director~~ secretary are made that: (A) The terms and  
9 conditions of the existing permit are not being satisfactorily  
10 met: *Provided, however*, That if the permittee is required to  
11 modify operations pursuant to mining or reclamation  
12 requirements which become applicable after the original date  
13 of permit issuance, the permittee shall be provided an  
14 opportunity to submit a schedule allowing a reasonable  
15 period to comply with such revised requirements; (B) the  
16 present surface-mining operation is not in compliance with  
17 the applicable environmental protection standards of this  
18 article; (C) the renewal requested substantially jeopardizes  
19 the operator's continuing responsibility on existing permit  
20 areas; (D) the operator has not provided evidence that the  
21 bond in effect for said operation will continue in effect for  
22 any renewal requested as required pursuant to sections eleven  
23 or twelve of this article; or (E) any additional revised or

24 updated information as required pursuant to rules  
25 promulgated by the ~~director~~ secretary has not been provided.

26 (2) If an application for renewal of a valid permit  
27 includes a proposal to extend the surface-mining operation  
28 beyond the boundaries authorized in the existing permit, that  
29 portion of the application for renewal which addresses any  
30 new land area is subject to the full standards of this article,  
31 which includes, but is not limited to: (A) Adequate bond; (B)  
32 a map showing the disturbed area and facilities; and (C) a  
33 reclamation plan.

34 (3) Any permit renewal shall be for a term not to exceed  
35 the period of time for which the original permit was issued.  
36 Application for permit renewal shall be made at least one  
37 hundred twenty days prior to the expiration of the valid  
38 permit.

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

44 (b)(1) During the term of the permit, the permittee may  
45 submit to the ~~director~~ secretary an application for a revision  
46 of the permit, together with a revised reclamation plan.

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

51 (3) Any extension to an area already covered by the  
52 permit, except incidental boundary revisions, shall be made  
53 by application for another permit. If the permittee desires to  
54 add the new area to his or her existing permit in order to have  
55 existing areas and new areas under one permit, the ~~director~~  
56 secretary may so amend the original permit: *Provided*, That  
57 the application for the new area is subject to all procedures  
58 and requirements applicable to applications for original  
59 permits under this article and a filing fee of \$550.

60 (c) The ~~director~~ secretary shall review outstanding  
61 permits of a five-year term before the end of the third year of  
62 the permit. Other permits shall be reviewed within the time

63 established by rules. The ~~director~~ secretary may require  
64 reasonable revision or modification of the permit following  
65 review: *Provided*, That such revision or modification shall  
66 be based upon written findings and shall be preceded by  
67 notice to the permittee of an opportunity for hearing.

68 (d) No transfer, assignment or sale of the rights granted  
69 under any permit issued pursuant to this article ~~shall~~ may be  
70 made without the prior written approval of the ~~director~~  
71 secretary, application for which shall be accompanied by a  
72 filing fee of \$1,500 for transfer or \$1,500 for assignment.

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