

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

House Bill 4758

BY DELEGATES ANDERSON, COOPER, ZATEZALO, J.

KELLY, WESTFALL, AND FERRELL

[Passed March 8, 2022; in effect ninety days from passage.]

1 AN ACT to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating
2 to developing and maintaining a database to track reclamation liabilities in the West
3 Virginia Department of Environmental Protection Special Reclamation Program in order
4 to better quantify the potential liability of the Special Reclamation Program for forfeited
5 coal mining permits.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.

1 (a) After a surface mining permit application has been approved pursuant to this article,
2 but before a permit has been issued, each operator shall furnish a penal bond, on a form to be
3 prescribed and furnished by the secretary, payable to the State of West Virginia and conditioned
4 upon the operator faithfully performing all of the requirements of this article and of the permit. The
5 penal amount of the bond shall be not less than \$1,000 nor more than \$5,000 for each acre or
6 fraction of an acre: *Provided*, That the minimum amount of bond furnished for any type of
7 reclamation bonding shall be \$10,000. The bond shall cover: (1) The entire permit area; or (2)
8 that increment of land within the permit area upon which the operator will initiate and conduct
9 surface mining and reclamation operations within the initial term of the permit. If the operator
10 chooses to use incremental bonding, as succeeding increments of surface mining and
11 reclamation operations are to be initiated and conducted within the permit area, the operator shall
12 file with the secretary an additional bond or bonds to cover the increments in accordance with this
13 section: *Provided, however*, That once the operator has chosen to proceed with bonding either
14 the entire permit area or with incremental bonding, the operator shall continue bonding in that
15 manner for the term of the permit.

16 (b) The period of liability for bond coverage begins with issuance of a permit and continues
17 for the full term of the permit plus any additional period necessary to achieve compliance with the
18 requirements in the reclamation plan of the permit.

19 (c)(1) The form of the bond shall be approved by the secretary and may include, at the
20 option of the operator, surety bonding, collateral bonding (including cash and securities),
21 establishment of an escrow account, self bonding or a combination of these methods. If collateral
22 bonding is used, the operator may elect to deposit cash or collateral securities or certificates as
23 follows: Bonds of the United States or its possessions of the Federal Land Bank or of the
24 Homeowners' Loan Corporation; full faith and credit general obligation bonds of the State of West
25 Virginia or other states and of any county, district or municipality of the State of West Virginia or
26 other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of
27 the department. The cash deposit or market value of the securities or certificates shall be equal
28 to or greater than the penal sum of the bond. The secretary shall, upon receipt of any deposit of
29 cash, securities, or certificates, promptly place the same with the Treasurer of the State of West
30 Virginia whose duty it is to receive and hold the deposit in the name of the state in trust for the
31 purpose for which the deposit is made when the permit is issued. The operator making the deposit
32 is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the
33 secretary, the whole or any portion of any cash, securities, or certificates so deposited, upon
34 depositing with him or her in lieu thereof cash or other securities or certificates of the classes
35 specified in this subsection having value equal to or greater than the sum of the bond.

36 (2) The secretary may approve an alternative bonding system if it will: (A) Reasonably
37 assure that sufficient funds will be available to complete the reclamation, restoration and
38 abatement provisions for all permit areas which may be in default at any time; and (B) provide a
39 substantial economic incentive for the permittee to comply with all reclamation provisions.

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

47 (f) All bond releases shall be accomplished in accordance with §22-3-23 of this code.

48 (g)(1) The Special Reclamation Fund previously created is continued. The Special
49 Reclamation Water Trust Fund is created within the state treasury into and from which moneys
50 shall be paid for the purpose of assuring a reliable source of capital and operating expenses for
51 the treatment of water discharges from forfeited sites where the secretary has obtained or applied
52 for an NPDES permit as of the effective date of this article. The moneys accrued in both funds,
53 any interest earned thereon and yield from investments by the State Treasurer or West Virginia
54 Investment Management Board are reserved solely and exclusively for the purposes set forth in
55 this section and §22-1-17 of this code.

56 (2) The funds shall be administered by the secretary who is authorized to expend the
57 moneys in both funds for the reclamation and rehabilitation of lands which were subjected to
58 permitted surface mining operations and abandoned after August 3, 1977, where the amount of
59 the bond posted and forfeited on the land is less than the actual cost of reclamation, and where
60 the land is not eligible for abandoned mine land reclamation funds under §22-2-1 *et seq.* of this
61 code. The secretary may also expend an amount not to exceed 10 percent of the total annual
62 assets in both funds to implement and administer the provisions of this article and, as they apply
63 to the Surface Mine Board, §22B-1-1 *et seq.* and §22B-1-4 *et seq.* of this code.

