



1 be amended and reenacted to read as follows:

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

3 **§22-3-11. Bonds; amount and method of bonding; bonding**  
4 **requirements; special reclamation tax and funds;**  
5 **prohibited acts; period of bond liability.**

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

1 *Provided, however,* That once the operator has chosen to proceed  
2 with bonding either the entire permit area or with incremental  
3 bonding, the operator shall continue bonding in that manner for the  
4 term of the permit.

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

9 (c) (1) The form of the bond shall be approved by the  
10 secretary and may include, at the option of the operator, surety  
11 bonding, collateral bonding (including cash and securities),  
12 establishment of an escrow account, self bonding or a combination  
13 of these methods. If collateral bonding is used, the operator may  
14 elect to deposit cash or collateral securities or certificates as  
15 follows: Bonds of the United States or its possessions of the  
16 Federal Land Bank or of the Homeowners' Loan Corporation; full  
17 faith and credit general obligation bonds of the State of West  
18 Virginia or other states and of any county, district or  
19 municipality of the State of West Virginia or other states; or  
20 certificates of deposit in a bank in this state, which certificates  
21 shall be in favor of the department. The cash deposit or market  
22 value of the securities or certificates shall be equal to or  
23 greater than the penal sum of the bond. The secretary shall, upon  
24 receipt of any deposit of cash, securities or certificates,

1 promptly place the same with the Treasurer of the State of West  
2 Virginia whose duty it is to receive and hold the deposit in the  
3 name of the state in trust for the purpose for which the deposit is  
4 made when the permit is issued. The operator making the deposit is  
5 entitled, from time to time, to receive from the State Treasurer,  
6 upon the written approval of the secretary, the whole or any  
7 portion of any cash, securities or certificates so deposited, upon  
8 depositing with him or her in lieu thereof cash or other securities  
9 or certificates of the classes specified in this subsection having  
10 value equal to or greater than the sum of the bond.

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

17 (d) The secretary may accept the bond of the applicant itself  
18 without separate surety when the applicant demonstrates to the  
19 satisfaction of the secretary the existence of a suitable agent to  
20 receive service of process and a history of financial solvency and  
21 continuous operation sufficient for authorization to self insure.

22 (e) It is unlawful for the owner of surface or mineral rights  
23 to interfere with the present operator in the discharge of the  
24 operator's obligations to the state for the reclamation of lands

1 disturbed by the operator.

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

4 (g) (1) The Special Reclamation Fund previously created is  
5 continued. The Special Reclamation Water Trust Fund is created  
6 within the State Treasury into and from which moneys shall be paid  
7 for the purpose of assuring a reliable source of capital to reclaim  
8 and restore water treatment systems on forfeited sites. The moneys  
9 accrued in both funds, any interest earned thereon and yield from  
10 investments by the State Treasurer or West Virginia Investment  
11 Management Board are reserved solely and exclusively for the  
12 purposes set forth in this section and section seventeen, article  
13 one of this chapter. The funds shall be administered by the  
14 secretary who is authorized to expend the moneys in both funds for  
15 the reclamation and rehabilitation of lands which were subjected to  
16 permitted surface mining operations and abandoned after August 3,  
17 1977, where the amount of the bond posted and forfeited on the land  
18 is less than the actual cost of reclamation, and where the land is  
19 not eligible for abandoned mine land reclamation funds under  
20 article two of this chapter. The secretary shall develop a  
21 long-range planning process for selection and prioritization of  
22 sites to be reclaimed so as to avoid inordinate short-term  
23 obligations of the assets in both funds of such magnitude that the  
24 solvency of either is jeopardized. The secretary may use both

1 funds for the purpose of designing, constructing and maintaining  
2 water treatment systems when they are required for a complete  
3 reclamation of the affected lands described in this subsection.  
4 The secretary may also expend an amount not to exceed ten percent  
5 of the total annual assets in both funds to implement and  
6 administer the provisions of this article and, as they apply to the  
7 Surface Mine Board, articles one and four, chapter twenty-two-b of  
8 this code.

9 (2) In the event of a bond forfeiture, the permit obligations  
10 and liabilities arising under the original National Pollutant  
11 Discharge Elimination System permit, issued to the mine operator  
12 pursuant to the Water Pollution Control Act (W.Va. Code §22-11 et  
13 seq.), remain with the mine operator and do not pass to the  
14 secretary; these obligations and any corresponding liabilities  
15 arising under the Water Pollution Control Act (W.Va. Code §22-11 et  
16 seq.) remain with the mine operator.

17 (3) Reclamation efforts undertaken by the Secretary, including  
18 the construction and maintenance of water pollution treatment  
19 systems, shall be considered construction activities subject to the  
20 requirements of West Virginia's National Pollutant Discharge  
21 Elimination System General Permit.

22 (4) The jurisdiction of the West Virginia Department of  
23 Environmental Protection over a bond forfeiture site terminates  
24 upon the completion of the land reclamation contract: *Provided,*

1 That jurisdiction does not terminate over the area necessary for  
2 the operation and maintenance of water treatment facilities until  
3 the water treatment facilities are removed on sites where the  
4 secretary has an obligation to obtain or maintain a National  
5 Pollutant Discharge Elimination Permit.

6 (5) (A) A tax credit shall be granted against the tax imposed  
7 by subsection (i) of this section to any mine operator who performs  
8 reclamation or remediation at a bond forfeiture site which  
9 otherwise would have been reclaimed using funds from the Special  
10 Reclamation Fund or Special Reclamation Water Trust Fund. The  
11 amount of credit shall be determined as provided in this section.

