

1 **Senate Bill No. 66**

2 (By Senator Facemire)

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4 [Introduced January 8, 2014; referred to the Committee on Energy,
5 Industry and Mining; and then to the Committee on the Judiciary.]

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10 A BILL to amend and reenact §22-3-11 of the Code of West Virginia,
11 1931, as amended, relating to the state's jurisdiction over
12 reclaimed sites of bond-forfeited surface mining operations.

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;**
19 **prohibited 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

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

1 requirements in the reclamation plan of the permit.

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

1 upon the written approval of the secretary, the whole or any
2 portion of any cash, securities or certificates so deposited, upon
3 depositing with him or her in lieu thereof cash or other securities
4 or certificates of the classes specified in this subsection having
5 value equal to or greater than the sum of the bond.

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

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

17 (e) It is unlawful for the owner of surface or mineral rights
18 to interfere with the present operator in the discharge of the
19 operator's obligations to the state for the reclamation of lands
20 disturbed by the operator.

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

1 (g) (1) The Special Reclamation Fund previously created is
2 continued. The Special Reclamation Water Trust Fund is created
3 within the State Treasury into and from which moneys shall be paid
4 for the purpose of assuring a reliable source of capital to reclaim
5 and restore water treatment systems on forfeited sites. The moneys
6 accrued in both funds, any interest earned thereon and yield from
7 investments by the State Treasurer or West Virginia Investment
8 Management Board are reserved solely and exclusively for the
9 purposes set forth in this section and section seventeen, article
10 one of this chapter. The funds shall be administered by the
11 secretary who is authorized to expend the moneys in both funds for
12 the reclamation and rehabilitation of lands which were subjected to
13 permitted surface mining operations and abandoned after August 3,
14 1977, where the amount of the bond posted and forfeited on the land
15 is less than the actual cost of reclamation, and where the land is
16 not eligible for abandoned mine land reclamation funds under
17 article two of this chapter. The secretary shall develop a
18 long-range planning process for selection and prioritization of
19 sites to be reclaimed so as to avoid inordinate short-term
20 obligations of the assets in both funds of such magnitude that the
21 solvency of either is jeopardized. The secretary may use both
22 funds for the purpose of designing, constructing and maintaining

1 water treatment systems when they are required for a complete
2 reclamation of the affected lands described in this subsection.
3 The secretary may also expend an amount not to exceed ten percent
4 of the total annual assets in both funds to implement and
5 administer the provisions of this article and, as they apply to the
6 Surface Mine Board, articles one and four, chapter twenty-two-b of
7 this code.

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

14 (B) The amount of a reclamation tax credit granted under this
15 subsection shall be equal to the amount that the Tax Commissioner
16 determines, based on the project costs, as shown in the records of
17 the secretary, that would have been spent from the Special
18 Reclamation Fund or Special Reclamation Water Trust Fund to
19 accomplish the reclamation or remediation performed by the mine
20 operator, including expenditures for water treatment.

21 (C) To claim the credit, the mine operator shall from time to
22 time file with the Tax Commissioner a written application seeking

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

14 (h) The Tax Commissioner may promulgate rules for legislative
15 approval pursuant to the provisions of article three, chapter
16 twenty-nine-a of this code to carry out the purposes of this
17 subdivision ~~two~~ (2), subsection (g) of this section.

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

19 (A) For tax periods commencing on and after July 1, 2009,
20 every person conducting coal surface mining shall remit a special
21 reclamation tax of fourteen and four-tenths cents per ton of clean
22 coal mined, the proceeds of which shall be allocated by the

1 secretary for deposit in the Special Reclamation Fund and the
2 Special Reclamation Water Trust Fund.

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

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

18 (D) Beginning with the tax period commencing on July 1, 2009,
19 and every two years thereafter, the special reclamation tax shall
20 be reviewed by the Legislature to determine whether the tax should
21 be continued: *Provided*, That the tax may not be reduced until the
22 Special Reclamation Fund and Special Reclamation Water Trust Fund

1 have sufficient moneys to meet the reclamation responsibilities of
2 the state established in this section.

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

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

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

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

21 (C) Determine the feasibility for sites requiring water
22 reclamation by creating a separate water reclamation security

1 account or bond for the costs so that the existing reclamation bond
2 in place may be released to the extent it exceeds the costs of
3 water reclamation.

4 (4) If the secretary determines that the alternative program,
5 the incremental bonding program or the water reclamation account or
6 bonding programs reasonably assure that sufficient funds will be
7 available to complete the reclamation of a forfeited site and that
8 the Special Reclamation Fund will remain fiscally stable, the
9 secretary is authorized to propose legislative rules in accordance
10 with article three, chapter twenty-nine-a of this code to implement
11 an alternate program, a water reclamation account or bonding
12 program or other funding mechanisms or a combination thereof.

13 (j) This special reclamation tax shall be collected by the
14 State Tax Commissioner in the same manner, at the same time and
15 upon the same tonnage as the minimum severance tax imposed by
16 article twelve-b, chapter eleven of this code is collected:
17 *Provided*, That under no circumstance shall the special reclamation
18 tax be construed to be an increase in either the minimum severance
19 tax imposed by said article or the severance tax imposed by article
20 thirteen of said chapter.

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

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

6 (m) The Tax Commissioner shall deposit the moneys collected
7 with the Treasurer of the State of West Virginia to the credit of
8 the Special Reclamation Fund and Special Reclamation Water Trust
9 Fund.

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

13 (o) To the extent that this section modifies any powers,
14 duties, functions and responsibilities of the department that may
15 require approval of one or more federal agencies or officials in
16 order to avoid disruption of the federal-state relationship
17 involved in the implementation of the federal Surface Mining
18 Control and Reclamation Act, 30 U. S. C. §1270 by the state, the
19 modifications will become effective upon the approval of the
20 modifications by the appropriate federal agency or official.

21 (p) As of the effective date of this subsection, the state no
22 longer has jurisdiction over and obligations to the reclaimed sites

1 of bond-forfeited former surface mining operations upon which: (1)
2 The warranty period on the state's reclamation contract for the
3 site expired on or before January 15, 2002; and (2) effluent
4 limitations that had applied to the site under 40 C.F.R. Part 434
5 were being met, and no further state funds shall be expended
6 thereon. The secretary shall propose legislative rules in
7 accordance with the provisions of chapter twenty-nine-a of this
8 code to establish a procedure for terminating the state's
9 jurisdiction over bond-forfeited former surface mining operations
10 that do not meet the above criteria.

NOTE: The purpose of this bill is to terminate the state's jurisdiction over reclaimed bond-forfeited surface mining operations if the land reclamation was completed prior to January 15, 2002 and the site met the effluent limitations set forth in 40 C.F.R. Part 434 and to direct the secretary to propose legislative rules establishing a process to terminate the state's jurisdiction over reclaimed bond-forfeited surface mining sites that do not meet the criteria established herein.

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