

SB 1011

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WEST VIRGINIA LEGISLATURE

OFFICE OF WEST VIRGINIA
CLERK OF STATE

SEVENTY-NINTH LEGISLATURE

FIRST EXTRAORDINARY SESSION, 2009

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ENROLLED

Senate Bill No. 1011

(BY SENATORS TOMBLIN (MR. PRESIDENT)
AND CARUTH, BY REQUEST OF THE EXECUTIVE)

[Passed June 2, 2009; in effect from passage.]

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SECRETARY OF STATE

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Senate Bill No. 1011

(BY SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH,
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[Passed June 2, 2009; in effect from passage.]

AN ACT to amend and reenact §5B-2A-3, §5B-2A-5, §5B-2A-6 and §5B-2A-9 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22-3-10 of said code, all relating to ensuring the post-mine development of reclaimed surface mine property; defining certain terms; requiring certain counties to develop master land use plans for post-mine development; clarifying procedures relating to master land use plans and community impact statements; enhancing certain powers and responsibilities of the Office of Coalfield Community Development and the Department of Environmental Protection with respect to master land use plans; requiring surface mine reclamation plans to comport with approved master land use plans; and authorizing surface mine reclamation plans to contain alternative, noncomporting post-mining land uses under certain circumstances.

Be it enacted by the Legislature of West Virginia:

That §5B-2A-3, §5B-2A-5, §5B-2A-6 and §5B-2A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §22-3-10 of said code be amended and reenacted, all to read as follows:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

§5B-2A-3. Definitions.

1 (a) For the purpose of this article, the following terms
2 have the meanings ascribed to them:

3 (1) "Department" means the Department of Environ-
4 mental Protection established in article one, chapter
5 twenty-two of this code;

6 (2) "Office" means the Office of Coalfield Community
7 Development;

8 (3) "Operator" means the definition in section three,
9 article three, chapter twenty-two of this code; and

10 (4) "Renewable and alternative energy" means energy
11 produced or generated from natural or replenishable
12 resources other than traditional fossil fuels or nuclear
13 resources and includes, without limitation, solar energy,
14 wind power, hydropower, geothermal energy, biomass
15 energy, biologically derived fuels, energy produced with
16 advanced coal technologies, coalbed methane, fuel pro-
17 duced by a coal gasification or liquefaction facility,
18 synthetic gas, waste coal, tire-derived fuel, pumped
19 storage hydroelectric power or similar energy sources.

20 (b) Unless used in a context that clearly requires a
21 different meaning or as otherwise defined herein, terms
22 used in this article shall have the definitions set forth in
23 this section.

§5B-2A-5. Powers and duties.

1 The office has and may exercise the following duties,
2 powers and responsibilities:

3 (1) To establish a procedure for developing a community
4 impact statement as provided in section six of this article
5 and to administer the procedure so established;

6 (2) To establish a procedure for determining the assets
7 that could be developed in and maintained by the commu-
8 nity to foster its long-term viability as provided in section
9 eight of this article and to administer the procedure so
10 established;

11 (3) To establish a procedure for determining the land and
12 infrastructure needs in the general area of the surface
13 mining operations as provided in section nine of this
14 article and to administer the procedure so established;

15 (4) To establish a procedure to develop action reports
16 and annual updates as provided in section ten of this
17 article and to administer the procedure so established;

18 (5) To determine the need for meetings to be held among
19 the various interested parties in the communities impacted
20 by surface mining operations and, when appropriate, to
21 facilitate the meetings;

22 (6) To establish a procedure to assist property owners in
23 the sale of their property as provided in section eleven of
24 this article and to administer the procedure so established;

25 (7) In conjunction with the department, to maintain and
26 operate a system to receive and address questions, con-
27 cerns and complaints relating to surface mining; and

28 (8) On its own initiative or at the request of a community
29 in close proximity to a mining operation, or a mining
30 operation, offer assistance to facilitate the development of
31 economic or community assets. Such assistance shall

32 include the preparation of a master land use plan pursuant
33 to the provisions of section nine of this article.

