

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

Introduced

### House Bill 4440

FISCAL  
NOTE

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[Introduced February 8, 2016; Referred  
to the Committee on Energy then Finance.]

1 A BILL to amend and reenact §11-8-5 of the Code of West Virginia, 1931, as amended; and to  
 2 amend and reenact §22-3-23 of said code, all relating to certain post-mining uses of lands  
 3 subject to surface mining permits; providing that formerly mined land now leased for  
 4 agricultural uses will be taxed as farms; and authorizing the secretary of environmental  
 5 protection to release bonds and deposits of surface mining permittees when the permitted  
 6 land is donated to economic development agencies.

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

7 That §11-8-5 of the Code of West Virginia, 1931, as amended, be amended and  
 8 reenacted; and that §22-3-23 of said code be amended and reenacted, all to read as follows:

**CHAPTER 11. TAXATION.**

**ARTICLE 8. LEVIES.**

**§11-8-5. Classification of property for levy purposes.**

1 For the purpose of levies, property shall be classified as follows:

2 Class I. All tangible personal property employed exclusively in agriculture, including  
 3 horticulture and grazing;

4 All products of agriculture (including livestock) while owned by the producer;

5 All notes, bonds, bills and accounts receivable, stocks and any other intangible personal  
 6 property;

7 Class II. All property owned, used and occupied by the owner exclusively for residential  
 8 purposes;

9 All farms, including land used for horticulture and grazing, occupied and cultivated by their  
 10 owners or bona fide tenants, including reclaimed or partially reclaimed surface mining lands that  
 11 have been leased for agricultural use;

12 Class III. All real and personal property situated outside of municipalities, exclusive of  
 13 Classes I and II;

14 Class IV. All real and personal property situated inside of municipalities, exclusive of  
15 Classes I and II.

## **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

### **ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.**

#### **§22-3-23. Release of bond or deposits; application; notice; duties of secretary; public hearings; final maps on grade release.**

1 (a) The permittee may file a request with the secretary for the release of a bond or deposit.  
2 The permittee shall publish an advertisement regarding the request for release in the same  
3 manner as is required of advertisements for permit applications. A copy of the advertisement shall  
4 be submitted to the secretary as part of any bond release application and shall contain a  
5 notification of the precise location of the land affected, the number of acres, the permit and the  
6 date approved, the amount of the bond filed and the portion sought to be released, the type and  
7 appropriate dates of reclamation work performed and a description of the results achieved as they  
8 relate to the permittee's approved reclamation plan. In addition, as part of any bond release  
9 application, the permittee shall submit copies of letters which the permittee has sent to adjoining  
10 property owners, local government bodies, planning agencies, sewage and water treatment  
11 authorities or water companies in the locality in which the surface mining operation is located,  
12 notifying them of the permittee's intention to seek release from the bond. Any request for grade  
13 release shall also be accompanied by final maps.

14 (b) Upon receipt of the application for bond release, the secretary, within thirty days, taking  
15 into consideration existing weather conditions, shall conduct an inspection and evaluation of the  
16 reclamation work involved. The evaluation shall consider, among other things, the degree of  
17 difficulty to complete any remaining reclamation, whether pollution of surface and subsurface  
18 water is occurring, the probability of continuance or future occurrence of the pollution and the  
19 estimated cost of abating the pollution. The secretary shall notify the permittee in writing of his or

20 her decision to release or not to release all or part of the bond or deposit within sixty days from  
21 the date of the initial publication of the advertisement if no public hearing is requested. If a public  
22 hearing is held, the secretary's decision shall be issued within thirty days thereafter.

23 (c) If the secretary is satisfied that reclamation covered by the bond or deposit or portion  
24 thereof has been accomplished as required by this article, he or she may release the bond or  
25 deposit, in whole or in part, according to the following schedule:

26 (1) For all operations except those with an approved variance from approximate original  
27 contour:

28 (A) When the operator completes the backfilling, regrading and drainage control of a  
29 bonded area in accordance with the operator's approved reclamation plan, the release of sixty  
30 percent of the bond or collateral for the applicable bonded area: *Provided*, That a minimum bond  
31 of \$10,000 shall be retained after grade release;

32 (B) Two years after the last augmented seeding, fertilizing, irrigation or other work to  
33 ensure compliance with subdivision (19), subsection (b), section thirteen of this article, the release  
34 of an additional twenty-five percent of the bond or collateral for the applicable bonded area:  
35 *Provided*, That a minimum bond of \$10,000 shall be retained after the release provided for in this  
36 subdivision; and

37 (C) When the operator has completed successfully all surface mining and reclamation  
38 activities, the release of the remaining portion of the bond, but not before the expiration of the  
39 period specified in subdivision (20), subsection (b), section thirteen of this article: *Provided*, That  
40 the revegetation has been established on the regraded mined lands in accordance with the  
41 approved reclamation plan: *Provided, however*, That the release may be made where the quality  
42 of the untreated post-mining water discharged is better than or equal to the premining water  
43 quality discharged from the mining site where expressly authorized by legislative rule promulgated  
44 pursuant to section three, article one of this chapter.

