

FILED

2005 APR 18 P 5: 46

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 3033

(By Mr. Speaker, Mr. Kiss, and Delegates Staton, Michael and Mahan)



MARCH 31

Passed ~~April 1~~, 2005

In Effect from Passage

FILED

2005 APR 18 P 5:46

OFFICE WEST VIRGINIA
SECRETARY OF STATE

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 3033

(BY MR. SPEAKER, MR. KISS, AND DELEGATES STATON,
MICHAEL AND MAHAN)

MARCH 31

[Passed ~~April 1~~, 2005; in effect from passage.]

*ok
S. 22-3*

AN ACT to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating generally to the special reclamation tax; extending the imposition of a temporary tax on clean coal mined for deposit into the special reclamation fund for an additional period; and providing duties for the Secretary of the Department of Environmental Protection in managing the special reclamation program.

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 fund; 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
5 of 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 one
8 thousand dollars nor more than five thousand dollars for each
9 acre or fraction thereof: *Provided*, That the minimum amount
10 of bond furnished for any type of reclamation bonding shall be
11 ten thousand dollars. The bond shall cover: (1) The entire
12 permit area; or (2) that increment of land within the permit area
13 upon which the operator will initiate and conduct surface
14 mining and reclamation operations within the initial term of the
15 permit. If the operator chooses to use incremental bonding, as
16 succeeding increments of surface mining and reclamation
17 operations are to be initiated and conducted within the permit
18 area, the operator shall file with the Secretary an additional
19 bond or bonds to cover the increments in accordance with this
20 section: *Provided, however*, That once the operator has chosen
21 to proceed with bonding either the entire permit area or with
22 incremental bonding, the operator shall continue bonding in that
23 manner for the term of the permit.

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

29 (c) (1) The form of the bond shall be approved by the
30 Secretary and may include, at the option of the operator, surety

31 bonding, collateral bonding (including cash and securities),
32 establishment of an escrow account, self-bonding or a combina-
33 tion of these methods. If collateral bonding is used, the operator
34 may elect to deposit cash or collateral securities or certificates
35 as follows: Bonds of the United States or its possessions, of the
36 federal land bank or of the homeowners' loan corporation; full
37 faith and credit general obligation bonds of the state of West
38 Virginia or other states, and of any county, district or municipi-
39 tality of the State of West Virginia or other states; or certifi-
40 cates of deposit in a bank in this state, which certificates shall
41 be in favor of the department. The cash deposit or market value
42 of such securities or certificates shall be equal to or greater than
43 the penal sum of the bond. The Secretary shall, upon receipt of
44 any deposit of cash, securities or certificates, promptly place the
45 same with the Treasurer of the State of West Virginia whose
46 duty it is to receive and hold the same in the name of the state
47 in trust for the purpose for which the deposit is made when the
48 permit is issued. The operator making the deposit is entitled,
49 from time to time, to receive from the State Treasurer, upon the
50 written approval of the Secretary, the whole or any portion of
51 any cash, securities or certificates so deposited, upon depositing
52 with him or her in lieu thereof cash or other securities or
53 certificates of the classes herein specified having value equal to
54 or greater than the sum of the bond.

55 (2) The Secretary may approve an alternative bonding
56 system if it will: ~~(1)~~ (A) Reasonably assure that sufficient funds
57 will be available to complete the reclamation, restoration and
58 abatement provisions for all permit areas which may be in
59 default at any time; and ~~(2)~~ (B) provide a substantial economic
60 incentive for the permittee to comply with all reclamation
61 provisions.

62 (d) The Secretary may accept the bond of the applicant
63 itself without separate surety when the applicant demonstrates
64 to the satisfaction of the Secretary the existence of a suitable

65 agent to receive service of process and a history of financial
66 solvency and continuous operation sufficient for authorization
67 to self-insure.

68 (e) It is unlawful for the owner of surface or mineral rights
69 to interfere with the present operator in the discharge of the
70 operator's obligations to the State for the reclamation of lands
71 disturbed by the operator.

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

74 (g) The Special Reclamation Fund previously created is
75 continued. The moneys accrued in the fund, including interest,
76 are reserved solely and exclusively for the purposes set forth in
77 this section and section seventeen, article one of this chapter.
78 The fund shall be administered by the Secretary who is autho-
79 rized to expend the moneys in the fund for the reclamation and
80 rehabilitation of lands which were subjected to permitted
81 surface mining operations and abandoned after the third day of
82 August, one thousand nine hundred seventy-seven, where the
83 amount of the bond posted and forfeited on the land is less than
84 the actual cost of reclamation, and where the land is not eligible
85 for abandoned mine land reclamation funds under article two of
86 this chapter. The Secretary shall develop a long-range planning
87 process for selection and prioritization of sites to be reclaimed
88 so as to avoid inordinate short-term obligations of the assets in
89 the fund of such magnitude that the solvency of the fund is
90 jeopardized. The Secretary may use the Special Reclamation
91 Fund for the purpose of designing, constructing and maintain-
92 ing water treatment systems when they are required for a
93 complete reclamation of the affected lands described in this
94 subsection. The Secretary may also expend an amount not to
95 exceed ten percent of the total annual assets in the fund to
96 implement and administer the provisions of this article and, as

97 they apply to the Surface Mine Board, articles one and four,
98 chapter twenty-two-b of this code.