§5B-2A-6. Community impact statement.

1 (a)(1) The operator shall develop a community impact
2 statement, as described in this section, which shall be
3 submitted to the office within sixty days of the filing of a
4 surface mining application pursuant to the provisions of
5 article three, chapter twenty-two of this code. Failure to
6 submit a community impact statement to the office shall
7 be considered a violation under the provisions of section
8 seventeen of said article; and

9 (2) The operator shall provide copies of the community
10 impact statement to the department's Office of Mining
11 Reclamation and Office of Explosives and Blasting and to
12 the county commissions, county clerks' offices and local,
13 county or regional development or redevelopment authori-
14 ties of the areas to be affected by the surface mining
15 operations.

16 (b) The community impact statement, where practicable,
17 shall not be a highly technical or legalistic document, but
18 shall be written in a clear and concise manner understand-
19 able to all citizens. The community impact statement shall
20 include the following:

21 (1) The amount and location of land to be mined or used
22 in the actual mining operations;

23 (2) The expected duration of the mining operations in
24 each area of the community;

25 (3) The extent of anticipated mining-related property
26 acquisitions, to the extent that such acquisitions are
27 known or knowable;

28 (4) The intentions of the surface and mineral owners
29 relative to the acquired property, to the extent that such
30 intentions are known or knowable;

31 (5) A statement of the post-mining land use for all land
32 within the permit boundary;

33 (6) The intended blasting plan and the expected time and
34 duration it will affect each community;

35 (7) Information concerning the extent and nature of
36 valley fills and the watersheds to be affected;

37 (8) Economic information, such as the number of jobs
38 created and annual coal production resulting from the
39 surface mining operation, the anticipated life of the
40 mining operation and such other information as may be
41 deemed appropriate; and

42 (9) An acknowledgment of the recommendations of any
43 approved master land use plan that pertains to the land
44 proposed to be mined, including an acknowledgment of
45 the infrastructure components needed to accomplish the
46 designated post-mine land use required by the plan.

47 (c) Where the operator makes any significant revision to
48 the permit application under section eighteen, article
49 three, chapter twenty-two of this code, which revision
50 substantially affects any of the information provided in
51 subsection (b) of this section, the operator shall revise the
52 affected provisions of its community impact statement and
53 shall submit such revisions as set forth in subsection (a) of
54 this section.

55 (d) Within thirty days of receipt of a community impact
56 statement pursuant to subdivision (2), subsection (a) of
57 this section or a revised community impact statement
58 pursuant to subsection (c) of this section, the local, county
59 or regional development or redevelopment authorities of
60 the areas to be affected by the surface mining operations

61 shall provide a written acknowledgment of the receipt of
62 this community impact statement or revised community
63 impact statement to the department's Division of Mining
64 Reclamation, to the county commission or county commis-
65 sions and to the office.

66 (e) The provisions of this section shall apply as follows:

67 (1) To all surface mining permits granted after June 11,
68 1999; and

69 (2) At the first renewal date of all previously issued
70 permits: *Provided*, That the permittee shall be afforded
71 ninety days from said date to comply with the provisions
72 of this section.

§5B-2A-9. Securing developable land and infrastructure.

1 (a) The office shall determine the land and infrastructure
2 needs in the general area of the surface mining operations.

3 (b) For the purposes of this section, the term "general
4 area" shall mean the county or counties in which the
5 mining operations are being conducted or any adjacent
6 county.

7 (c) To assist the office the operator shall be required to
8 prepare and submit to the office the information set forth
9 in this subsection as follows:

10 (1) A map of the area for which a permit under article
11 three, chapter twenty-two of this code is being sought or
12 has been obtained;

13 (2) The names of the surface and mineral owners of the
14 property to be mined pursuant to the permit; and

15 (3) A statement of the post-mining land use for all land
16 which may be affected by the mining operations.

