

# **WEST VIRGINIA LEGISLATURE**

## **2022 REGULAR SESSION**

**Introduced**

### **House Bill 4758**

BY DELEGATES ANDERSON, COOPER, ZATEZALO, J.

KELLY, WESTFALL, AND FERRELL

[Introduced February 15, 2022; referred to the Committee  
on Energy and Manufacturing]



1 A BILL to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating  
2 to developing and maintaining a database to track reclamation liabilities in the West  
3 Virginia Department of Environmental Protection Special Reclamation Program in order  
4 to better quantify the potential liability of the Special Reclamation Program for forfeited  
5 coal mining permits.

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

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

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

19 (c)(1) The form of the bond shall be approved by the secretary and may include, at the  
20 option of the operator, surety bonding, collateral bonding (including cash and securities),  
21 establishment of an escrow account, self bonding or a combination of these methods. If collateral  
22 bonding is used, the operator may elect to deposit cash or collateral securities or certificates as  
23 follows: Bonds of the United States or its possessions of the Federal Land Bank or of the  
24 Homeowners' Loan Corporation; full faith and credit general obligation bonds of the State of West  
25 Virginia or other states and of any county, district or municipality of the State of West Virginia or  
26 other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of  
27 the department. The cash deposit or market value of the securities or certificates shall be equal  
28 to or greater than the penal sum of the bond. The secretary shall, upon receipt of any deposit of  
29 cash, securities, or certificates, promptly place the same with the Treasurer of the State of West  
30 Virginia whose duty it is to receive and hold the deposit in the name of the state in trust for the  
31 purpose for which the deposit is made when the permit is issued. The operator making the deposit  
32 is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the  
33 secretary, the whole or any portion of any cash, securities, or certificates so deposited, upon  
34 depositing with him or her in lieu thereof cash or other securities or certificates of the classes  
35 specified in this subsection having value equal to or greater than the sum of the bond.

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

40 (d) The secretary may accept the bond of the applicant itself without separate surety when  
41 the applicant demonstrates to the satisfaction of the secretary the existence of a suitable agent

42 to receive service of process and a history of financial solvency and continuous operation  
43 sufficient for authorization to self insure.

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

47 (f) All bond releases shall be accomplished in accordance with ~~the provisions of §22-3-23~~  
48 of this code.

49 (g)(1) The Special Reclamation Fund previously created is continued. The Special  
50 Reclamation Water Trust Fund is created within the state treasury into and from which moneys  
51 shall be paid for the purpose of assuring a reliable source of capital and operating expenses for  
52 the treatment of water discharges from forfeited sites where the secretary has obtained or applied  
53 for an NPDES permit as of the effective date of this article. The moneys accrued in both funds,  
54 any interest earned thereon and yield from investments by the State Treasurer or West Virginia  
55 Investment Management Board are reserved solely and exclusively for the purposes set forth in  
56 this section and §22-1-17 of this code.

57 (2) The funds shall be administered by the secretary who is authorized to expend the  
58 moneys in both funds for the reclamation and rehabilitation of lands which were subjected to  
59 permitted surface mining operations and abandoned after August 3, 1977, where the amount of  
60 the bond posted and forfeited on the land is less than the actual cost of reclamation, and where  
61 the land is not eligible for abandoned mine land reclamation funds under §22-2-1 *et seq.* of this  
62 code. The secretary may also expend an amount not to exceed 10 percent of the total annual  
63 assets in both funds to implement and administer the provisions of this article and, as they apply  
64 to the Surface Mine Board, §22B-1-1 *et seq.* and §22B-1-4 *et seq.* of this code.

65 (3)(A) A tax credit shall be granted against the tax imposed by subsection (i) of this section  
66 to any mine operator who performs reclamation or remediation at a bond forfeiture site which  
67 otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special

68 Reclamation Water Trust Fund. The credit authorized pursuant to this subdivision is retroactive  
69 and may be claimed for reclamation or remediation performed on or after January 1, 2012:  
70 *Provided*, That for reclamation or remediation performed prior to July 13, 2013, no tax credit may  
71 be granted unless a written application for the tax credit was submitted to the Tax Commissioner  
72 prior to September 1, 2014. The amount of credit shall be determined as provided in this section.