99 (h) (1) Prior to the first day of January, two thousand two,
100 every person conducting coal surface mining operations shall
101 contribute into the fund a sum equal to three cents per ton of
102 clean coal mined. For tax periods commencing on and after the
103 first day of January, two thousand two, every person conducting
104 coal surface mining shall contribute into the fund as follows:

A

sk
3/20/06
105 (A) For a period not to exceed fifty-seven months, seven
106 cents per ton of clean coal mined; and (B) an additional seven
107 cents per ton of clean coal mined. The tax shall be levied upon
108 each ton of clean coal severed or clean coal obtained from
109 refuse pile and slurry pond recovery or clean coal from other
110 mining methods extracting a combination of coal and waste
111 material as part of a fuel supply on or after the first day of
112 January, two thousand two. The additional seven-cent tax shall
113 be reviewed and, if necessary, adjusted annually by the Legisla-
114 ture upon recommendation of the Council pursuant to the
115 provisions of section seventeen, article one of this chapter:
116 *Provided*, That the tax may not be reduced until the Special
117 Reclamation Fund has sufficient moneys to meet the reclama-
118 tion responsibilities of the State established in this section.

119 (2) In managing the Special Reclamation Program, the
120 Secretary shall:

121 (A) Pursue cost effective alternative water treatment
122 strategies; and

123 (B) Conduct formal actuarial studies every two years and
124 conduct informal reviews annually on the Special Reclamation
125 Fund.

126 (3) Prior to the thirty-first day of December, two thousand
127 five, the Secretary shall:

128 (A) Determine the feasibility of allowing full cost bonding
129 in lieu of a portion of the per ton coal tax. In making this
130 determination, the Secretary shall consider the availability and
131 affordability of full cost bonding to operators and the overall
132 fiscal stability of the Special Reclamation Program;

133 (B) Determine the feasibility of creating a water quality
134 trust fund to provide long-term funding for water treatment
135 from forfeited sites and to reduce a portion of the per ton coal
136 tax. In making this determination, the Secretary shall consider
137 the availability and fiscal stability of any funding for a water
138 quality trust fund and any impact it may have on the overall
139 fiscal stability of the Special Reclamation Program; and

140 (C) Determine the feasibility of establishing a bonding
141 requirement for water treatment activities in lieu of a portion of
142 the per ton coal tax. In making this determination, the Secretary
143 shall consider the availability and affordability of bonding to
144 operators and the overall fiscal stability of the Special Reclama-
145 tion Program.

146 (4) If the Secretary determines that full cost bonding, water
147 treatment bonding, the establishment of a water quality trust
148 fund, or the use of other funding mechanisms, or a combination
149 of any or all of these financial assurance mechanisms, reason-
150 ably assure that sufficient funds will be available to complete
151 the reclamation of a forfeited site and that the Special Reclama-
152 tion Fund will remain fiscally stable, the Secretary is authorized
153 to propose legislative rules in accordance with article three,
154 chapter twenty-nine-a of this code to implement a full cost
155 bonding program, a water reclamation bonding program, a
156 water quality trust fund program, or other funding mechanisms,
157 or a combination thereof, in lieu of the per ton coal tax or a
158 portion thereof.

159 (i) This special reclamation tax shall be collected by the
160 State Tax Commissioner in the same manner, at the same time

161 and upon the same tonnage as the minimum severance tax
162 imposed by article twelve-b, chapter eleven of this code is
163 collected: *Provided*, That under no circumstance shall the
164 special reclamation tax be construed to be an increase in either
165 the minimum severance tax imposed by said article or the
166 severance tax imposed by article thirteen of said chapter.

167 (j) Every person liable for payment of the special reclama-
168 tion tax shall pay the amount due without notice or demand for
169 payment.

170 (k) The Tax Commissioner shall provide to the Secretary a
171 quarterly listing of all persons known to be delinquent in
172 payment of the special reclamation tax. The Secretary may take
173 the delinquencies into account in making determinations on the
174 issuance, renewal or revision of any permit.

175 (l) The Tax Commissioner shall deposit the fees collected
176 with the Treasurer of the State of West Virginia to the credit of
177 the Special Reclamation Fund. The moneys in the fund shall be
178 placed by the Treasurer in an interest-bearing account with the
179 interest being returned to the fund on an annual basis.

180 (m) At the beginning of each quarter, the Secretary shall
181 advise the State Tax Commissioner and the Governor of the
182 assets, excluding payments, expenditures and liabilities, in the
183 fund.

184 (n) To the extent that this section modifies any powers,
185 duties, functions and responsibilities of the Department that
186 may require approval of one or more federal agencies or
187 officials in order to avoid disruption of the federal-state
188 relationship involved in the implementation of the federal
189 Surface Mining Control and Reclamation Act, 30 U. S. C.
190 §1270 by the State, the modifications will become effective
191 upon the approval of the modifications by the appropriate
192 federal agency or official.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



Chairman Senate Committee



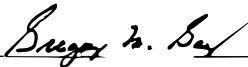
Chairman House Committee

Originating in the House.

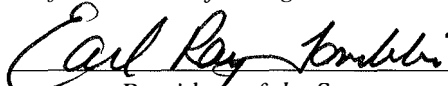
In effect from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 18th
day of April, 2004.



Governor

PRESENTED TO THE
GOVERNOR

Date 4/12/05

Time 3:05pm