

1 ENROLLED

2 COMMITTEE SUBSTITUTE

3 FOR

4 H. B. 2352

5 (By R. Phillips, Stowers, Skaff and Boggs)

6 [Passed April 13, 2013; in effect ninety days from passage.]

7  
8 AN ACT to amend and reenact §22-3-11 of the Code of West Virginia,  
9 1931, as amended, relating generally to bonding and special  
10 reclamation tax for coal mining permits; providing tax  
11 incentives for mine operators who reclaim bond forfeiture  
12 sites.

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

14 That §22-3-11 of the Code of West Virginia, 1931, as amended,  
15 be amended and reenacted to read as follows:

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

17 **§22-3-11. Bonds; amount and method of bonding; bonding**  
18 **requirements; special reclamation tax and funds; prohibited**  
19 **acts; period of bond liability.**

20 (a) After a surface mining permit application has been  
21 approved pursuant to this article, but before a permit has been  
22 issued, each operator shall furnish a penal bond, on a form to be  
23 prescribed and furnished by the secretary, payable to the State of  
24 West Virginia and conditioned upon the operator faithfully  
25 performing all of the requirements of this article and of the

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

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

21 (c) (1) The form of the bond shall be approved by the  
22 secretary and may include, at the option of the operator, surety  
23 bonding, collateral bonding (including cash and securities),  
24 establishment of an escrow account, self bonding or a combination  
25 of these methods. If collateral bonding is used, the operator may  
26 elect to deposit cash or collateral securities or certificates as

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

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

1 (d) The secretary may accept the bond of the applicant itself  
2 without separate surety when the applicant demonstrates to the  
3 satisfaction of the secretary the existence of a suitable agent to  
4 receive service of process and a history of financial solvency and  
5 continuous operation sufficient for authorization to self insure.

6 (e) It is unlawful for the owner of surface or mineral rights  
7 to interfere with the present operator in the discharge of the  
8 operator's obligations to the state for the reclamation of lands  
9 disturbed by the operator.

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

12 (g) (1) The Special Reclamation Fund previously created is  
13 continued. The Special Reclamation Water Trust Fund is created  
14 within the State Treasury into and from which moneys shall be paid  
15 for the purpose of assuring a reliable source of capital to reclaim  
16 and restore water treatment systems on forfeited sites. The moneys  
17 accrued in both funds, any interest earned thereon and yield from  
18 investments by the State Treasurer or West Virginia Investment  
19 Management Board are reserved solely and exclusively for the  
20 purposes set forth in this section and section seventeen, article  
21 one of this chapter. The funds shall be administered by the  
22 secretary who is authorized to expend the moneys in both funds for  
23 the reclamation and rehabilitation of lands which were subjected to  
24 permitted surface mining operations and abandoned after August 3,  
25 1977, where the amount of the bond posted and forfeited on the land  
26 is less than the actual cost of reclamation, and where the land is

1 not eligible for abandoned mine land reclamation funds under  
2 article two of this chapter. The secretary shall develop a  
3 long-range planning process for selection and prioritization of  
4 sites to be reclaimed so as to avoid inordinate short-term  
5 obligations of the assets in both funds of such magnitude that the  
6 solvency of either is jeopardized. The secretary may use both  
7 funds for the purpose of designing, constructing and maintaining  
8 water treatment systems when they are required for a complete  
9 reclamation of the affected lands described in this subsection.  
10 The secretary may also expend an amount not to exceed ten percent  
11 of the total annual assets in both funds to implement and  
12 administer the provisions of this article and, as they apply to the  
13 Surface Mine Board, articles one and four, chapter twenty-two-b of  
14 this code.

15 (2) (A) A tax credit shall be granted against the tax imposed  
16 by subsection (i) of this section to any mine operator who performs  
17 reclamation or remediation at a bond forfeiture site which  
18 otherwise would have been reclaimed using funds from the Special  
19 Reclamation Fund or Special Reclamation Water Trust Fund. The  
20 amount of credit shall be determined as provided in this section.

21 (B) The amount of a reclamation tax credit granted under this  
22 subsection shall be equal to the amount that the Tax Commissioner  
23 determines, based on the project costs, as shown in the records of  
24 the secretary, that would have been spent from the Special  
25 Reclamation Fund or Special Reclamation Water Trust Fund to  
26 accomplish the reclamation or remediation performed by the mine

1 operator, including expenditures for water treatment.

