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WEST VIRGINIA LEGISLATURE
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SECRETARY OF STATE

REGULAR SESSION, 2015



ENROLLED

Senate Bill No. 502

(BY SENATORS SYPOLT, FERNS, GAUNCH, KIRKENDOLL,
LEONHARDT, PLYMALE, PREZIOSO AND STOLLINGS)

[PASSED MARCH 12, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB502

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(BY SENATORS SYPOLT, FERNS, GAUNCH, KIRKENDOLL,
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[Passed March 12, 2015; in effect ninety days from passage.]

AN ACT to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating generally to surface mining and reclamation; bonding; special reclamation tax and funds; prohibited acts; bond liability; specifying retrospective eligibility of a mine operator to receive a tax credit for performing reclamation or remediation at a bond forfeiture site which otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special Reclamation Water Trust Fund; and specifying limitations.

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 funds; 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
4 be prescribed and furnished by the secretary, payable to the
5 state of West Virginia and conditioned upon the operator
6 faithfully performing all of the requirements of this article
7 and of the permit. The penal amount of the bond shall be not
8 less than \$1,000 nor more than \$5,000 for each acre or
9 fraction of an acre: *Provided*, That the minimum amount of
10 bond furnished for any type of reclamation bonding shall be
11 \$10,000. The bond shall cover: (1) The entire permit area; or
12 (2) that increment of land within the permit area upon which
13 the operator will initiate and conduct surface mining and
14 reclamation operations within the initial term of the permit.
15 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
20 this section: *Provided, however*, That once the operator has
21 chosen to proceed with bonding either the entire permit area
22 or with incremental bonding, the operator shall continue
23 bonding in that 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
27 compliance with the requirements in the reclamation plan of
28 the 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,
31 surety bonding, collateral bonding (including cash and
32 securities), establishment of an escrow account, self bonding
33 or a combination of these methods. If collateral bonding is
34 used, the operator may elect to deposit cash or collateral
35 securities or certificates as follows: Bonds of the United
36 States or its possessions of the Federal Land Bank or of the

37 Homeowners' Loan Corporation; full faith and credit general
38 obligation bonds of the state of West Virginia or other states
39 and of any county, district or municipality of the state of
40 West Virginia or other states; or certificates of deposit in a
41 bank in this state, which certificates shall be in favor of the
42 department. The cash deposit or market value of the
43 securities or certificates shall be equal to or greater than the
44 penal sum of the bond. The secretary shall, upon receipt of
45 any deposit of cash, securities or certificates, promptly place
46 the same with the Treasurer of the state of West Virginia
47 whose duty it is to receive and hold the deposit in the name
48 of the state in trust for the purpose for which the deposit is
49 made when the permit is issued. The operator making the
50 deposit is entitled, from time to time, to receive from the
51 State Treasurer, upon the written approval of the secretary,
52 the whole or any portion of any cash, securities or certificates
53 so deposited, upon depositing with him or her in lieu thereof
54 cash or other securities or certificates of the classes specified
55 in this subsection having value equal to or greater than the
56 sum of the bond.

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

64 (d) The secretary may accept the bond of the applicant
65 itself without separate surety when the applicant
66 demonstrates to the satisfaction of the secretary the existence
67 of a suitable agent to receive service of process and a history
68 of financial solvency and continuous operation sufficient for
69 authorization to self insure.

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

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

76 (g) (1) The Special Reclamation Fund previously created
77 is continued. The Special Reclamation Water Trust Fund is
78 created within the state treasury into and from which moneys
79 shall be paid for the purpose of assuring a reliable source of
80 capital to reclaim and restore water treatment systems on
81 forfeited sites. The moneys accrued in both funds, any
82 interest earned thereon and yield from investments by the
83 State Treasurer or West Virginia Investment Management
84 Board are reserved solely and exclusively for the purposes set
85 forth in this section and section seventeen, article one of this
86 chapter. The funds shall be administered by the secretary
87 who is authorized to expend the moneys in both funds for the
88 reclamation and rehabilitation of lands which were subjected
89 to permitted surface mining operations and abandoned after
90 August 3, 1977, where the amount of the bond posted and
91 forfeited on the land is less than the actual cost of
92 reclamation, and where the land is not eligible for abandoned
93 mine land reclamation funds under article two of this chapter.
94 The secretary shall develop a long-range planning process for
95 selection and prioritization of sites to be reclaimed so as to
96 avoid inordinate short-term obligations of the assets in both
97 funds of such magnitude that the solvency of either is
98 jeopardized. The secretary may use both funds for the
99 purpose of designing, constructing and maintaining water
100 treatment systems when they are required for a complete
101 reclamation of the affected lands described in this subsection.
102 The secretary may also expend an amount not to exceed ten
103 percent of the total annual assets in both funds to implement

104 and administer the provisions of this article and, as they apply
105 to the Surface Mine Board, articles one and four, chapter
106 twenty-two-b of this code.

107 (2) (A) A tax credit shall be granted against the tax
108 imposed by subsection (i) of this section to any mine operator
109 who performs reclamation or remediation at a bond forfeiture
110 site which otherwise would have been reclaimed using funds
111 from the Special Reclamation Fund or Special Reclamation
112 Water Trust Fund. The credit authorized pursuant to this
113 subdivision is retroactive and may be claimed for reclamation
114 or remediation performed on or after January 1, 2012:
115 *Provided*, That for reclamation or remediation performed
116 prior to July 13, 2013, no tax credit may be granted unless a
117 written application for the tax credit was submitted to the Tax
118 Commissioner prior to September 1, 2014. The amount of
119 credit shall be determined as provided in this section.