17 (d) In making a determination of the land and infra-
18 structure needs in the general area of the mining opera-
19 tions, the office shall consider at least the following:

20 (1) The availability of developable land in the general
21 area;

22 (2) The needs of the general area for developable land;

23 (3) The availability of infrastructure, including, but not
24 limited to, access roads, water service, wastewater service
25 and other utilities;

26 (4) The amount of land to be mined and the amount of
27 valley to be filled;

28 (5) The amount, nature and cost to develop and maintain
29 the community assets identified in section eight of this
30 article; and

31 (6) The availability of federal, state and local grants and
32 low-interest loans to finance all or a portion of the acqui-
33 sition and construction of the identified land and infra-
34 structure needs of the general area.

35 (e) In making a determination of the land and infrastruc-
36 ture needs in the general area of the surface mining
37 operations, the office shall give significant weight to
38 developable land on or near existing or planned multilane
39 highways.

40 (f) The office may secure developable land and infra-
41 structure for a development office or county through the
42 preparation of a master land use plan for inclusion into a
43 reclamation plan prepared pursuant to the provisions of
44 section ten, article three, chapter twenty-two of this code.
45 No provision of this section may be construed to modify
46 requirements of article three of said chapter.

47 (1) The county commission or other governing body for
48 each county in which there are surface mining operations

49 that are subject to this article shall determine land and
50 infrastructure needs within their jurisdictions through the
51 development of a master land use plan which incorporates
52 post-mining land use needs, including, but not limited to,
53 renewable and alternative energy uses, residential uses,
54 highway uses, industrial uses, commercial uses, agricul-
55 tural uses, public facility uses or recreational facility uses.
56 A county commission or other governing body of a county
57 may designate a local, county or regional development or
58 redevelopment authority to assist in the preparation of a
59 master land use plan. A county commission or other
60 governing body of a county may adopt a master land use
61 plan developed after July 1, 2009, only after a reasonable
62 public comment period;

63 (2) Upon the request of a county or designated develop-
64 ment or redevelopment authority, the office shall assist the
65 county or development or redevelopment authority with
66 the development of a master land use plan;

67 (3)(A) The Department of Environmental Protection and
68 the Office of Coalfield Community Development shall
69 review master land use plans existing as of July 1, 2009.
70 If the office determines that a master land use plan
71 complies with the requirements of this article and the
72 rules promulgated pursuant to this article, the office shall
73 approve the plan on or before July 1, 2010;

74 (B) Master land use plans developed after July 1, 2009,
75 shall be submitted to the department and the office for
76 review. The office shall determine whether to approve a
77 master land use plan submitted pursuant to this subdivi-
78 sion within three months of submission. The office shall
79 approve the plan if it complies with the requirements of
80 this article and the rules promulgated pursuant to this
81 article;

82 (C) The office shall review a master land use plan
83 approved under this section every three years. No later

84 than six months before the review of a master land use
85 plan, the county or designated development or redevelop-
86 ment authority shall submit an updated master land use
87 plan to the department and the office for review. The
88 county may submit its updated master land use plan only
89 after a reasonable public comment period. The office shall
90 approve the master land use plan if the updated plan
91 complies with the requirements of this article and the
92 rules promulgated pursuant to this article;

93 (D) If the office does not approve a master land use plan,
94 the county or designated development or redevelopment
95 authority shall submit a supplemental master land use
96 plan to the office for approval;

97 (4) The required infrastructure component standards
98 needed to accomplish the designated post-mining land
99 uses identified in a master land use plan shall be devel-
100 oped by the county or its designated development or
101 redevelopment authority. These standards must be in
102 place before the respective county or development or
103 redevelopment authority can accept ownership of property
104 donated pursuant to a master land use plan. Acceptance
105 of ownership of such property by a county or development
106 or redevelopment authority may not occur unless it is
107 determined that: (i) The property use is compatible with
108 adjacent land uses; (ii) the use satisfies the relevant county
109 or development or redevelopment authority's anticipated
110 need and market use; (iii) the property has in place
111 necessary infrastructure components needed to achieve the
112 anticipated use; (iv) the use is supported by all other
113 appropriate public agencies; (v) the property is eligible for
114 bond release in accordance with section twenty-three,
115 article three, chapter twenty-two of this code; and (vi) the
116 use is feasible. Required infrastructure component
117 standards require approval of the relevant county commis-
118 sion, commissions or other county governing body before
119 such standards are accepted. County commission or other

