

# WEST VIRGINIA LEGISLATURE

## 2016 REGULAR SESSION

Introduced

### Senate Bill 359

FISCAL  
NOTE

BY SENATORS BOSO, GAUNCH, BLAIR, PALUMBO,  
STOLLINGS, KIRKENDOLL, CARMICHAEL, FERNS, TAKUBO,  
PREZIOSO, PLYMALE, WILLIAMS, TRUMP, HALL AND  
MULLINS

[Introduced January 21, 2016;

Referred to the Committee on Energy, Industry and Mining;

then to the Committee on the Judiciary; and then to the

Committee on Finance.]

1 A BILL to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating  
 2 to requirements for performance bonds by operators; providing amount and method of  
 3 bonding; establishing that issuance of bonds be limited to Mining Mutual Insurance  
 4 Company beginning one year after it is funded; establishing purpose for bonds; requiring  
 5 secretary to submit plan to allow additional entities to issue bonds; allowing secretary to  
 6 issue bond without additional surety under certain circumstances; prohibiting owner from  
 7 interfering with operator obligations; continuing Special Reclamation Fund; creating and  
 8 administering Special Reclamation Water Trust Fund; creating requirements for tax credits  
 9 for operators reclaiming or remediating sites; allowing Tax Commissioner to promulgate  
 10 rules regarding tax credits; establishing special reclamation tax rates; establishing review  
 11 by Legislature of special reclamation tax; establishing secretary's duties for special  
 12 reclamation program; establishing Tax Commissioner's duties for special reclamation tax;  
 13 prohibited acts; establishing liability for special reclamation tax; and requiring approval  
 14 from federal agency before implementation of section if necessary.

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

1 That §22-3-11 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted to read as follows;

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

**§22-3-11. Performance Bonds; amount and method of bonding; bonding requirements;  
 continuation of special reclamation tax and fund; prohibited acts; bond liability.**

1 (a) Upon the funding of Mining Mutual Insurance Company, as provided in section eight,  
 2 article twenty-g, chapter thirty-three of this code, each operator shall furnish a bond for  
 3 performance payable to the State of West Virginia and conditioned upon faithful performance of  
 4 all the requirements of this chapter and the permit. The bond shall cover that area of land within  
 5 the permit area upon which the operator will initiate and conduct surface coal mining and  
 6 reclamation operations within the initial term of the permit. As succeeding increments of surface

7 coal mining and reclamation operations are to be initiated and conducted within the permit area,  
8 the permittee shall file an additional bond or bonds to cover such increments in accordance with  
9 this section. The amount of the bond required for each bonded area shall depend upon the  
10 reclamation requirements of the approved permit; shall reflect the probable difficulty of  
11 reclamation giving consideration to such factors as topography, geology of the site, hydrology,  
12 and revegetation potential, and shall be determined by the regulatory authority. The amount of  
13 the bond shall be sufficient to assure the completion of the reclamation plan if the work had to be  
14 performed by the State of West Virginia in the event of forfeiture and in no case shall the bond for  
15 the entire area under one permit be less than \$10,000.

16 (b) Bonds meeting the requirements of this section may only be issued by the Mining  
17 Mutual Insurance Company; provided, however, that for a period of no more than one year  
18 following the funding of Mining Mutual Insurance Company, as provided in subsection (a),  
19 operators may meet the bonding requirements of this section through a combination of  
20 performance bonds issued by the Mining Mutual Insurance Company and penal bonds previously  
21 furnished by the operator.