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

128 (C) To claim the credit, the mine operator shall, from
129 time to time, file with the Tax Commissioner a written
130 application seeking the amount of the credit earned. Within
131 thirty days of receipt of the application, the Tax
132 Commissioner shall issue a certification of the amount of tax
133 credit, if any, to be allocated to the eligible taxpayer. Should
134 the amount of the credit certified be less than the amount
135 applied for, the Tax Commissioner shall set forth in writing
136 the reason for the difference. Should no certification be

137 issued within the thirty-day period, the application will be
138 deemed certified. Any decision by the Tax Commissioner is
139 appealable pursuant to the provisions of the West Virginia
140 Tax Procedure and Administration Act set forth in article ten,
141 chapter eleven of the code. Applications for certification of
142 the proposed tax credit shall contain the information and be
143 in the detail and form as required by the Tax Commissioner.

144 (h) The Tax Commissioner may promulgate rules for
145 legislative approval pursuant to the provisions of article three,
146 chapter twenty-nine-a of this code to carry out the purposes
147 of this subdivision two, subsection (g) of this section.

148 (i) (1) *Rate, deposits and review.*

149 (A) For tax periods commencing on and after July 1,
150 2009, every person conducting coal surface mining shall
151 remit a special reclamation tax of fourteen and four-tenths
152 cents per ton of clean coal mined, the proceeds of which shall
153 be allocated by the secretary for deposit in the Special
154 Reclamation Fund and the Special Reclamation Water Trust
155 Fund.

156 (B) For tax periods commencing on and after July 1,
157 2012, the rate of tax specified in paragraph (A) of this
158 subdivision is discontinued and is replaced by the rate of tax
159 specified in this paragraph. For tax periods commencing on
160 and after July 1, 2012, every person conducting coal surface
161 mining shall remit a special reclamation tax of twenty-seven
162 and nine-tenths cents per ton of clean coal mined, the
163 proceeds of which shall be allocated by the secretary for
164 deposit in the Special Reclamation Fund and the Special
165 Reclamation Water Trust Fund. Of that amount, fifteen cents
166 per ton of clean coal mined shall be deposited into the Special
167 Reclamation Water Trust Fund.

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

173 (D) Beginning with the tax period commencing on July
174 1, 2009, and every two years thereafter, the special
175 reclamation tax shall be reviewed by the Legislature to
176 determine whether the tax should be continued: *Provided,*
177 That the tax may not be reduced until the Special
178 Reclamation Fund and Special Reclamation Water Trust
179 Fund have sufficient moneys to meet the reclamation
180 responsibilities of the state established in this section.

181 (2) In managing the Special Reclamation Program, the
182 secretary shall: (A) Pursue cost-effective alternative water
183 treatment strategies; and (B) conduct formal actuarial studies
184 every two years and conduct informal reviews annually on
185 the Special Reclamation Fund and Special Reclamation
186 Water Trust Fund.

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

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

194 (B) Determine the feasibility of creating an incremental
195 bonding program by which operators can post a reclamation
196 bond for those areas actually disturbed within a permit area,
197 but for less than all of the proposed disturbance and obtain
198 incremental release of portions of that bond as reclamation

199 advances so that the released bond can be applied to
200 approved future disturbance; and

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

206 (4) If the secretary determines that the alternative
207 program, the incremental bonding program or the water
208 reclamation account or bonding programs reasonably assure
209 that sufficient funds will be available to complete the
210 reclamation of a forfeited site and that the Special
211 Reclamation Fund will remain fiscally stable, the secretary is
212 authorized to propose legislative rules in accordance with
213 article three, chapter twenty-nine-a of this code to implement
214 an alternate program, a water reclamation account or bonding
215 program or other funding mechanisms or a combination
216 thereof.

217 (j) This special reclamation tax shall be collected by the
218 Tax Commissioner in the same manner, at the same time and
219 upon the same tonnage as the minimum severance tax
220 imposed by article twelve-b, chapter eleven of this code is
221 collected: *Provided*, That under no circumstance shall the
222 special reclamation tax be construed to be an increase in
223 either the minimum severance tax imposed by said article or
224 the severance tax imposed by article thirteen of said chapter.

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

228 (l) The Tax Commissioner shall provide to the secretary
229 a quarterly listing of all persons known to be delinquent in

230 payment of the special reclamation tax. The secretary may
231 take the delinquencies into account in making determinations
232 on the issuance, renewal or revision of any permit.

233 (m) The Tax Commissioner shall deposit the moneys
234 collected with the Treasurer of the state of West Virginia to
235 the credit of the Special Reclamation Fund and Special
236 Reclamation Water Trust Fund.

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

241 (o) To the extent that this section modifies any powers,
242 duties, functions and responsibilities of the department that
243 may require approval of one or more federal agencies or
244 officials in order to avoid disruption of the federal-state
245 relationship involved in the implementation of the federal
246 Surface Mining Control and Reclamation Act, 30 U. S. C.
247 §1270 by the state, the modifications will become effective
248 upon the approval of the modifications by the appropriate
249 federal agency or official.

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 ninety days from passage.

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

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

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

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

The within *is approved*..... this the *24th*
March
Day of, 2015.

[Signature]
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 18 2015

Time 10:30 AM