120 county governing body approval may be rendered only
121 after a reasonable public comment period;

122 (5) The provisions of this subsection shall not take effect
123 until legislative rules are promulgated pursuant to para-
124 graph (C), subdivision (1), subsection (c), section
125 twenty-three, article three, chapter twenty-two of this
126 code governing bond releases which assure sound future
127 maintenance by the local or regional economic develop-
128 ment, redevelopment or planning agencies.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-10. Reclamation plan requirements.

1 (a) Each reclamation plan submitted as part of a surface
2 mining permit application shall include, in the degree of
3 detail necessary to demonstrate that reclamation required
4 by this article can be accomplished, a statement of:

5 (1) The identification of the lands subject to surface
6 mining over the estimated life of these operations and the
7 size, sequence and timing of the operations for which it is
8 anticipated that individual permits for mining will be
9 sought;

10 (2) The condition of the land to be covered by the permit
11 prior to any mining, including: (A) The uses existing at the
12 time of the application and, if the land has a history of
13 previous mining, the uses which preceded any mining; (B)
14 the capability of the land prior to any mining to support a
15 variety of uses, giving consideration to soil and foundation
16 characteristics, topography and vegetation cover and, if
17 applicable, a soil survey prepared pursuant to subdivision
18 (15), subsection (a), section nine of this article; and (C) the
19 best information available on the productivity of the land
20 prior to mining, including appropriate classification as

21 prime farmlands and the average yield of food, fiber,
22 forage or wood products from the lands obtained under
23 high levels of management;

24 (3) The use which is proposed to be made of the land
25 following reclamation, including a discussion of the utility
26 and capacity of the reclaimed land to support a variety of
27 alternative uses, including, but not limited to, renewable
28 and alternative energy uses, residential uses, highway
29 uses, industrial uses, commercial uses, agricultural uses,
30 public facility uses or recreational facility uses, and the
31 relationship of the use to existing land use policies and
32 plans and the comments of any owner of the surface, other
33 state agencies and local governments which would have to
34 initiate, implement, approve or authorize the proposed use
35 of the land following reclamation;

36 (A) The post-mining land use proposed in any reclama-
37 tion plan for lands proposed to be mined by surface
38 mining methods shall comport with the land use that is
39 specified in the approved master land use plan for the area
40 as provided in section nine, article two-a, chapter five-b of
41 this code: *Provided*, That the secretary may approve an
42 alternative post-mining land use where the applicant
43 demonstrates that:

44 (i) The proposed post-mining land use is a higher and
45 better use than the land use specified in the approved
46 master land use plan;

47 (ii) Site-specific conditions make attainment of a post-
48 mining land use which comports with the land use that is
49 specified in the approved master land use plan for the area
50 impractical; or

51 (iii) The post-mining land use specified in the approved
52 master land use plan would substantially interfere with
53 the future extraction of a mineable coal bed, as that term
54 is defined in rules promulgated by the Tax Commissioner

55 relating to the valuation of active or reserve coal property
56 for ad valorem property tax purposes, 110 C. S. R. 1I-3 or
57 a successor rule, from the land to be mined.

