

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 687**

BY SENATORS MAYNARD, WALTERS, STOLLINGS AND

CLINE

[Introduced February 22, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §22-3-10 of the Code of West Virginia, 1931, as amended, relating  
 2 to allowing mine reclamation plans to include usage of the reclaimed land for purposes of  
 3 the construction and installation of military bases or satellite offices under the authority of  
 4 the United States Department of Defense or the United States Department of Homeland  
 5 Security.

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

1 That §22-3-10 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**

**§22-3-10. Reclamation plan requirements.**

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

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

7 (2) The condition of the land to be covered by the permit prior to any mining, including: (A)  
 8 The uses existing at the time of the application and, if the land has a history of previous mining,  
 9 the uses which preceded any mining; (B) the capability of the land prior to any mining to support  
 10 a variety of uses, giving consideration to soil and foundation characteristics, topography and  
 11 vegetation cover and, if applicable, a soil survey prepared pursuant to subdivision (15), subsection  
 12 (a), section nine of this article; and (C) the best information available on the productivity of the  
 13 land prior to mining, including appropriate classification as prime farmlands and the average yield  
 14 of food, fiber, forage or wood products from the lands obtained under high levels of management;

15 (3) The use which is proposed to be made of the land following reclamation, including a  
 16 discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses,

17 including, but not limited to, renewable and alternative energy uses, residential uses, highway  
18 uses, industrial uses, commercial uses, agricultural uses, public facility uses, or recreational  
19 facility uses, or uses by the United States Department of Defense or any of its subordinate military  
20 departments or any of its subordinate national intelligence services, or the United States  
21 Department of Homeland Security or any of its subordinate agencies, for constructing a military  
22 installation or satellite office; and the relationship of the use to existing land use policies and plans  
23 and the comments of any owner of the surface, other state agencies and local governments which  
24 would have to initiate, implement, approve or authorize the proposed use of the land following  
25 reclamation: Provided, That any proposed reclamation plan for usage as a military installation or  
26 satellite office under the authority of either the United States Department of Defense or one of its  
27 subordinate departments or services, or the United States Department of Homeland Security or  
28 one of its subordinate agencies, must include a proposed qualified agreement for leasing or  
29 purchasing the property for such use by the United States Department of Defense or one of its  
30 subordinate departments or services, or the United States Department of Homeland Security or  
31 one of its subordinate agencies, whatever the case may be, demonstrating a clear intention by  
32 the United States Department of Defense or one of its subordinate departments or services, or  
33 the United States Department of Homeland Security or one of its subordinate agencies, to  
34 implement the proposed usage upon approval of the proposed plan.

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

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

42 (ii) Site-specific conditions make attainment of a post-mining land use which comports with

43 the land use that is specified in the approved master land use plan for the area impractical; or

44 (iii) The post-mining land use specified in the approved master land use plan would  
45 substantially interfere with the future extraction of a mineable coal bed, as that term is defined in  
46 rules promulgated by the Tax Commissioner relating to the valuation of active or reserve coal  
47 property for ad valorem property tax purposes, 110 C.S.R. 11-3 or a successor rule, from the land  
48 to be mined.

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

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

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

60 (5) The engineering techniques proposed to be used in mining and reclamation and a  
61 description of the major equipment; a plan for the control of surface water drainage and of water  
62 accumulation; a plan, where appropriate, for backfilling, soil stabilization and compacting, grading,  
63 revegetation and a plan for soil reconstruction, replacement and stabilization pursuant to the  
64 performance standards in subdivision (7), subsection (b), section thirteen of this article for those  
65 food, forage and forest lands identified therein; and a statement as to how the operator plans to  
66 comply with each of the applicable requirements set out in section thirteen or fourteen of this  
67 article;

68 (6) A detailed estimated timetable for the accomplishment of each major step in the

69 reclamation plan;

70 (7) The consideration which has been given to conducting surface mining operations in a  
71 manner consistent with surface owner plans and applicable state and local land use plans and  
72 programs;

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

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

77 (10) All lands, interests in lands or options on the interests held by the applicant or pending  
78 bids on interests in lands by the applicant, which lands are contiguous to the area to be covered  
79 by the permit;

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

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

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

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

88 (12) The results of tests borings which the applicant has made at the area to be covered  
89 by the permit or other equivalent information and data in a form satisfactory to the director,  
90 including the location of subsurface water and an analysis of the chemical properties, including  
91 acid-forming properties of the mineral and overburden: *Provided*, That information which pertains  
92 only to the analysis of the chemical and physical properties of the coal, except information  
93 regarding the mineral or elemental contents which are potentially toxic in the environment, shall  
94 be kept confidential and not made a matter of public record;

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

98           (14) Any other requirements as the director may prescribe by rule.

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

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

104           (d) The amendments to this section by the first extraordinary session of the Legislature in  
105 2009 are effective upon the approval of the corresponding amendments to West Virginia's state  
106 program, as that term is defined in the federal Surface Mining Control and Reclamation Act of  
107 1977, 30 U.S.C. §1291, by the federal Office of Surface Mining Reclamation and Enforcement.

NOTE: The purpose of this bill is to authorize and promote the prospect that mine reclamation sites be used for military installations or homeland security satellite offices.

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