2 (C) To claim the credit, the mine operator shall from time to  
3 time file with the Tax Commissioner a written application seeking  
4 the amount of the credit earned. Within thirty days of receipt of  
5 the application, the Tax Commissioner shall issue a certification  
6 of the amount of tax credit, if any, to be allocated to the  
7 eligible taxpayer. Should the amount of the credit certified be  
8 less than the amount applied for, the Tax Commissioner shall set  
9 forth in writing the reason for the difference. Should no  
10 certification be issued within the thirty-day period, the  
11 application will be deemed certified. Any decision by the Tax  
12 Commissioner is appealable pursuant to the provisions of the "West  
13 Virginia Tax Procedure and Administration Act" set forth in article  
14 ten, chapter eleven of the code. Applications for certification of  
15 the proposed tax credit shall contain the information and be in the  
16 detail and form as required by the Tax Commissioner.

17 (h) The Tax Commissioner may promulgate rules for legislative  
18 approval pursuant to the provisions of article three, chapter  
19 twenty-nine-a of this code to carry out the purposes of this  
20 subdivision two, subsection (g) of this section.

21 (i) (1) *Rate, deposits and review.*

22 (A) For tax periods commencing on and after July 1, 2009,  
23 every person conducting coal surface mining shall remit a special  
24 reclamation tax of fourteen and four-tenths cents per ton of clean  
25 coal mined, the proceeds of which shall be allocated by the  
26 secretary for deposit in the Special Reclamation Fund and the

1 Special Reclamation Water Trust Fund.

2 (B) For tax periods commencing on and after July 1, 2012, the  
3 rate of tax specified in paragraph (A) of this subdivision is  
4 discontinued and is replaced by the rate of tax specified in this  
5 paragraph (B). For tax periods commencing on and after July 1,  
6 2012, every person conducting coal surface mining shall remit a  
7 special reclamation tax of twenty-seven and nine-tenths cents per  
8 ton of clean coal mined, the proceeds of which shall be allocated  
9 by the secretary for deposit in the Special Reclamation Fund and  
10 the Special Reclamation Water Trust Fund. Of that amount, fifteen  
11 cents per ton of clean coal mined shall be deposited into the  
12 Special Reclamation Water Trust Fund.

13 (C) The tax shall be levied upon each ton of clean coal  
14 severed or clean coal obtained from refuse pile and slurry pond  
15 recovery or clean coal from other mining methods extracting a  
16 combination of coal and waste material as part of a fuel supply.

17 (D) Beginning with the tax period commencing on July 1, 2009,  
18 and every two years thereafter, the special reclamation tax shall  
19 be reviewed by the Legislature to determine whether the tax should  
20 be continued: *Provided*, That the tax may not be reduced until the  
21 Special Reclamation Fund and Special Reclamation Water Trust Fund  
22 have sufficient moneys to meet the reclamation responsibilities of  
23 the state established in this section.

24 (2) In managing the Special Reclamation Program, the secretary  
25 shall: (A) Pursue cost-effective alternative water treatment  
26 strategies; and (B) conduct formal actuarial studies every two

1 years and conduct informal reviews annually on the Special  
2 Reclamation Fund and Special Reclamation Water Trust Fund.

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

4 (A) Determine the feasibility of creating an alternate  
5 program, on a voluntary basis, for financially sound operators by  
6 which those operators pay an increased tax into the Special  
7 Reclamation Fund in exchange for a maximum per-acre bond that is  
8 less than the maximum established in subsection (a) of this  
9 section;

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

16 (C) Determine the feasibility for sites requiring water  
17 reclamation by creating a separate water reclamation security  
18 account or bond for the costs so that the existing reclamation bond  
19 in place may be released to the extent it exceeds the costs of  
20 water reclamation.

21 (4) If the secretary determines that the alternative program,  
22 the incremental bonding program or the water reclamation account or  
23 bonding programs reasonably assure that sufficient funds will be  
24 available to complete the reclamation of a forfeited site and that  
25 the Special Reclamation Fund will remain fiscally stable, the  
26 secretary is authorized to propose legislative rules in accordance



1 with article three, chapter twenty-nine-a of this code to implement  
2 an alternate program, a water reclamation account or bonding  
3 program or other funding mechanisms or a combination thereof.

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

12 (k) Every person liable for payment of the special reclamation  
13 tax shall pay the amount due without notice or demand for payment.

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

19 (m) The Tax Commissioner shall deposit the moneys collected  
20 with the Treasurer of the State of West Virginia to the credit of  
21 the Special Reclamation Fund and Special Reclamation Water Trust  
22 Fund.

23 (n) At the beginning of each quarter, the secretary shall  
24 advise the State Tax Commissioner and the Governor of the assets,  
25 excluding payments, expenditures and liabilities, in both funds.

26 (o) To the extent that this section modifies any powers,

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