

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 358

FISCAL
NOTE

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[Introduced January 21, 2016;

Referred to the Committee on Banking and Insurance;
then to the Committee on the Judiciary; and then to the
Committee on Finance.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §33-20G-1, §33-20G-2, §33-20G-3, §33-20G-4, §33-20G-5, §33-20G-6, §33-
 3 20G-7, §33-20G-8, §33-20G-9, §33-20G-10, §33-20G-11, §33-20G-12, §33-20G-13 and
 4 §33-20G-14, all relating to establishing Mining Mutual Insurance Company; establishing
 5 scope, findings and purpose; defining terms; authorizing creation and requirements of
 6 company; establishing provisional board of directors and continuing governance and
 7 organization; establishing board of directors may enter into contract with firm or company
 8 to administer affairs of company; creating special revenue account entitled "Department
 9 of Environmental Protection Mining Mutual Insurance Company Account"; establishing
 10 initial capital and surplus for company; authorizing issuance of bonds; requiring DEP to
 11 promulgate rules regarding purchase of bonds; establishing controlling law; establishing
 12 liberal construction of article; and allowing severability of article provisions.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §33-20G-1, §33-20G-2, §33-20G-3, §33-20G-4, §33-20G-5, §33-20G-6, §33-
 3 20G-7, §33-20G-8, §33-20G-9, §33-20G-10, §33-20G-11, §33-20G-12, §33-20G-13 and §33-
 4 20G-14, all to read as follows:

ARTICLE 20G. MINING MUTUAL INSURANCE COMPANY

§33-20G-1. Short title.

1 This article shall be known and may be cited as the "Mining Mutual Insurance Company
 2 Act."

§33-20G-2. Scope of Article.

1 This article applies only to the Mining Mutual Insurance Company created as a transfer of
 2 part of the Special Reclamation Fund created in article three, chapter twenty-two of this code and
 3 the Special Water Reclamation Trust Fund created in article three, chapter twenty-two of this
 4 code.

§33-20G-3. Findings and purpose.

1 (a) The Legislature finds that:

2 (1) There is a nationwide economic crisis in the coal mining industry and this crisis is
3 especially difficult in West Virginia;

4 (2) Coal mining permit holders across the state are facing economic situations that have
5 forced many of them into bankruptcy;

6 (3) Insolvent permit holders may be unable to continue operations, thus jeopardizing their
7 ability to properly reclaim lands as required under article three, chapter twenty-two of this code;

8 (4) Current financial assurance methods are of finite amount and could be, from time to
9 time, inadequate to properly restore the land as required by article three, chapter twenty-two of
10 this code;

11 (5) Any shortfall would be paid from the state's Special Reclamation Fund which could be
12 insufficiently funded to meet the potential demand;

13 (6) As a result of the current crisis, coal mining permit holders in West Virginia find it
14 increasingly difficult to comply with the financial assurance provisions of article three, chapter
15 twenty-two of this code;

16 (7) The difficulty or impossibility of obtaining private performance bonds may result in the
17 inability of many permit holders to meet the conditions of their permits, thus making the overall
18 situation much worse;

19 (8) Having a robust guarantee of proper reclamation of mining operations is of utmost
20 importance to the citizens of West Virginia;

21 (9) A mechanism is needed to provide an enduring solution to this impending reclamation
22 funding crisis and satisfy the need for an efficient and effective method of complying with the
23 financial assurance provisions of article three, chapter twenty-two of this code;

24 (10) A state assisted mutual insurance company or a similar entity has proven to be a
25 successful mechanism, in West Virginia for helping stabilize certain insurance markets such as
26 medical professional liability and worker compensation;

27 (11) There is a substantial public interest in creating a method to provide a stable mining
28 reclamation performance bond insurance market in this state;

29 (12) The state has attempted to address the reclamation crisis by the creation of a Special
30 Reclamation Fund to provide reclamation funding through the Department of Environmental
31 Protection;

32 (13) Due to loss of coal production, the current tax funding structure under article three,
33 chapter twenty-two of this code may be insufficient to assure solvency of the Special Reclamation
34 Fund to meet losses expected during this crisis;

35 (14) There is substantial public benefit in managing the actual and potential liability of the
36 state through the private sector and creating a stable self-sufficient entity which will be a source
37 of performance bond insurance coverage for permit holders in this state;

38 (15) A stable, financially viable insurer in the private sector will provide a continuing source
39 of insurance funds to accomplish reclamations as needed to protect the environment of the state;
40 and

41 (16) Because the public will greatly benefit from the formation of a mining mutual insurance
42 company, state efforts to encourage and support the formation of such an entity, including
43 providing a loan of the entity's initial capital, is in the clear public interest.

44 (b) The purpose of this article is to create a mechanism for the formation of a mining mutual
45 insurance company that will provide;

46 (1) A means for mining permit holders to obtain performance bond insurance that is
47 available and affordable; and

48 (2) Assurance that reclamation will occur in a timely and predictable fashion in those
49 instances where a permit holder fails to perform under the terms of the permit.

