

1 **ENROLLED**

2 **Senate Bill No. 497**

3 (BY SENATORS BEACH, D. FACEMIRE, KIRKENDOLL AND MILLER)

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5 [Passed March 10, 2012; in effect ninety days from passage.]  
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10 AN ACT to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new section, designated §22-3-33, relating to  
12 the award of attorney fees and costs by the Surface Mine Board  
13 and courts.

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

15 That the Code of West Virginia, 1931, as amended, be amended  
16 by adding thereto a new section, designated §22-3-33, to read as  
17 follows:

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

19 **§22-3-33. Attorney fees and costs.**

20 (a) As a result of any administrative proceeding under this  
21 article, at the request of any person, a sum equal to the aggregate  
22 amount of all costs and expenses, including attorney fees, as  
23 determined by the court or the Surface Mine Board to have been

1 reasonably incurred by the requesting person for or in connection  
2 with his or her participation in the administrative proceeding,  
3 including any judicial review of agency actions, may be assessed  
4 against either party as the court, resulting from judicial review  
5 or the Surface Mine Board, resulting from administrative  
6 proceedings, considers proper.

7       (b) On a finding that a claim was brought in bad faith or for  
8 the purposes of harassment, the Surface Mine Board or the court,  
9 whichever is appropriate, may award to the defendant or respondent,  
10 however designated, a sum equal to the aggregate amount of all  
11 costs and expenses, including attorney fees, as determined to have  
12 been reasonably incurred.

13       (c) The secretary shall propose rules for legislative approval  
14 in accordance with the provisions of article three, chapter twenty-  
15 nine-a of this code that are necessary to implement the provisions  
16 of this section.