

# H. B. 2816

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(BY DELEGATE(S) R. PHILLIPS, STANSBURY,  
R. SMITH, BATES, WALTERS, H. WHITE, REYNOLDS, ELDRIDGE,  
MOFFATT, J. NELSON AND PERDUE)

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Committee on Energy; and then to the Committee on Finance.]

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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.**

1       (a) After a surface mining permit application has been  
2 approved pursuant to this article, but before a permit has been  
3 issued, each operator shall furnish a penal bond, on a form to be  
4 prescribed and furnished by the secretary, payable to the State of  
5 West Virginia and conditioned upon the operator faithfully  
6 performing all of the requirements of this article and of the  
7 permit. The penal amount of the bond shall be not less than  
8 \$1,000 nor more than \$5,000 for each acre or fraction of an acre:  
9 *Provided, That* the minimum amount of bond furnished for any  
10 type of reclamation bonding shall be \$10,000. The bond shall  
11 cover: (1) The entire permit area; or (2) that increment of land  
12 within the permit area upon which the operator will initiate and  
13 conduct surface mining and reclamation operations within the  
14 initial term of the permit. If the operator chooses to use  
15 incremental bonding, as succeeding increments of surface  
16 mining and reclamation operations are to be initiated and  
17 conducted within the permit area, the operator shall file with the

18 secretary an additional bond or bonds to cover the increments in  
19 accordance with this section: *Provided, however,* That once the  
20 operator has chosen to proceed with bonding either the entire  
21 permit area or with incremental bonding, the operator shall  
22 continue bonding in that manner for the term of the permit.

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

27 (c) (1) The form of the bond shall be approved by the  
28 secretary and may include, at the option of the operator, surety  
29 bonding, collateral bonding (including cash and securities),  
30 establishment of an escrow account, self bonding or a  
31 combination of these methods. If collateral bonding is used, the  
32 operator may elect to deposit cash or collateral securities or  
33 certificates as follows: Bonds of the United States or its  
34 possessions of the Federal Land Bank or of the Homeowners'  
35 Loan Corporation; full faith and credit general obligation bonds  
36 of the State of West Virginia or other states and of any county,  
37 district or municipality of the State of West Virginia or other

38 states; or certificates of deposit in a bank in this state, which  
39 certificates shall be in favor of the department. The cash deposit  
40 or market value of the securities or certificates shall be equal to  
41 or greater than the penal sum of the bond. The secretary shall,  
42 upon receipt of any deposit of cash, securities or certificates,  
43 promptly place the same with the Treasurer of the State of West  
44 Virginia whose duty it is to receive and hold the deposit in the  
45 name of the state in trust for the purpose for which the deposit is  
46 made when the permit is issued. The operator making the deposit  
47 is entitled, from time to time, to receive from the State Treasurer,  
48 upon the written approval of the secretary, the whole or any  
49 portion of any cash, securities or certificates so deposited, upon  
50 depositing with him or her in lieu thereof cash or other securities  
51 or certificates of the classes specified in this subsection having  
52 value equal to or greater than the sum of the bond.

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

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

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

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

70       (g) (1) The Special Reclamation Fund previously created is  
71   continued. The Special Reclamation Water Trust Fund is created  
72   within the State Treasury into and from which moneys shall be  
73   paid for the purpose of assuring a reliable source of capital to  
74   reclaim and restore water treatment systems on forfeited sites.  
75   The moneys accrued in both funds, any interest earned thereon  
76   and yield from investments by the State Treasurer or West  
77   Virginia Investment Management Board are reserved solely and  
78   exclusively for the purposes set forth in this section and section

79 seventeen, article one of this chapter. The funds shall be  
80 administered by the secretary who is authorized to expend the  
81 moneys in both funds for the reclamation and rehabilitation of  
82 lands which were subjected to permitted surface mining  
83 operations and abandoned after August 3, 1977, where the  
84 amount of the bond posted and forfeited on the land is less than  
85 the actual cost of reclamation, and where the land is not eligible  
86 for abandoned mine land reclamation funds under article two of  
87 this chapter. The secretary shall develop a long-range planning  
88 process for selection and prioritization of sites to be reclaimed  
89 so as to avoid inordinate short-term obligations of the assets in  
90 both funds of such magnitude that the solvency of either is  
91 jeopardized. The secretary may use both funds for the purpose of  
92 designing, constructing and maintaining water treatment systems  
93 when they are required for a complete reclamation of the  
94 affected lands described in this subsection. The secretary may  
95 also expend an amount not to exceed ten percent of the total  
96 annual assets in both funds to implement and administer the  
97 provisions of this article and, as they apply to the Surface Mine  
98 Board, articles one and four, chapter twenty-two-b of this code.