§33-20G-4. Definitions.

1 For purposes of this article, the term:

2 (1) "Commissioner" means the Insurance Commissioner of West Virginia as provided for
3 in section one, article two, chapter thirty-three of this code.

4 (2) "Company" means the Mining Mutual Insurance Company created pursuant to the
5 terms of this article.

§33-20G-5. Authorization for creation of company; requirements and limitations.

1 (a) Subject to the provisions of this article, a Mining Mutual Insurance Company may be
2 created as a domestic, private, nonstock corporation. The company must remain for the duration
3 of its existence a domestic mutual insurance company owned by its policyholders and may not
4 be converted into a stock corporation or any other entity not owned by its policyholders.

5 (b) For the duration of its existence, the company is not and may not be considered a
6 department, unit, agency, or instrumentality of the state for any purpose. All debts, claims,
7 obligations, and liabilities of the company, whenever incurred, are the debts, claims, obligations,
8 and liabilities of the company only and not of the state or of any department, unit, agency,
9 instrumentality, officer or employee of the state.

10 (c) The moneys of the company are not and may not be considered part of the General
11 Revenue Fund of the state. The debts, claims, obligations, and liabilities of the company are not
12 and may not be considered a debt of the state or a pledge of the credit of the state.

13 (d) The company is not subject to provisions of article nine-a, chapter six of this code or
14 the provisions of article one, chapter twenty-nine-b of this code.

15 (e) All premiums collected by the company are subject to the premium taxes, additional
16 premium taxes, additional fire and casualty insurance premium taxes and surcharges contained
17 in sections fourteen, fourteen-a, fourteen-d and thirty-three, article three of this chapter.

§33-20G-6. Governance and organization.

1 (a) Initially, the company shall be governed by a provisional board of directors consisting
2 of five directors. The provisional board shall act as the incorporators of the company and shall
3 prepare and file articles of incorporation and bylaws in accordance with the provisions of this
4 article and the provisions of this chapter and chapter thirty-one of this code. The provisional board
5 of directors shall be selected within thirty (30) days of the effective date of this article as follows:

6 (1) The chair shall be named by the Governor. The chair shall be an individual with at least
7 five years' experience as a CEO and board member of a mutual insurance company.

8 (2) One member of the provisional board shall be selected by the Secretary of the
9 Department of Environmental Protection of the State of West Virginia. This provisional board
10 member shall have extensive experience in environmental management and shall have at least
11 five years' experience in coal mine reclamation.

12 (3) One member of the provisional board shall be selected by the Commissioner of
13 Insurance of the State of West Virginia. This provisional board member shall have insurance
14 experience and shall have served at least five years as a member of a board of directors of a
15 mutual insurance company.

16 (4) One member of the provisional board shall be selected by the President of the West
17 Virginia Senate. This provisional board member shall have experience in coal mine operations,
18 reclamation and land management.

19 (5) One member of the provisional board shall be selected by the Speaker of the House
20 of Delegates of the State of West Virginia. This provisional board member shall have experience
21 in coal mine operations, reclamation and land management.

22 (b) After the provisional board, the directors and officers of the company are to be chosen
23 in accordance with the articles of incorporation and bylaws of the company. The initial board of
24 directors selected in accordance with the provisions of subsection (b) of this section shall serve
25 for the following terms: (1) Two for four-year terms; (2) one for a three-year term; (3) one for a
26 two-year term; and (4) one for a one-year term. Thereafter, the directors shall serve staggered

27 terms of four years. If additional directors are added to the board as provided in the company's
28 by-laws, the term shall be for four years.

§33-20G-7. Management and administration of the company.

1 (a) If the company's board of directors determines that the affairs of the company may be
2 administered more suitably and efficiently, the company may enter into a contract with a licensed
3 insurer, licensed health service plan, insurance service organization, third-party administrator,
4 insurance brokerage firm or other firm or company with suitable qualifications and experience to
5 administer some or all of the affairs of the company, subject to the continuing direction of the
6 board of directors as required by the articles of incorporation and bylaws of the company, and the
7 contract. All such contracts shall be awarded by competitive bidding.

8 (b) The company shall file a true copy of the contract with the commissioner.

§33-20G-8. Creation of special revenue account; initial capital and surplus.

1 (a) There is hereby created in the State Treasury a special revenue account designated
2 as the "Department of Environmental Protection Mining Mutual Insurance Company Account"
3 solely for the purpose of receiving moneys transferred from various funds at the Department of
4 Environmental Protection.

5 (b) As soon as practical, but within thirty (30) days of the effective date of this article, the
6 Treasurer shall, with the full cooperation of the Department of Environmental Protection, cause
7 the transfer of twelve million five hundred thousand dollars (\$12,500,000) into the Department of
8 Environmental Protection Mining Mutual Insurance Company Account.