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

19 (C) To claim the credit, the mine operator shall from time to  
20 time file with the Tax Commissioner a written application seeking  
21 the amount of the credit earned. Within thirty days of receipt of  
22 the application, the Tax Commissioner shall issue a certification  
23 of the amount of tax credit, if any, to be allocated to the  
24 eligible taxpayer. Should the amount of the credit certified be

1 less than the amount applied for, the Tax Commissioner shall set  
2 forth in writing the reason for the difference. Should no  
3 certification be issued within the thirty-day period, the  
4 application will be deemed certified. Any decision by the Tax  
5 Commissioner is appealable pursuant to the provisions of the "West  
6 Virginia Tax Procedure and Administration Act" set forth in article  
7 ten, chapter eleven of the code. Applications for certification of  
8 the proposed tax credit shall contain the information and be in the  
9 detail and form as required by the Tax Commissioner.

10 (h) The secretary may propose rules for legislative approval  
11 in accordance with article three, chapter twenty-nine-a of this  
12 code to carry out the policy and purposes of this article, to  
13 provide any necessary clarification of the provisions of this  
14 section and to efficiently provide for the general administration  
15 of this section. The Tax Commissioner may promulgate rules for  
16 legislative approval pursuant to the provisions of article three,  
17 chapter twenty-nine-a of this code to carry out the purposes of  
18 this section.

19 ~~(h)~~ (i) (1) *Rate, deposits and review.*

20 (A) For tax periods commencing on and after July 1, 2009,  
21 every person conducting coal surface mining shall remit a special  
22 reclamation tax of fourteen and four-tenths cents per ton of clean  
23 coal mined, the proceeds of which shall be allocated by the  
24 secretary for deposit in the Special Reclamation Fund and the



1 Special Reclamation Water Trust Fund.

2       (B) For tax periods commencing on and after July 1, 2012, the  
3 rate of tax specified in paragraph (A) of this subdivision is  
4 discontinued and is replaced by the rate of tax specified in this  
5 paragraph (B). For tax periods commencing on and after July 1,  
6 2012, every person conducting coal surface mining shall remit a  
7 special reclamation tax of twenty-seven and nine-tenths cents per  
8 ton of clean coal mined, the proceeds of which shall be allocated  
9 by the secretary for deposit in the Special Reclamation Fund and  
10 the Special Reclamation Water Trust Fund. Of that amount, fifteen  
11 cents per ton of clean coal mined shall be deposited into the  
12 Special Reclamation Water Trust Fund.

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

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

24       (2) In managing the Special Reclamation Program, the secretary

1 shall: (A) Pursue cost-effective alternative water treatment  
2 strategies; and (B) conduct formal actuarial studies every two  
3 years and conduct informal reviews annually on the Special  
4 Reclamation Fund and Special Reclamation Water Trust Fund.

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

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

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

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

23 (4) If the secretary determines that the alternative program,  
24 the incremental bonding program or the water reclamation account or

1 bonding programs reasonably assure that sufficient funds will be  
2 available to complete the reclamation of a forfeited site and that  
3 the Special Reclamation Fund will remain fiscally stable, the  
4 secretary is authorized to propose legislative rules in accordance  
5 with article three, chapter twenty-nine-a of this code to implement  
6 an alternate program, a water reclamation account or bonding  
7 program or other funding mechanisms or a combination thereof.

8       ~~(i)~~ (j) This special reclamation tax shall be collected by the  
9 State Tax Commissioner in the same manner, at the same time and  
10 upon the same tonnage as the minimum severance tax imposed by  
11 article twelve-b, chapter eleven of this code is collected:  
12 *Provided*, That under no circumstance shall the special reclamation  
13 tax be construed to be an increase in either the minimum severance  
14 tax imposed by said article or the severance tax imposed by article  
15 thirteen of said chapter.

16       ~~(j)~~ (k) Every person liable for payment of the special  
17 reclamation tax shall pay the amount due without notice or demand  
18 for payment.

19       ~~(k)~~ (l) The Tax Commissioner shall provide to the secretary a  
20 quarterly listing of all persons known to be delinquent in payment  
21 of the special reclamation tax. The secretary may take the  
22 delinquencies into account in making determinations on the  
23 issuance, renewal or revision of any permit.

24       ~~(l)~~ (m) The Tax Commissioner shall deposit the moneys

1 collected with the Treasurer of the State of West Virginia to the  
2 credit of the Special Reclamation Fund and Special Reclamation  
3 Water Trust Fund.

4 ~~(m)~~ (n) At the beginning of each quarter, the secretary shall  
5 advise the State Tax Commissioner and the Governor of the assets,  
6 excluding payments, expenditures and liabilities, in both funds.

7 ~~(n)~~ (o) To the extent that this section modifies any powers,  
8 duties, functions and responsibilities of the department that may  
9 require approval of one or more federal agencies or officials in  
10 order to avoid disruption of the federal-state relationship  
11 involved in the implementation of the federal Surface Mining  
12 Control and Reclamation Act, 30 U. S. C. §1270 by the state, the  
13 modifications will become effective upon the approval of the  
14 modifications by the appropriate federal agency or official.

NOTE: The purpose of this bill is to clarify that a mine operator's obligations under the West Virginia Water Pollution Control Act do not pass to the West Virginia Department of Environmental Protection at bond forfeiture sites where the West Virginia Department of Environmental Protection completes reclamation. The bill also clarifies that the West Virginia Department of Environmental Protection's reclamation activities at bond forfeiture sites shall be considered construction activities. Finally, the bill establishes a tax incentive for mine operators who agree to reclaim bond forfeiture sites.

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