99           (2)(A) A tax credit shall be granted against the tax imposed  
100 by subsection (i) of this section to any mine operator who  
101 performs reclamation or remediation at a bond forfeiture site  
102 which otherwise would have been reclaimed using funds from  
103 the Special Reclamation Fund or Special Reclamation Water  
104 Trust Fund: Provided, That for reclamation or remediation  
105 performed prior to July 13, 2013, no tax credit may be granted  
106 unless a written application for the tax credit was submitted to  
107 the Tax Commissioner prior to September 1, 2014. The amount  
108 of credit shall be determined as provided in this section.

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

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

119 seeking the amount of the credit earned. Within thirty days of  
120 receipt of the application, the Tax Commissioner shall issue a  
121 certification of the amount of tax credit, if any, to be allocated to  
122 the eligible taxpayer. Should the amount of the credit certified be  
123 less than the amount applied for, the Tax Commissioner shall set  
124 forth in writing the reason for the difference. Should no  
125 certification be issued within the thirty-day period, the  
126 application will be deemed certified. Any decision by the Tax  
127 Commissioner is appealable pursuant to the provisions of the  
128 “West Virginia Tax Procedure and Administration Act” set forth  
129 in article ten, chapter eleven of the code. Applications for  
130 certification of the proposed tax credit shall contain the  
131 information and be in the detail and form as required by the Tax  
132 Commissioner.

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

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



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

144       (B) For tax periods commencing on and after July 1, 2012,  
145 the rate of tax specified in paragraph (A) of this subdivision is  
146 discontinued and is replaced by the rate of tax specified in this  
147 paragraph (B). For tax periods commencing on and after July 1,  
148 2012, every person conducting coal surface mining shall remit  
149 a special reclamation tax of twenty-seven and nine-tenths cents  
150 per ton of clean coal mined, the proceeds of which shall be  
151 allocated by the secretary for deposit in the Special Reclamation  
152 Fund and the Special Reclamation Water Trust Fund. Of that  
153 amount, fifteen cents per ton of clean coal mined shall be  
154 deposited into the Special Reclamation Water Trust Fund.

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

159 (D) Beginning with the tax period commencing on July 1,  
160 2009, and every two years thereafter, the special reclamation tax  
161 shall be reviewed by the Legislature to determine whether the  
162 tax should be continued: *Provided*, That the tax may not be  
163 reduced until the Special Reclamation Fund and Special  
164 Reclamation Water Trust Fund have sufficient moneys to meet  
165 the reclamation responsibilities of the state established in this  
166 section.

167 (2) In managing the Special Reclamation Program, the  
168 secretary shall: (A) Pursue cost-effective alternative water  
169 treatment strategies; and (B) conduct formal actuarial studies  
170 every two years and conduct informal reviews annually on the  
171 Special Reclamation Fund and Special Reclamation Water Trust  
172 Fund.

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

174 (A) Determine the feasibility of creating an alternate  
175 program, on a voluntary basis, for financially sound operators by  
176 which those operators pay an increased tax into the Special  
177 Reclamation Fund in exchange for a maximum per-acre bond

178 that is less than the maximum established in subsection (a) of  
179 this section;

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

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

192 (4) If the secretary determines that the alternative program,  
193 the incremental bonding program or the water reclamation  
194 account or bonding programs reasonably assure that sufficient  
195 funds will be available to complete the reclamation of a forfeited  
196 site and that the Special Reclamation Fund will remain fiscally  
197 stable, the secretary is authorized to propose legislative rules in

198 accordance with article three, chapter twenty-nine-a of this code  
199 to implement an alternate program, a water reclamation account  
200 or bonding program or other funding mechanisms or a  
201 combination thereof.

202 (j) This special reclamation tax shall be collected by the  
203 State Tax Commissioner in the same manner, at the same time  
204 and upon the same tonnage as the minimum severance tax  
205 imposed by article twelve-b, chapter eleven of this code is  
206 collected: *Provided*, That under no circumstance shall the special  
207 reclamation tax be construed to be an increase in either the  
208 minimum severance tax imposed by said article or the severance  
209 tax imposed by article thirteen of said chapter.

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

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

218 (m) The Tax Commissioner shall deposit the moneys  
219 collected with the Treasurer of the State of West Virginia to the  
220 credit of the Special Reclamation Fund and Special Reclamation  
221 Water Trust Fund.

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

226 (o) To the extent that this section modifies any powers,  
227 duties, functions and responsibilities of the department that may  
228 require approval of one or more federal agencies or officials in  
229 order to avoid disruption of the federal-state relationship  
230 involved in the implementation of the federal Surface Mining  
231 Control and Reclamation Act, 30 U. S. C. §1270 by the state, the  
232 modifications will become effective upon the approval of the  
233 modifications by the appropriate federal agency or 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.