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

78 (C) To claim the credit, the mine operator shall, from time to time, file with the Tax  
79 Commissioner a written application seeking the amount of the credit earned. Within 30 days of  
80 receipt of the application, the Tax Commissioner shall issue a certification of the amount of tax  
81 credit, if any, to be allocated to the eligible taxpayer. Should the amount of the credit certified be  
82 less than the amount applied for, the Tax Commissioner shall set forth in writing the reason for  
83 the difference. Should no certification be issued within the 30-day period, the application ~~will~~ shall  
84 ~~be deemed~~ considered certified. Any decision by the Tax Commissioner is appealable pursuant  
85 to the provisions of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1  
86 *et seq.* of this code. Applications for certification of the proposed tax credit shall contain the  
87 information and be in the detail and form as required by the Tax Commissioner.

88 (h) The Tax Commissioner may promulgate rules for legislative approval pursuant to ~~the~~  
89 ~~provisions of~~ §29A-3-1 *et seq.* of this code to carry out the purposes of this subdivision two,  
90 subsection (g) of this section.

91 (i)(1) Rate, deposits, and review.

92 (A) For tax periods commencing on and after July 1, 2009, every person conducting coal  
93 surface mining shall remit a special reclamation tax of 14 and four-tenths cents per ton of clean

94 coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special  
95 Reclamation Fund and the Special Reclamation Water Trust Fund.

96 (B) For tax periods commencing on and after July 1, 2012, the rate of tax specified in  
97 paragraph (A) of this subdivision is discontinued and is replaced by the rate of tax specified in this  
98 paragraph. For tax periods commencing on and after July 1, 2012, every person conducting coal  
99 surface mining shall remit a special reclamation tax of 27 and nine-tenths cents per ton of clean  
100 coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special  
101 Reclamation Fund and the Special Reclamation Water Trust Fund. Of that amount, 15 cents per  
102 ton of clean coal mined shall be deposited into the Special Reclamation Water Trust Fund.

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

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

111 (2) In managing the special reclamation program, the secretary shall: (A) Pursue cost-  
112 effective alternative water treatment strategies; ~~and~~ (B) conduct formal actuarial studies every two  
113 years and conduct informal reviews annually on the Special Reclamation Fund and Special  
114 Reclamation Water Trust Fund; and (C) develop and maintain a database to track existing  
115 reclamation liabilities (including water treatment) at coal mining operations in the state that were  
116 permitted after August 3, 1977. This information is to be updated on a quarterly basis beginning  
117 July 2022 to ensure that actuarial studies of the special reclamation fund and special reclamation  
118 water trust fund are informed by current data.

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

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

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

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

132 (4) If the secretary determines that the alternative program, the incremental bonding  
133 program or the water reclamation account or bonding programs reasonably assure that sufficient  
134 funds will be available to complete the reclamation of a forfeited site and that the Special  
135 Reclamation Fund will remain fiscally stable, the secretary ~~is authorized to~~ may propose  
136 legislative rules in accordance with §29A-3-1 *et seq.* of this code to implement an alternate  
137 program, a water reclamation account or bonding program or other funding mechanisms or a  
138 combination thereof.

139 (j) This special reclamation tax shall be collected by the Tax Commissioner in the same  
140 manner, at the same time and upon the same tonnage as the minimum severance tax imposed  
141 by §11-12B-1 *et seq.* of this code is collected: *Provided*, That under no circumstance ~~shall~~ may  
142 the special reclamation tax be construed to be an increase in either the minimum severance tax  
143 imposed by ~~said that~~ said article or the severance tax imposed by §11-13-1 *et seq.* of this code.

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

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

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

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

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

NOTE: The purpose of this bill is to allow the Special Reclamation Program to develop and maintain a database designed to track reclamation liabilities.

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