22 (c) Bonds issued by the Mining Mutual Insurance Company shall be used for the purpose  
23 of reclaiming mine sites forfeited by operators. Bonds for each forfeited site shall be administered  
24 by the Mining Mutual Insurance Company to achieve reclamation at such site consistent with the  
25 reclamation plan, which may be revised by the secretary as necessary to reflect the status of mine  
26 sites at the time of forfeiture. The secretary shall consult with state and local development  
27 authorities when revising reclamation plans in order to ensure that reclamation is conducted in a  
28 manner consistent with state and local development plans. The Mining Mutual Insurance  
29 Company shall consult with the secretary in the development of a long- range planning process  
30 for selection and prioritization of sites to be reclaimed so as to avoid inordinate short-term  
31 obligations that might jeopardize the solvency of the Mining Mutual Insurance Company. The  
32 Mining Mutual Insurance Company may use bond funds for the purpose of designing, constructing

33 and maintaining water treatment systems when they are required for a complete reclamation of  
34 the affected lands described in this subsection. The Mining Mutual Insurance Company may also  
35 expend an amount not to exceed ten percent of the total annual assets to implement and  
36 administer the provisions of this section.

37 (d) The secretary shall, by January 1, 2021, submit a plan to the Legislature that allows  
38 for entities other than Mining Mutual Insurance Company to issue bonds pursuant to the  
39 provisions of this section.

40 (e) 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 (f) It is unlawful for the owner of surface or mineral rights to interfere with persons  
45 discharging the operator's obligations to the state for the reclamation of lands disturbed by the  
46 operator.

47 (g) All bond releases shall be accomplished in accordance with the provisions of section  
48 twenty-three of this article.

49 (h)(1) The Special Reclamation Fund previously created is continued for the purpose of  
50 reclaiming sites forfeited prior to the establishment and funding of the Mining Mutual Insurance  
51 Company. The Special Reclamation Water Trust Fund is created within the State Treasury into  
52 and from which moneys shall be paid for the purpose of assuring a reliable source of capital to  
53 reclaim and restore water treatment systems on sites forfeited prior to the establishment and  
54 funding of the Mining Mutual Insurance Company. The moneys accrued in both funds, any interest  
55 earned thereon and yield from investments by the State Treasurer or West Virginia Investment  
56 Management Board are reserved solely and exclusively for the purposes set forth in this section  
57 and section seventeen, article one of this chapter. The funds shall be administered by the  
58 secretary who is authorized to expend the moneys in both funds for the reclamation and

59 rehabilitation of lands which were subjected to permitted surface mining operations and  
60 abandoned between August 3, 1977, and the establishment and funding of Mining Mutual  
61 Insurance Company, but where the amount of the bond posted and forfeited on the land is less  
62 than the actual cost of reclamation, and where the land is not eligible for abandoned mine land  
63 reclamation funds under article two of this chapter. The secretary shall develop a long- range  
64 planning process for selection and prioritization of sites to be reclaimed so as to avoid inordinate  
65 short-term obligations of the assets in both funds of such magnitude that the solvency of either is  
66 jeopardized. The secretary may use both funds for the purpose of designing, constructing and  
67 maintaining water treatment systems when they are required for a complete reclamation of the  
68 affected lands described in this subsection. The secretary may also expend an amount not to  
69 exceed ten percent of the total annual assets in both funds to implement and administer the  
70 provisions of this article and, as they apply to the Surface Mine Board, articles one and four,  
71 chapter twenty-two-b of this code.

72 (2) (A) A tax credit shall be granted against the tax imposed by subsection (i) of this section  
73 to any mine operator who performs reclamation or remediation at a bond forfeiture site which  
74 otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special  
75 Reclamation Water Trust Fund. The credit authorized pursuant to this subdivision is retroactive  
76 and may be claimed for reclamation or remediation performed on or after January 1, 2012:  
77 Provided, That for reclamation or remediation performed prior to July 13, 2013, no tax credit may  
78 be granted unless a written application for the tax credit was submitted to the Tax Commissioner  
79 prior to September 1, 2014. The amount of credit shall be determined as provided in this section.

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

85 (C) To claim the credit, the mine operator shall, from time to time, file with the Tax  
86 Commissioner a written application seeking the amount of the credit earned. Within thirty days of  
87 receipt of the application, the Tax Commissioner shall issue a certification of the amount of tax  
88 credit, if any, to be allocated to the eligible taxpayer. Should the amount of the credit certified be  
89 less than the amount applied for, the Tax Commissioner shall set forth in writing the reason for  
90 the difference. Should no certification be issued within the thirty-day period, the application will be  
91 deemed certified. Any decision by the Tax Commissioner is appealable pursuant to the provisions  
92 of the West Virginia Tax Procedure and Administration Act set forth in article ten, chapter eleven  
93 of the code. Applications for certification of the proposed tax credit shall contain the information  
94 and be in the detail and form as required by the Tax Commissioner.

