

H. B. 4519

(By Delegate Hall, Hunt and Barker)

[By Request of the Department of
Environmental Protection]

[Introduced February 14, 2012; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §22-3-11 of the Code of West Virginia,
1931, as amended, relating to the Surface Coal Mining and
Reclamation Act; special reclamation tax and funds; and
continuing and reimposing the special reclamation tax on clean
coal mined at an increased rate.

Be it enacted by the Legislature of West Virginia:

That §22-3-11 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.

**§22-3-11. Bonds; amount and method of bonding; bonding
requirements; special reclamation tax and funds;
prohibited acts; period of bond liability.**

(a) After a surface mining permit application has been
approved pursuant to this article, but before a permit has been
issued, each operator shall furnish a penal bond, on a form to be

1 prescribed and furnished by the secretary, payable to the State of
2 West Virginia and conditioned upon the operator faithfully
3 performing all of the requirements of this article and of the
4 permit. The penal amount of the bond shall be not less than \$1,000
5 nor more than \$5,000 for each acre or fraction of an acre:
6 *Provided*, That the minimum amount of bond furnished for any type of
7 reclamation bonding shall be \$10,000. The bond shall cover: (1)
8 The entire permit area; or (2) that increment of land within the
9 permit area upon which the operator will initiate and conduct
10 surface mining and reclamation operations within the initial term
11 of the permit. If the operator chooses to use incremental bonding,
12 as succeeding increments of surface mining and reclamation
13 operations are to be initiated and conducted within the permit
14 area, the operator shall file with the secretary an additional bond
15 or bonds to cover the increments in accordance with this section:
16 *Provided, however*, That once the operator has chosen to proceed
17 with bonding either the entire permit area or with incremental
18 bonding, the operator shall continue bonding in that manner for the
19 term of the permit.

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

24 (c) (1) The form of the bond shall be approved by the

1 secretary and may include, at the option of the operator, surety
2 bonding, collateral bonding (including cash and securities),
3 establishment of an escrow account, self-bonding or a combination
4 of these methods. If collateral bonding is used, the operator may
5 elect to deposit cash or collateral securities or certificates as
6 follows: Bonds of the United States or its possessions of the
7 Federal Land Bank or of the Homeowners' Loan Corporation; full
8 faith and credit general obligation bonds of the State of West
9 Virginia or other states and of any county, district or
10 municipality of the State of West Virginia or other states; or
11 certificates of deposit in a bank in this state, which certificates
12 shall be in favor of the department. The cash deposit or market
13 value of the securities or certificates shall be equal to or
14 greater than the penal sum of the bond. The secretary shall, upon
15 receipt of any deposit of cash, securities or certificates,
16 promptly place the same with the Treasurer of the State of West
17 Virginia whose duty it is to receive and hold the deposit in the
18 name of the state in trust for the purpose for which the deposit is
19 made when the permit is issued. The operator making the deposit is
20 entitled, from time to time, to receive from the State Treasurer,
21 upon the written approval of the secretary, the whole or any
22 portion of any cash, securities or certificates so deposited, upon
23 depositing with him or her in lieu thereof cash or other securities
24 or certificates of the classes specified in this subsection having

1 value equal to or greater than the sum of the bond.

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

8 (d) The secretary may accept the bond of the applicant itself
9 without separate surety when the applicant demonstrates to the
10 satisfaction of the secretary the existence of a suitable agent to
11 receive service of process and a history of financial solvency and
12 continuous operation sufficient for authorization to self-insure.

13 (e) It is unlawful for the owner of surface or mineral rights
14 to interfere with the present operator in the discharge of the
15 operator's obligations to the state for the reclamation of lands
16 disturbed by the operator.

17 (f) All bond releases shall be accomplished in accordance with
18 the provisions of section twenty-three of this article.

19 (g) The Special Reclamation Fund previously created is
20 continued. The Special Reclamation Water Trust Fund is created
21 within the State Treasury into and from which moneys shall be paid
22 for the purpose of assuring a reliable source of capital to reclaim
23 and restore water treatment systems on forfeited sites. The moneys
24 accrued in both funds, any interest earned thereon and yield from

1 investments by the State Treasurer or West Virginia Investment
2 Management Board are reserved solely and exclusively for the
3 purposes set forth in this section and section seventeen, article
4 one of this chapter. The funds shall be administered by the
5 secretary who is authorized to expend the moneys in both funds for
6 the reclamation and rehabilitation of lands which were subjected to
7 permitted surface mining operations and abandoned after August 3,
8 1977, where the amount of the bond posted and forfeited on the land
9 is less than the actual cost of reclamation, and where the land is
10 not eligible for abandoned mine land reclamation funds under
11 article two of this chapter. The secretary shall develop a long-
12 range planning process for selection and prioritization of sites to
13 be reclaimed so as to avoid inordinate short-term obligations of
14 the assets in both funds of such magnitude that the solvency of
15 either is jeopardized. The secretary may use both funds for the
16 purpose of designing, constructing and maintaining water treatment
17 systems when they are required for a complete reclamation of the
18 affected lands described in this subsection. The secretary may
19 also expend an amount not to exceed ten percent of the total annual
20 assets in both funds to implement and administer the provisions of
21 this article and, as they apply to the Surface Mine Board, articles
22 one and four, chapter twenty-two-b of this code.