9 (c) As soon as practical, but within thirty (30) days of the transfer described in subsection
10 (b) of this section, the Treasurer shall cause the funds in the " Department of Environmental
11 Protection Mining Mutual Insurance Company Account" as described in subsection (b) of this
12 section to be transferred to the company to be used as initial capital and surplus in the form of a
13 Surplus Note. These funds shall be deemed a noninterest loan and shall be paid back as credits
14 as reclamation activities are accomplished.

15 (d) As soon as practical, but within thirty (30) days of gaining any necessary approvals,
16 the Treasurer shall, with the full cooperation of the Department of Environmental Protection,
17 cause the transfer of one hundred million dollars (\$100,000,000) from the Special Reclamation
18 Fund and the Special Water Reclamation Trust Fund into the Department of Environmental
19 Protection Mining Mutual Insurance Company Account.

20 (e) As soon as practical, but within thirty (30) days of the transfer described in subsection
21 (d) of this section, the Treasurer shall cause the funds in the "Department of Environmental
22 Protection Mining Mutual Insurance Company Account" as described in subsection (d) of this
23 section to be transferred to the company to be used as capital and surplus in the form of a Surplus
24 Note. These funds shall be deemed a noninterest loan and shall be paid back as credits as
25 reclamation activities are accomplished.

§33-20G-9. Application for license; authority of commissioner.

1 (a) As soon as practical, the company established pursuant to the provisions of this article
2 shall file its corporate charter and bylaws with the commissioner and apply for a license to transact
3 insurance in this state. Notwithstanding any other provision of this code, the commissioner shall
4 act on the documents within fifteen days of the filing by the company.

5 (b) In recognition of the critical need for an effective and efficient financial assurance
6 alternative in this state at the time of enactment of this article and the critical need to expedite the
7 initial operation of the company, the Legislature hereby authorizes the commissioner to review
8 the documentation submitted by the company and to determine the initial capital and surplus
9 requirements of the company, notwithstanding the provisions of section five-b, article three of this
10 chapter. The commissioner has the sole discretion to determine the capital and surplus funds of
11 the company and to monitor the economic viability of the company during its initial operation and
12 duration on not less than a monthly basis. The company shall furnish the commissioner with all
13 information and cooperate in all respects necessary for the commissioner to perform the duties
14 set forth in this section and in other provisions of this chapter, including annual audited financial

15 statements required by article thirty-three of this chapter and fidelity bond coverage for each of
16 the directors of the company.

17 (c) Subject to the provisions of subsection (d) of this section, the commissioner may waive
18 other requirements imposed on mutual insurance companies by the provisions of this chapter as
19 the commissioner determines is necessary to enable the company to begin issuing performance
20 bonds in this state at the earliest possible date.

21 (d) Within forty months of the date of the issuance of its license to transact insurance, the
22 company shall comply with the capital and surplus requirements set forth in section five-b, article
23 three of this chapter.

§33-20G-10. Kinds of coverage authorized.

1 Upon approval by the commissioner for a license to transact insurance in this state, the
2 company may issue nonassessable policies of performance bonds.

§33-20G-11. Rulemaking authority; mandatory performance bonds for permit holders.

1 Upon approval by the commissioner for a license to transact insurance in this state, the
2 Secretary of the Department of Environmental Protection shall issue such rules as necessary to
3 assure that all mining permit holders shall purchase appropriate performance bonds through the
4 company.

§33-20G-12. Controlling law.

1 To the extent applicable, and when not in conflict with the provisions of this article, the
2 provisions of chapters thirty-one and thirty-three of this code apply to the company created
3 pursuant to the provisions of this article. If a provision of this article and another provision of this
4 code are in conflict, the provision of this article controls.

§33-20G-13. Liberal construction.

1 This article is enacted to address a situation critical to the citizens of the State of West
2 Virginia by providing a mechanism for the speedy and deliberate creation of a company to begin

3 offering performance bond insurance to mining permit holders in this state at the earliest possible
4 date; and to accomplish this purpose, this article shall be liberally construed.

§33-20G-14. Severability.

1 If any provision of this article or the application thereof to any person or circumstance is
2 held invalid, such invalidity may not affect other provisions or applications of this article and to
3 this end, the provisions of this article are declared to be severable.

NOTE: The purpose of this bill is to establish the Mining Mutual Insurance Company; establish scope, findings and purpose; define terms; authorize creation and requirements of company; establish provisional board of directors and continuing governance and organization; establish board or directors may enter into contract with firm or company to administer affairs of company; create special revenue account entitled "Department of Environmental Protection Mining Mutual Insurance Company Account"; establish initial capital and surplus for company; authorize issuance of bonds; require DEP to promulgate rules regarding purchase of bonds; establish controlling law; establishing liberal construction of article; allowing severability of article provisions.

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