64 (3)(A) A tax credit shall be granted against the tax imposed by subsection (i) of this section
65 to any mine operator who performs reclamation or remediation at a bond forfeiture site which
66 otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special
67 Reclamation Water Trust Fund. The credit authorized pursuant to this subdivision is retroactive

68 and may be claimed for reclamation or remediation performed on or after January 1, 2012:
69 *Provided*, That for reclamation or remediation performed prior to July 13, 2013, no tax credit may
70 be granted unless a written application for the tax credit was submitted to the Tax Commissioner
71 prior to September 1, 2014. The amount of credit shall be determined as provided in this section.

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

77 (C) To claim the credit, the mine operator shall, from time to time, file with the Tax
78 Commissioner a written application seeking the amount of the credit earned. Within 30 days of
79 receipt of the application, the Tax Commissioner shall issue a certification of the amount of tax
80 credit, if any, to be allocated to the eligible taxpayer. Should the amount of the credit certified be
81 less than the amount applied for, the Tax Commissioner shall set forth in writing the reason for
82 the difference. Should no certification be issued within the 30-day period, the application shall be
83 considered certified. Any decision by the Tax Commissioner is appealable pursuant to the
84 provisions of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1 *et seq.*
85 of this code. Applications for certification of the proposed tax credit shall contain the information
86 and be in the detail and form as required by the Tax Commissioner.

87 (h) The Tax Commissioner may promulgate rules for legislative approval pursuant to
88 §29A-3-1 *et seq.* of this code to carry out the purposes of this subdivision two, subsection (g) of
89 this section.

90 (i)(1) Rate, deposits, and review.

91 (A) For tax periods commencing on and after July 1, 2009, every person conducting coal
92 surface mining shall remit a special reclamation tax of 14 and four-tenths cents per ton of clean

93 coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special
94 Reclamation Fund and the Special Reclamation Water Trust Fund.

95 (B) For tax periods commencing on and after July 1, 2012, the rate of tax specified in
96 paragraph (A) of this subdivision is discontinued and is replaced by the rate of tax specified in this
97 paragraph. For tax periods commencing on and after July 1, 2012, every person conducting coal
98 surface mining shall remit a special reclamation tax of 27 and nine-tenths cents per ton of clean
99 coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special
100 Reclamation Fund and the Special Reclamation Water Trust Fund. Of that amount, 15 cents per
101 ton of clean coal mined shall be deposited into the Special Reclamation Water Trust Fund.

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

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

110 (2) In managing the special reclamation program, the secretary shall: (A) Pursue cost-
111 effective alternative water treatment strategies; (B) conduct formal actuarial studies every two
112 years and conduct informal reviews annually on the Special Reclamation Fund and Special
113 Reclamation Water Trust Fund; and (C) develop and maintain a database to track existing
114 reclamation liabilities (including water treatment) at coal mining operations in the state that were
115 permitted after August 3, 1977. This information is to be updated on a quarterly basis beginning
116 July 2022 to ensure that actuarial studies of the special reclamation fund and special reclamation
117 water trust fund are informed by current data.

118 (3) Prior to December 31, 2008, the secretary shall:

119 (A) Determine the feasibility of creating an alternate program, on a voluntary basis, for
120 financially sound operators by which those operators pay an increased tax into the Special
121 Reclamation Fund in exchange for a maximum per-acre bond that is less than the maximum
122 established in subsection (a) of this section;

123 (B) Determine the feasibility of creating an incremental bonding program by which
124 operators can post a reclamation bond for those areas actually disturbed within a permit area, but
125 for less than all of the proposed disturbance and obtain incremental release of portions of that
126 bond as reclamation advances so that the released bond can be applied to approved future
127 disturbance; and

128 (C) Determine the feasibility for sites requiring water reclamation by creating a separate
129 water reclamation security account or bond for the costs so that the existing reclamation bond in
130 place may be released to the extent it exceeds the costs of water reclamation.

131 (4) If the secretary determines that the alternative program, the incremental bonding
132 program or the water reclamation account or bonding programs reasonably assure that sufficient
133 funds will be available to complete the reclamation of a forfeited site and that the Special
134 Reclamation Fund will remain fiscally stable, the secretary may propose legislative rules in
135 accordance with §29A-3-1 *et seq.* of this code to implement an alternate program, a water
136 reclamation account or bonding program or other funding mechanisms or a combination thereof.

137 (j) This special reclamation tax shall be collected by the Tax Commissioner in the same
138 manner, at the same time and upon the same tonnage as the minimum severance tax imposed
139 by §11-12B-1 *et seq.* of this code is collected: *Provided*, That under no circumstance may the
140 special reclamation tax be construed to be an increase in either the minimum severance tax
141 imposed by that article or the severance tax imposed by §11-13-1 *et seq.* of this code.

142 (k) Every person liable for payment of the special reclamation tax shall pay the amount
143 due without notice or demand for payment.

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

148 (m) The Tax Commissioner shall deposit the moneys collected with the Treasurer of the
149 State of West Virginia to the credit of the Special Reclamation Fund and Special Reclamation
150 Water Trust Fund.

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

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

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

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

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Governor