58 (B) Existing permits with approved reclamation plans
59 may be modified by the operator through an appropriate
60 permit revision to include a post-mining land use which
61 comports with the land use that is specified in the ap-
62 proved master land use plan for the area as provided in
63 section nine, article two-a, chapter five-b of this code;

64 (C) By complying with a master land use plan that has
65 been approved in accordance with article two-a, chapter
66 five-b of this code, a post-mining land use satisfies the
67 requirements for an alternative post-mining land use and
68 satisfies the variance requirements set forth in subsection
69 (c), section thirteen, article three, chapter twenty-two of
70 this code if applicable to the proposed use;

71 (4) A detailed description of how the proposed post-
72 mining land use is to be achieved and the necessary
73 support activities which may be needed to achieve the
74 proposed land use;

75 (5) The engineering techniques proposed to be used in
76 mining and reclamation and a description of the major
77 equipment; a plan for the control of surface water drain-
78 age and of water accumulation; a plan, where appropriate,
79 for backfilling, soil stabilization and compacting, grading,
80 revegetation and a plan for soil reconstruction, replace-
81 ment and stabilization pursuant to the performance
82 standards in subdivision (7), subsection (b), section
83 thirteen of this article for those food, forage and forest
84 lands identified therein; and a statement as to how the
85 operator plans to comply with each of the applicable
86 requirements set out in section thirteen or fourteen of this
87 article;

88 (6) A detailed estimated timetable for the accomplish-
89 ment of each major step in the reclamation plan;

90 (7) The consideration which has been given to conduct-
91 ing surface mining operations in a manner consistent with
92 surface owner plans and applicable state and local land
93 use plans and programs;

94 (8) The steps to be taken to comply with applicable air
95 and water quality laws and rules and any applicable
96 health and safety standards;

97 (9) The consideration which has been given to developing
98 the reclamation plan in a manner consistent with local
99 physical environmental and climatological conditions;

100 (10) All lands, interests in lands or options on the
101 interests held by the applicant or pending bids on interests
102 in lands by the applicant, which lands are contiguous to
103 the area to be covered by the permit;

104 (11) A detailed description of the measures to be taken
105 during the surface mining and reclamation process to
106 assure the protection of:

107 (A) The quality of surface and groundwater systems,
108 both on and off site, from adverse effects of the surface
109 mining operation;

110 (B) The rights of present users to the water; and

111 (C) The quantity of surface and groundwater systems,
112 both on and off site, from adverse effects of the surface
113 mining operation or to provide alternative sources of
114 water where the protection of quantity cannot be assured;

115 (12) The results of tests borings which the applicant has
116 made at the area to be covered by the permit or other
117 equivalent information and data in a form satisfactory to
118 the director, including the location of subsurface water
119 and an analysis of the chemical properties, including acid-

120 forming properties of the mineral and overburden: *Pro-*
121 *vided*, That information which pertains only to the
122 analysis of the chemical and physical properties of the
123 coal, except information regarding the mineral or elemen-
124 tal contents which are potentially toxic in the environ-
125 ment, shall be kept confidential and not made a matter of
126 public record;

127 (13) The consideration which has been given to maximize
128 the utilization and conservation of the solid fuel resource
129 being recovered so that re-affecting the land in the future
130 can be minimized; and

131 (14) Any other requirements as the director may pre-
132 scribe by rule.

133 (b) A reclamation plan pending approval as of the
134 effective date of this section may be amended by the
135 operator to provide for a post-mining land use that
136 comports with a master land use plan that has been
137 approved in accordance with article two-a, chapter five-b
138 of this code.

139 (c) The reclamation plan shall be available to the public
140 for review except for those portions thereof specifically
141 exempted in subsection (a) of this section.

142 (d) The amendments to this section by the first extraor-
143 dinary session of the Legislature in 2009 are effective upon
144 the approval of the corresponding amendments to West
145 Virginia's state program, as that term is defined in the
146 federal Surface Mining Control and Reclamation Act of
147 1977, 30 U. S. C. §1291, by the federal Office of Surface
148 Mining Reclamation and Enforcement.

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

[Signature]
.....
Chairman Senate Committee

[Signature]
.....
Chairman House Committee

Originated in the Senate.

In effect from passage.

[Signature]
.....
Clerk of the Senate

[Signature]
.....
Clerk of the House of Delegates

[Signature]
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within _____ is approved this the 17th
Day of June 2009.

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

JUN 16 2009

Time 9:00 am