

H. B. 2816

1
2
3
4
5
6
7
8
9

(By Delegates R. Phillips, Stansbury, R. Smith, Bates, Walters,
H. White, Reynolds, Eldridge, Moffatt, J. Nelson and Perdue)

[Introduced February 19, 2015; referred to the
Committee on Energy 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 eligibility of a mine operator to receive a tax credit for performing reclamation or remediation at a bond forfeiture site which otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special Reclamation Water Trust Fund.

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 prescribed and furnished by the secretary, payable to the State of West Virginia and conditioned upon the operator faithfully performing all of the requirements of this article and of the permit. The penal

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

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

14 (c) (1) The form of the bond shall be approved by the secretary and may include, at the option
15 of the operator, surety bonding, collateral bonding (including cash and securities), establishment of
16 an escrow account, self bonding or a combination of these methods. If collateral bonding is used,
17 the operator may elect to deposit cash or collateral securities or certificates as follows: Bonds of the
18 United States or its possessions of the Federal Land Bank or of the Homeowners' Loan Corporation;
19 full faith and credit general obligation bonds of the State of West Virginia or other states and of any
20 county, district or municipality of the State of West Virginia or other states; or certificates of deposit
21 in a bank in this state, which certificates shall be in favor of the department. The cash deposit or
22 market value of the securities or certificates shall be equal to or greater than the penal sum of the

1 bond. The secretary shall, upon receipt of any deposit of cash, securities or certificates, promptly
2 place the same with the Treasurer of the State of West Virginia whose duty it is to receive and hold
3 the deposit in the name of the state in trust for the purpose for which the deposit is made when the
4 permit is issued. The operator making the deposit is entitled, from time to time, to receive from the
5 State Treasurer, upon the written approval of the secretary, the whole or any portion of any cash,
6 securities or certificates so deposited, upon depositing with him or her in lieu thereof cash or other
7 securities or certificates of the classes specified in this subsection having value equal to or greater
8 than the sum of the bond.

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

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

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

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

22 (g) (1) The Special Reclamation Fund previously created is continued. The Special

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

19 (2)(A) A tax credit shall be granted against the tax imposed by subsection (i) of this section
20 to any mine operator who performs reclamation or remediation at a bond forfeiture site which
21 otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special
22 Reclamation Water Trust Fund: Provided, That for reclamation or remediation performed prior to

1 July 13, 2013, no tax credit may be granted unless a written application for the tax credit was
2 submitted to the Tax Commissioner prior to September 1, 2014. The amount of credit shall be
3 determined as provided in this section.

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

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

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

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

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

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

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

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

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

1 Reclamation Water Trust Fund.

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

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

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

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

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

20 (j) This special reclamation tax shall be collected by the State Tax Commissioner in the same
21 manner, at the same time and upon the same tonnage as the minimum severance tax imposed by
22 article twelve-b, chapter eleven of this code is collected: *Provided*, That under no circumstance shall

1 the special reclamation tax be construed to be an increase in either the minimum severance tax
2 imposed by said article or the severance tax imposed by article thirteen of said chapter.

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

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

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

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

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

NOTE: The purpose of this bill is to specify that a tax credit may not be granted for reclamation or remediation performed prior to July 13, 2013, unless a written application for the tax credit was submitted to the Tax Commissioner prior to September 1, 2014.

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