95 (i) The Tax Commissioner may promulgate rules for legislative approval pursuant to the  
96 provisions of article three, chapter twenty-nine-a of this code to carry out the purposes of this  
97 subdivision (2), subsection (h) of this section.

98 (j) (1) Rate, deposits and review.

99 (A) For tax periods commencing on and after July 1, 2009, every person conducting coal  
100 surface mining shall remit a special reclamation tax of 14.4¢ per ton of clean coal mined, the  
101 proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund  
102 and the Special Reclamation Water Trust Fund.

103 (B) For tax periods commencing on and after July 1, 2012, the rate of tax specified in  
104 paragraph (A) of this subdivision is discontinued and is replaced by the rate of tax specified in this  
105 paragraph. For tax periods commencing on and after July 1, 2012, every person conducting coal  
106 surface mining shall remit a special reclamation tax of 27.9¢ per ton of clean coal mined, the  
107 proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund  
108 and the Special Reclamation Water Trust Fund. Of that amount, 15¢ per ton of clean coal mined  
109 shall be deposited into the Special Reclamation Water Trust Fund.

110 (C) For tax periods commencing on or after the funding of Mining Mutual Insurance  
111 Company as provided in section eight, article twenty-g, chapter thirty-three of this code, the rate  
112 of tax specified in paragraph (B) of this subdivision is discontinued and replaced by the rate of tax  
113 specified in this paragraph. For tax periods commencing on and after the funding of Mining Mutual  
114 Insurance Company as provided section eight, article twenty-g, chapter thirty-three of this code,  
115 every person conducting coal surface mining shall remit a special reclamation tax of 15¢ per ton  
116 of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the  
117 Special Reclamation Fund and the Special Reclamation Water Trust Fund.

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

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

126 (2) In managing the special reclamation program, the secretary shall:

127 (A) Pursue cost-effective alternative water treatment strategies; and

128 (B) Conduct formal actuarial studies every two years and conduct informal reviews  
129 annually on the Special Reclamation Fund and Special Reclamation Water Trust Fund.

130 (k) This special reclamation tax shall be collected by the Tax Commissioner in the same  
131 manner, at the same time and upon the same tonnage as the minimum severance tax imposed  
132 by article twelve-b, chapter eleven of this code is collected: *Provided*, That under no circumstance  
133 shall the special reclamation tax be construed to be an increase in either the minimum severance  
134 tax imposed by said article or the severance tax imposed by article thirteen of said chapter.

135 (l) Every person liable for payment of the special reclamation tax shall pay the amount due  
136 without notice or demand for payment.

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

141 (n) The Tax Commissioner shall deposit the moneys collected with the Treasurer of the  
142 State of West Virginia to the credit of the Special Reclamation Fund and Special Reclamation  
143 Water Trust Fund.

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

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

NOTE: The purpose of this bill is to establish requirements for performance bonds by operators; providing the amount and method of bonding; establishing that issuance of bonds be limited to Mining Mutual Insurance Company beginning one year after it is funded; establishing purpose for bonds; requiring the secretary to submit plan to allow additional entities to issue bonds; allowing secretary to issue bond without additional surety under certain circumstances; prohibiting owner from interfering with operator obligations; continuing the Special Reclamation Fund; creating and administering the Special Reclamation Water Trust Fund; creating requirements for tax credits for operators reclaiming or remediating sites; allowing Tax Commissioner to promulgate rules regarding tax credits; establishing special reclamation tax rates; establishing review by Legislature of special reclamation tax; establishing secretary's duties for special reclamation program; establishing Tax Commissioner's duties for special reclamation tax; prohibited acts; establishing liability for special reclamation tax; and requiring approval from federal agency before implementation of section if necessary.

This section has been completely rewritten.

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