

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 4003**

BY DELEGATES KEATON, BARRETT, HANSHAW (MR.

SPEAKER), SUMMERS, ESPINOSA, RILEY, HOWELL,

BURKHAMMER, CLARK, PACK, AND MAYNOR

[Passed March 10, 2022; in effect ninety days from passage.]



1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,  
2 designated §22-2-10, relating generally to the ownership and commercial benefit of  
3 substances removed from waters of the state by the treatment of mine drainage; restating  
4 public policies concerning the maintenance of reasonable standards of purity and quality  
5 of the waters of the state consistent with public health and the protection of all forms of  
6 life; providing for legislative findings, intent, and purpose, including that treatment of mine  
7 drainage reduces environmental harm by reducing toxic substances and pollution in the  
8 waters of the state, that such treatment may produce valuable concentrations of materials  
9 which may be utilized for commercial gain, and that said materials are part of the water;  
10 stating the legislative intent of fulfilling the state's obligations to maintain reasonable  
11 standards of purity and quality of the waters of the state by encouraging investments into  
12 the treatment of mine drainage; providing that all chemical compounds, elements, and  
13 other potentially toxic materials found within the waters of this state and derived from the  
14 treatment of mine drainage which have economic value may be used, sold, or transferred  
15 by the Department of Environmental Protection or its designee for commercial gain and  
16 benefit; providing that all funds received by said department shall be deposited and used  
17 at the discretion of the secretary into already established environmental funds; providing  
18 that all chemical compounds, elements, and other potentially toxic materials found within  
19 the waters of this state and derived from the treatment of mine drainage which have  
20 economic value may be used, sold, or transferred by any party who successfully removes  
21 the same from the waters of this state for commercial gain and benefit; providing for the  
22 protection of existing and future contracts; and providing a severability clause.

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

**ARTICLE 2. ABANDONED MINE LANDS AND RECLAMATION ACT.**

**§22-2-10. Benefits derived from substances separated by treatment of pollution from mine drainage in the waters of the state; public policy; legislative findings, intent, and purpose; severability.**

1           (a) *Public Policy.* It is the long-standing public policy of the State of West Virginia, pursuant  
2 to § 22-11-1 *et seq.* of this code, the Water Pollution Control Act, that the state is compelled to  
3 maintain reasonable standards of purity and quality of the waters of the state which are consistent  
4 with public health and the protection of all forms of life. It is also the long-standing public policy of  
5 this state, pursuant to § 20-2-1 *et seq.* of this code, that wildlife resources in this state shall be  
6 held as a public trust by the state and protected for the use and enjoyment of its citizens.

7           (b) *Legislative Findings, Intent, and Purpose.* The Legislature finds that treatment of mine  
8 drainage reduces environmental harm by reducing toxic substances and pollution in the waters  
9 of the state. The Legislature finds that the necessary and expensive treatment of mine drainage  
10 to remove pollution from the waters of the state, and disposal of the same, may produce materials  
11 that contain valuable concentrations of rare earth elements, critical materials, and other  
12 substances which may be utilized for commercial gain. The Legislature finds that these materials  
13 found within the waters of the state are part of the water and can only be separated from the water  
14 with expensive and continuing investments of resources which may last for decades. The  
15 Legislature enacts this section with the intent of fulfilling the state's obligations to maintain  
16 reasonable standards of purity and quality of the waters of the state, consistent with public health  
17 and the protection of all forms of life, by encouraging investments into the treatment of mine  
18 drainage.

19           (c) Notwithstanding any provision of this code or common law to the contrary, all chemical  
20 compounds, elements, and other potentially toxic materials which are found within the waters of  
21 this state, which are derived from the treatment of mine drainage, and which have economic  
22 value, may be used, sold, or transferred by the Department of Environmental Protection, or its  
23 designee, for commercial gain and benefit. All funds received by the department shall be

24 deposited at the discretion of the secretary into the Special Reclamation Water Trust Fund or the  
25 Acid Mine Drainage Set-Aside Fund, and used by the department to fulfill its obligations under  
26 this code: *Provided*, That nothing in this subsection shall be construed to interfere with any  
27 existing contract or the ability of the department to enter into an agreement with private parties  
28 with respect to the removal, sale, or transfer of said chemical compounds, elements, and other  
29 potentially toxic materials.

30 (d) Notwithstanding any provision of this code or common law to the contrary, all chemical  
31 compounds, elements, and other potentially toxic materials which are found within the waters of  
32 this state which are derived from the treatment of mine drainage, and which have economic value,  
33 may be used, sold, or transferred by any party, other than the department, who successfully  
34 removes said chemical compounds, elements, and other potentially toxic materials from the  
35 waters of this state for commercial gain and benefit: *Provided*, That nothing in this subsection  
36 shall be construed to interfere with any existing contract or the ability of parties to enter into an  
37 agreement with respect to the removal, sale, or transfer of said chemical compounds, elements,  
38 and other potentially toxic materials.

39 (e) The provisions of this section are severable, and if any part of this section is adjudged  
40 to be unconstitutional, unenforceable, or invalid, that determination does not affect the continuing  
41 validity of the remaining provisions of this section.



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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2022.

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*Governor*