WEST virginia legislature

2022 regular session

Committee Substitute

for

House Bill 4003

By Delegates Keaton, Barrett, Hanshaw, Mr. Speaker, Summers, Espinosa, Riley, Howell, Burkhammer, Clark, Pack, and Maynor

[Originating in the Committee on the Judiciary, January 31, 2022.]

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

Be it enacted by the Legislature of West Virginia:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

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.

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

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

(c) Notwithstanding any provision of this code or the common law to the contrary, all chemical compounds, elements, and other potentially toxic materials which are found within the waters of this state and which are derived from the treatment of mine drainage, and which have economic value, may be used, sold, or transferred by the Department of Environmental Protection, or its designee, for commercial gain and benefit. All funds received by said department shall be deposited at the discretion of the secretary into the Special Reclamation Water Trust Fund (3312) or the Acid Mine Drainage Set-Aside Fund (8796), and used by said department to fulfill its obligations under this code.

(d) Notwithstanding any provision of this code or the common law to the contrary, all chemical compounds, elements, and other potentially toxic materials which are found within the waters of this state and which are derived from the treatment of mine drainage, and which have economic value, may be used, sold, or transferred by any party, other than the department, who successfully removes said chemical compounds, elements, and other potentially toxic materials from the waters of this state for commercial gain and benefit.

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

NOTE: The purpose of this bill is to establish legal rights to chemical compounds, elements, and substances that are derived from the treatment of mine drainage.

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