

# H. B. 2626

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(BY DELEGATE(S) ASHLEY, IRELAND AND FRICH)

[BY REQUEST OF THE ENVIRONMENTAL  
PROTECTION, DEPARTMENT OF]

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[Introduced February 5, 2015; referred to the  
Committee on Finance.]

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A BILL 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.**

- 1 (a) All abandoned land reclamation funds available under
- 2 Title IV of the federal Surface Mining Control and Reclamation

3 Act of 1977, as amended, private donations received, any state  
4 appropriated or transferred funds, or funds received from the sale  
5 of land by the secretary under this article shall be deposited with  
6 the Treasurer of the State of West Virginia to the credit of the  
7 abandoned land reclamation fund heretofore created, and  
8 expended pursuant to the requirements of this article.

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

11 (1) Reclamation and restoration of land and water resources  
12 adversely affected by past coal surface-mining operations,  
13 including, but not limited to, reclamation and restoration of  
14 abandoned surface mine areas, abandoned coal processing areas  
15 and abandoned coal processing waste areas; sealing and filling  
16 abandoned deep mine entries and voids; planting of land  
17 adversely affected by past coal surface-mining operations to  
18 prevent erosion and sedimentation; prevention, abatement,  
19 treatment and control of water pollution created by coal mine  
20 drainage, including restoration of stream beds and construction  
21 and operation of water treatment plants; prevention, abatement  
22 and control of burning coal processing waste areas and burning

23 coal in situ; prevention, abatement and control of coal mine  
24 subsidence; and payment of administrative expenses and all  
25 other necessary expenses incurred to accomplish the purpose of  
26 this article: *Provided*, That all expenditures from this fund shall  
27 reflect the following priorities in the order stated:

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

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

34 (C) The restoration of land and water resources and  
35 environment previously degraded by adverse effects of past coal  
36 surface-mining practices, including measures for the  
37 conservation and development of soil, water (excluding  
38 channelization), woodland, fish and wildlife, recreation  
39 resources and agricultural productivity;

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

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

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

52 (2) (A) The secretary may expend ~~up to thirty percent of the~~  
53 funds allocated to the state in any year through the grants made  
54 available under paragraphs (1) and (5), subsection (g) of Section  
55 402 of the federal Surface Mining Control and Reclamation Act  
56 of 1977, as amended, for the purpose of protecting, repairing,  
57 replacing, constructing or enhancing facilities relating to water  
58 supply, including water distribution facilities and treatment  
59 plants, to replace water supplies adversely affected by coal  
60 surface-mining practices.

61 (B) If the adverse effects on water supplies referred to in this  
62 subdivision occurred both prior to and after the August 3, 1977,

63 subsection (c) of this section does not prohibit the state from  
64 using funds for the purposes of this subdivision if the secretary  
65 determines that the adverse effects occurred predominantly prior  
66 to August 3, 1977.

67 (3) The secretary may receive and retain up to ~~ten~~ thirty  
68 percent of the total of the grants made annually to the state under  
69 paragraphs (1) and (5), subsection (g) of Section 402 of the  
70 federal Surface Mining Control and Reclamation Act of 1977, as  
71 amended, if the amounts are deposited to the credit of either:

72 (A) The special account in the State Treasury designated the  
73 “Reclamation and Restoration Fund” is hereby continued.  
74 Moneys in the fund may be expended by the secretary to achieve  
75 the priorities stated in subdivision (1) of this subsection after  
76 September 30, 1995 and for associated administrative and  
77 personnel expenses; or

78 (B) The special account in the State Treasury designated the  
79 “Acid Mine Drainage Abatement and Treatment Fund” is hereby  
80 continued. Moneys in the fund may be expended by the secretary  
81 to implement, in consultation with the United States soil  
82 conservation service, acid mine drainage abatement and

83 treatment plans approved by the secretary of the United States  
84 department of interior and for associated administrative and  
85 personnel expenses. The plans shall provide for the  
86 comprehensive abatement of the causes and treatment of the  
87 effects of acid mine drainage within qualified hydrologic units  
88 affected by coal surface-mining practices. The moneys accrued  
89 in this fund, any earnings thereon, and yield from investments by  
90 the State Treasurer or West Virginia Investment Management  
91 Board are reserved solely and exclusively for the purposes set  
92 forth in this section of the code. Any interest accrued on any  
93 moneys deposited into the Acid Mine Drainage Abatement and  
94 Treatment Fund which previously defaulted from that account  
95 into general revenue shall be credited back to the fund on or  
96 before July 1, 2014.

97 (c) Except as provided for in this subsection, lands and water  
98 eligible for reclamation or drainage abatement expenditures  
99 under this article are those which were mined for coal or which  
100 were affected by the mining, wastebanks, coal processing or  
101 other coal mining processes, and abandoned or left in an  
102 inadequate reclamation status prior to August 3, 1977, and for

103 which there is no continuing reclamation responsibility:  
104 *Provided*, That moneys from the funds made available by the  
105 secretary of the United States department of interior pursuant to  
106 paragraphs (1) and (5), subsection (g), Section 402 of the federal  
107 Surface Mining Control and Reclamation Act of 1977, as  
108 amended, may be expended for the reclamation or drainage  
109 abatement of a site that: (1) The surface-mining operation  
110 occurred during the period beginning on August 4, 1977, and  
111 ending on or before January 21, 1981, and that any funds for  
112 reclamation or abatement which are available pursuant to a bond  
113 or other financial guarantee or from any other source, and not  
114 sufficient to provide for adequate reclamation or abatement of  
115 the site; or (2) the surface-mining operation occurred during the  
116 period beginning on August 4, 1977, and ending on or before  
117 November 5, 1990, and that the surety of the surface-mining  
118 operation became insolvent during that period, and as of  
119 November 5, 1990, funds immediately available from  
120 proceeding relating to the insolvency or from any financial  
121 guarantees or other sources are not sufficient to provide for  
122 adequate reclamation of the site: *Provided, however*, That the

123 secretary, with the concurrence of the secretary of the United  
124 States department of interior, makes either of the above-stated  
125 findings, and that the site is eligible, or more urgent than the  
126 reclamation priorities set forth in paragraphs (A) and (B),  
127 subdivision (1), subsection (b) of this section.

128 (d) One purpose of this article is to provide additional and  
129 cumulative remedies to abate the pollution of the waters of the  
130 state, and nothing contained in this article abridges or alters  
131 rights of action or remedies now or hereafter existing, nor do any  
132 provisions in this article or any act done by virtue of this article  
133 estop the state, municipalities, public health officers or persons  
134 as riparian owners or otherwise in the exercise of their rights to  
135 suppress nuisances or to abate any pollution now or hereafter  
136 existing or to recover damages.

137 (e) Where the Governor certifies that the above objectives of  
138 the fund have been achieved and there is a need for construction  
139 of specific public facilities in communities impacted by coal  
140 development, and other sources of federal funds are inadequate  
141 and the secretary of the United States department of interior



142 concurs, then the secretary may expend money from the fund for  
143 the construction.

NOTE: The purpose of this bill is to remove the 30% cap placed on the Department of Environmental Protection's Office of Abandoned Mine Lands and Reclamation's (AML's) waterline funding and to increase from 10% to 30% the amount of the annual AML grant that can be retained in the AMD Set-Aside Fund, all amendments to bring West Virginia's Abandoned Mine Lands and Reclamation Act into conformance with the 2006 amendments to the federal Surface Mining Control and Reclamation Act.

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





