

# **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.]



1 A BILL 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; and providing a  
22 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.**

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

24 shall be deposited at the discretion of the secretary into the Special Reclamation Water Trust  
25 Fund (3312) or the Acid Mine Drainage Set-Aside Fund (8796), and used by said department to  
26 fulfill its obligations under this code.

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

33 (e) The provisions of this section are severable, and if any part of this section is adjudged  
34 to be unconstitutional, unenforceable, or invalid, that determination does not affect the continuing  
35 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.