

**ENROLLED**

**H. B. 2626**

(By Delegates Ashley, Ireland and Frich)

[Passed March 9, 2015; in effect ninety days from passage.]

AN ACT to amend and reenact §22-2-4 of the Code of West Virginia, 1931, as amended, relating to use of the Abandoned Land Reclamation Fund.

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

That §22-2-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

**ARTICLE 2. ABANDONED MINE LANDS AND RECLAMATION ACT.**

**§22-2-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.**

(a) All abandoned land reclamation funds available under Title IV of the federal Surface Mining Control and Reclamation Act of 1977, as amended, private donations received, any state appropriated or transferred funds, or funds received from the sale of land by the secretary under this article shall be deposited with the Treasurer of the State of West Virginia to the credit of the

1 abandoned land reclamation fund heretofore created, and expended pursuant to the requirements of  
2 this article.

3 (b) Moneys in the fund may be used by the secretary for the following:

4 (1) Reclamation and restoration of land and water resources adversely affected by past coal  
5 surface-mining operations, including, but not limited to, reclamation and restoration of abandoned  
6 surface mine areas, abandoned coal processing areas and abandoned coal processing waste areas;  
7 sealing and filling abandoned deep mine entries and voids; planting of land adversely affected by  
8 past coal surface-mining operations to prevent erosion and sedimentation; prevention, abatement,  
9 treatment and control of water pollution created by coal mine drainage, including restoration of  
10 stream beds and construction and operation of water treatment plants; prevention, abatement and  
11 control of burning coal processing waste areas and burning coal in situ; prevention, abatement and  
12 control of coal mine subsidence; and payment of administrative expenses and all other necessary  
13 expenses incurred to accomplish the purpose of this article: *Provided*, That all expenditures from  
14 this fund shall reflect the following priorities in the order stated:

15 (A) The protection of public health, safety, general welfare and property from extreme danger  
16 of adverse effects of past surface-mining practices;

17 (B) The protection of public health, safety and general welfare from adverse effects of past  
18 coal surface-mining practices;

19 (C) The restoration of land and water resources and environment previously degraded by  
20 adverse effects of past coal surface-mining practices, including measures for the conservation and  
21 development of soil, water (excluding channelization), woodland, fish and wildlife, recreation

1 resources and agricultural productivity;

2 (D) Research and demonstration projects relating to the development of surface-mining  
3 reclamation and water quality control program methods and techniques;

4 (E) The protection, repair, replacement, construction or enhancement of public facilities such  
5 as utilities, roads, recreation and conservation facilities adversely affected by past coal surface-  
6 mining practices; and

7 (F) The development of publicly owned land adversely affected by past coal surface-mining  
8 practices, including land acquired as provided in this article for recreation and historic purposes,  
9 conservation and reclamation purposes and open space benefits.

10 (2) (A) The secretary may expend the funds allocated to the state in any year through the  
11 grants made available under paragraphs (1) and (5), subsection (g) of Section 402 of the federal  
12 Surface Mining Control and Reclamation Act of 1977, as amended, for the purpose of protecting,  
13 repairing, replacing, constructing or enhancing facilities relating to water supply, including water  
14 distribution facilities and treatment plants, to replace water supplies adversely affected by coal  
15 surface-mining practices.

16 (B) If the adverse effects on water supplies referred to in this subdivision occurred both prior  
17 to and after the August 3, 1977, subsection (c) of this section does not prohibit the state from using  
18 funds for the purposes of this subdivision if the secretary determines that the adverse effects occurred  
19 predominantly prior to August 3, 1977.

20 (3) The secretary may receive and retain up to thirty percent of the total of the grants made  
21 annually to the state under paragraphs (1) and (5), subsection (g) of Section 402 of the federal

1 Surface Mining Control and Reclamation Act of 1977, as amended, if the amounts are deposited to  
2 the credit of either:

3 (A) The special account in the State Treasury designated the "Reclamation and Restoration  
4 Fund" is hereby continued. Moneys in the fund may be expended by the secretary to achieve the  
5 priorities stated in subdivision (1) of this subsection after September 30, 1995 and for associated  
6 administrative and personnel expenses; or

7 (B) The special account in the State Treasury designated the "Acid Mine Drainage Abatement  
8 and Treatment Fund" is hereby continued. Moneys in the fund may be expended by the secretary  
9 to implement, in consultation with the United States soil conservation service, acid mine drainage  
10 abatement and treatment plans approved by the secretary of the United States department of interior  
11 and for associated administrative and personnel expenses. The plans shall provide for the  
12 comprehensive abatement of the causes and treatment of the effects of acid mine drainage within  
13 qualified hydrologic units affected by coal surface-mining practices. The moneys accrued in this  
14 fund, any earnings thereon, and yield from investments by the State Treasurer or West Virginia  
15 Investment Management Board are reserved solely and exclusively for the purposes set forth in this  
16 section of the code. Any interest accrued on any moneys deposited into the Acid Mine Drainage  
17 Abatement and Treatment Fund which previously defaulted from that account into general revenue  
18 shall be credited back to the fund on or before July 1, 2014.

19 (c) Except as provided for in this subsection, lands and water eligible for reclamation or  
20 drainage abatement expenditures under this article are those which were mined for coal or which  
21 were affected by the mining, wastebanks, coal processing or other coal mining processes, and

1 abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there  
2 is no continuing reclamation responsibility: *Provided*, That moneys from the funds made available  
3 by the secretary of the United States department of interior pursuant to paragraphs (1) and (5),  
4 subsection (g), Section 402 of the federal Surface Mining Control and Reclamation Act of 1977, as  
5 amended, may be expended for the reclamation or drainage abatement of a site that: (1) The surface-  
6 mining operation occurred during the period beginning on August 4, 1977, and ending on or before  
7 January 21, 1981, and that any funds for reclamation or abatement which are available pursuant to  
8 a bond or other financial guarantee or from any other source, and not sufficient to provide for  
9 adequate reclamation or abatement of the site; or (2) the surface-mining operation occurred during  
10 the period beginning on August 4, 1977, and ending on or before November 5, 1990, and that the  
11 surety of the surface-mining operation became insolvent during that period, and as of November 5,  
12 1990, funds immediately available from proceeding relating to the insolvency or from any financial  
13 guarantees or other sources are not sufficient to provide for adequate reclamation of the site:  
14 *Provided, however*, That the secretary, with the concurrence of the secretary of the United States  
15 department of interior, makes either of the above-stated findings, and that the site is eligible, or more  
16 urgent than the reclamation priorities set forth in paragraphs (A) and (B), subdivision (1), subsection  
17 (b) of this section.

18 (d) One purpose of this article is to provide additional and cumulative remedies to abate the  
19 pollution of the waters of the state, and nothing contained in this article abridges or alters rights of  
20 action or remedies now or hereafter existing, nor do any provisions in this article or any act done by  
21 virtue of this article estop the state, municipalities, public health officers or persons as riparian

1 owners or otherwise in the exercise of their rights to suppress nuisances or to abate any pollution  
2 now or hereafter existing or to recover damages.

3 (e) Where the Governor certifies that the above objectives of the fund have been achieved  
4 and there is a need for construction of specific public facilities in communities impacted by coal  
5 development, and other sources of federal funds are inadequate and the secretary of the United States  
6 department of interior concurs, then the secretary may expend money from the fund for the  
7 construction.