23 (h) (1) For tax periods commencing on and after July 1, ~~2009~~
24 2012, every person conducting coal surface mining shall remit a

1 special reclamation tax of ~~fourteen and four-tenths cents~~ twenty-
2 seven and nine-tenths per ton of clean coal mined, the proceeds of
3 which shall be allocated by the secretary for deposit in the
4 Special Reclamation Fund and the Special Reclamation Water Trust
5 Fund. Fifteen cents of that amount shall be deposited into the
6 Special Reclamation Water Trust Fund. The tax shall be levied upon
7 each ton of clean coal severed or clean coal obtained from refuse
8 pile and slurry pond recovery or clean coal from other mining
9 methods extracting a combination of coal and waste material as part
10 of a fuel supply. Beginning with the tax period commencing on July
11 1, 2009, and every two years thereafter, the special reclamation
12 tax shall be reviewed by the Legislature to determine whether the
13 tax should be continued: *Provided*, That the tax may not be reduced
14 until the Special Reclamation Fund and Special Reclamation Water
15 Trust Fund have sufficient moneys to meet the reclamation
16 responsibilities of the state established in this section.

17 (2) In managing the Special Reclamation Program, the secretary
18 shall: (A) Pursue cost-effective alternative water treatment
19 strategies; and (B) conduct formal actuarial studies every two
20 years and conduct informal reviews annually on the Special
21 Reclamation Fund and Special Reclamation Water Trust Fund.

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

23 (A) Determine the feasibility of creating an alternate
24 program, on a voluntary basis, for financially sound operators by

1 which those operators pay an increased tax into the Special
2 Reclamation Fund in exchange for a maximum per-acre bond that is
3 less than the maximum established in subsection (a) of this
4 section;

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

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

16 (4) If the secretary determines that the alternative program,
17 the incremental bonding program or the water reclamation account or
18 bonding programs reasonably assure that sufficient funds will be
19 available to complete the reclamation of a forfeited site and that
20 the Special Reclamation Fund will remain fiscally stable, the
21 secretary is authorized to propose legislative rules in accordance
22 with article three, chapter twenty-nine-a of this code to implement
23 an alternate program, a water reclamation account or bonding
24 program or other funding mechanisms or a combination thereof.

1 (i) This special reclamation tax shall be collected by the
2 State Tax Commissioner in the same manner, at the same time and
3 upon the same tonnage as the minimum severance tax imposed by
4 article twelve-b, chapter eleven of this code is collected:
5 *Provided*, That under no circumstance shall the special reclamation
6 tax be construed to be an increase in either the minimum severance
7 tax imposed by said article or the severance tax imposed by article
8 thirteen of said chapter.

9 (j) Every person liable for payment of the special reclamation
10 tax shall pay the amount due without notice or demand for payment.

11 (k) The Tax Commissioner shall provide to the secretary a
12 quarterly listing of all persons known to be delinquent in payment
13 of the special reclamation tax. The secretary may take the
14 delinquencies into account in making determinations on the
15 issuance, renewal or revision of any permit.

16 (l) The Tax Commissioner shall deposit the moneys collected
17 with the Treasurer of the State of West Virginia to the credit of
18 the Special Reclamation Fund and Special Reclamation Water Trust
19 Fund.

20 (m) At the beginning of each quarter, the secretary shall
21 advise the State Tax Commissioner and the Governor of the assets,
22 excluding payments, expenditures and liabilities, in both funds.

23 (n) To the extent that this section modifies any powers,
24 duties, functions and responsibilities of the department that may

1 require approval of one or more federal agencies or officials in
2 order to avoid disruption of the federal-state relationship
3 involved in the implementation of the federal Surface Mining
4 Control and Reclamation Act, 30 U.S.C. §1270 by the state, the
5 modifications will become effective upon the approval of the
6 modifications by the appropriate federal agency or official.

NOTE: The purpose of this bill is to continue and reimpose the special reclamation tax. It also increases the rate from 14.4 cents to 27.9 cents per ton of clean coal mined.

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