45 (2) For operations with an approved variance from approximate original contour:

46 (A) When the operator completes the backfilling, regrading and drainage control of a  
47 bonded area in accordance with the operator's approved reclamation plan, the release of fifty  
48 percent of the bond or collateral for the applicable bonded area: *Provided*, That a minimum bond  
49 of \$10,000 shall be retained after grade release;

50 (B) Two years after the last augmented seeding, fertilizing, irrigation or other work to  
51 ensure compliance with subdivision (19), subsection (b), section thirteen of this article, the release  
52 of an additional ten percent of the bond or collateral for the applicable bonded area: *Provided*,  
53 That a minimum bond of \$10,000 shall be retained after the release provided ~~for~~ in this  
54 subdivision; and

55 (C) When the operator has completed successfully all surface mining and reclamation  
56 activities, the release of the remaining portion of the bond, but not before the expiration of the  
57 period specified in subdivision (20), subsection (b), section thirteen of this article: *Provided*, That  
58 the revegetation has been established on the regraded mined lands in accordance with the  
59 approved reclamation plan and if applicable the necessary post-mining infrastructure is  
60 established and any necessary financing is completed: *Provided, however*, That the release may  
61 be made where the quality of the untreated post-mining water discharged is better than or equal  
62 to the premining water quality discharged from the mining site where expressly authorized by  
63 legislative rule promulgated pursuant to section three, article one of this chapter.

64 No part of the bond or deposit may be released under this subsection so long as the lands  
65 to which the release would be applicable are contributing additional suspended solids to  
66 streamflow or runoff outside the permit area in excess of the requirements set by section thirteen  
67 of this article, or until soil productivity for prime farmlands has returned to equivalent levels of yield  
68 as nonmined land of the same soil type in the surrounding area under equivalent management  
69 practices as determined from the soil survey performed pursuant to section nine of this article.  
70 Where a sediment dam is to be retained as a permanent impoundment pursuant to section  
71 thirteen of this article, or where a road or minor deviation is to be retained for sound future

72 maintenance of the operation, the portion of the bond may be released under this subsection so  
73 long as provisions for sound future maintenance by the operator or the landowner have been  
74 made with the secretary.

75 Notwithstanding the bond release scheduling provisions of subdivisions (1) and (2) of this  
76 subsection, if the operator completes the backfilling and reclamation in accordance with an  
77 approved post-mining land use plan that has been approved by the Department of Environmental  
78 Protection and accepted by a local or regional economic development or planning agency for the  
79 county or region in which the operation is located, provisions for sound future maintenance are  
80 assured by the local or regional economic development or planning agency, and the quality of  
81 any untreated post-mining water discharge complies with applicable water quality criteria for bond  
82 release, the secretary may release the entire amount of the bond or deposit. The secretary shall  
83 propose rules for legislative approval in accordance with the provisions of article three, chapter  
84 twenty-nine-a of this code to govern a bond release pursuant to the terms of this paragraph.

85 (d) If the permittee makes a donation of the property under protection of a bond to, and  
86 the donation is accepted by, a local, regional or state economic development agency or authority,  
87 the secretary may release the bond or deposit after the permittee has complied with the  
88 advertising and notification requirements of this section and, if requested, after hearing and  
89 decision pursuant to subsection (g) of this section.

90 ~~(d)~~ (e) If the secretary disapproves the application for release of the bond or portion  
91 thereof, the secretary shall notify the permittee, in writing, stating the reasons for disapproval and  
92 recommending corrective actions necessary to secure the release and notifying the operator of  
93 the right to a hearing.

94 ~~(e)~~ (f) When any application for total or partial bond release is filed with the secretary, he  
95 or she shall notify the municipality in which a surface-mining operation is located by registered or  
96 certified mail at least thirty days prior to the release of all or a portion of the bond.

97 ~~(f)~~ (g) Any person with a valid legal interest which is or may be adversely affected by

98 release of the bond or the responsible officer or head of any federal, state or local governmental  
99 agency which has jurisdiction by law or special expertise with respect to any environmental, social  
100 or economic impact involved in the operation, or is authorized to develop and enforce  
101 environmental standards with respect to the operations, has the right to file written objections to  
102 the proposed bond release and request a hearing with the secretary within thirty days after the  
103 last publication of the permittee's advertisement. If written objections are filed and a hearing  
104 requested, the secretary shall inform all of the interested parties of the time and place of the  
105 hearing and shall hold a public hearing in the locality of the surface-mining operation proposed  
106 for bond release within three weeks after the close of the public comment period. The date, time  
107 and location of the public hearing shall also be advertised by the secretary in a newspaper of  
108 general circulation in the same locality.

109 ~~(g)~~ (h) Without prejudice to the rights of the objectors, the applicant, or the responsibilities  
110 of the secretary pursuant to this section, the secretary may hold an informal conference to resolve  
111 any written objections and satisfy the hearing requirements of this section thereby.

112 ~~(h)~~ (i) For the purpose of the hearing, the secretary has the authority and is hereby  
113 empowered to administer oaths, subpoena witnesses and written or printed materials, compel the  
114 attendance of witnesses, or production of materials, and take evidence, including, but not limited  
115 to, inspections of the land affected and other surface-mining operations carried on by the applicant  
116 in the general vicinity. A verbatim record of each public hearing required by this section shall be  
117 made and a transcript made available on the motion of any party or by order of the secretary at  
118 the cost of the person requesting the transcript.

NOTE: The purpose of this bill is to allow surface mining operations to extinguish their permit bond obligations if they donate the reclaimed or partially-reclaimed land to an economic development authority and to provide for proper tax levy classification when reclaimed or partially-reclaimed mining lands are leased for agriculture.

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