

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 1

BY SENATORS BLAIR (MR. PRESIDENT), BALDWIN,
JEFFRIES, STOLLINGS, HAMILTON, LINDSAY, WOODRUM,
PLYMALE, AND TAKUBO

[Introduced January 21, 2022; referred to the
Committee on Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §33-61-1, §33-61-2, §33-61-3, §33-61-4, §33-61-5, §33-61-6, §33-61-7, §33-
3 61-8, §33-61-9, and §33-61-10, all relating to creating the Mining Mutual Insurance
4 Company; providing for the scope of the company; providing for findings and a purpose
5 for the company; creating definitions; laying out the authorization for the company, as well
6 as establishing requirements and limitations for the company; providing for governance
7 and organization of the company; providing for management and administration of the
8 company; creating an application for licensure with the company and establishing the
9 authority of the commissioner; providing for initial capital and surplus; authorizing types of
10 coverage and definition discretionary participation in the company; and setting forth
11 applicable law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 61. MINING MUTUAL INSURANCE COMPANY.

§33-61-1. Scope.

1 This article applies only to the Mining Mutual Insurance Company created pursuant to this
2 article.

§33-61-2. Findings and purpose.

1 (a) The Legislature finds that:

2 (1) There has been a nationwide downturn in the coal mining industry which was especially
3 difficult in West Virginia;

4 (2) Coal mining permit holders across the state have faced economic circumstances that
5 forced many of them into difficult financial situations;

6 (3) Insolvent permit holders may be unable to continue operations, thus jeopardizing their
7 ability to properly reclaim lands as required under §22-3-1 et seq. of this code;

8 (4) Any shortfall would be paid from the state's Special Reclamation Fund which could
9 become strained if the coal industry and/ or reclamation surety bond providers would experience

10 unforeseen circumstances;

11 (5) An increase in bonding amounts would cause undue financial hardships and coal
12 mining permit holders in West Virginia may find it increasingly difficult to comply with the financial
13 assurance provisions of §22-3-1 et seq. of this code;

14 (6) The difficulty or impossibility of obtaining private performance bonds on reasonable
15 economic terms may result in challenges for operators to receive new coal-mining permits;

16 (7) Having a robust guarantee of proper reclamation of mining operations is of utmost
17 importance to the citizens of West Virginia;

18 (8) A mechanism is needed for an alternative provider in the state's current coal mining
19 bonding system to provide for additional coverage and further bolster an efficient and effective
20 method of complying with the reclamation requirements and the financial assurance provisions of
21 §22-3-1 et seq. of this code;

22 (9) A state assisted mutual insurance company or a similar entity has proven to be a
23 successful mechanism in West Virginia for helping stabilize certain insurance markets such as
24 medical professional liability and worker compensation;

25 (10) There is a substantial public interest in creating a method to provide an enhanced
26 mining reclamation performance bond insurance market in this state;

27 (11) The state currently funds reclamation at former coal-mining sites, where the bond has
28 been forfeited, through a combination of bond proceeds and, if needed, moneys from the Special
29 Reclamation Fund as approved by the Surface Mining Control and Reclamation Act;

30 (12) There is substantial public benefit in managing the actual and potential liability of the
31 state to the private sector and maintaining a stable self-sufficient entity which can be a source of
32 performance bond insurance coverage for permit holders in this state;

33 (13) A stable, financially viable insurer in the private sector will provide a continuing source
34 of insurance funds to accomplish reclamation as needed to protect the environment of the state;

35 and

36 (14) Because the public will greatly benefit from the formation of a Mining Mutual Insurance
37 Company, state efforts to encourage and support the formation of such an entity, including
38 providing a loan of the entity's initial capital, is in the clear public interest.

39 (b) The purpose of this article is to create a mechanism for the formation of a mining mutual
40 insurance company that will provide:

41 (1) An option for mining permit holders to obtain performance bond insurance that is
42 available and affordable; and

43 (2) Assure that reclamation will occur in a timely and predictable fashion in those instances
44 where a permit holder fails to perform under the terms of the permit issued pursuant to §22-3-1
45 et seq. of this code.

§33-61-3. Definitions.

1 For purposes of this article, the term:

2 “Commissioner” means the Insurance Commissioner as provided in §33-2-1 of this code.

3 “Company” means the Mining Mutual Insurance Company created pursuant to the terms
4 of this article.

5 “Operator” has the same meaning as provided in §22-3-3 of this code and means any
6 person who is granted or who should obtain a permit to engage in any activity covered by §22-3-
7 1, et seq. of this code and any rule promulgated pursuant thereto and includes any person who
8 engages in surface mining or surface mining and reclamation operations, or both. The term shall
9 also be construed in a manner consistent with the federal program pursuant to the federal Surface
10 Mining Control and Reclamation Act of 1977, as amended.

§33-61-4. Authorization for creation of company; requirements and limitations.

1 (a) A Mining Mutual Insurance Company may be created as a domestic, private, nonstock
2 corporation in this state. The company shall remain for the duration of its existence a domestic
3 mutual insurance company owned by its policyholders and may not be converted into a stock
4 corporation or any other entity not owned by its policyholders.

5 (b) For the duration of its existence, the company shall not be considered a department,
6 unit, agency, or instrumentality of this state for any purpose. All debts, claims, obligations, and
7 liabilities of the company, whenever incurred, are the debts, claims, obligations, and liabilities of
8 the company only and not of this state or of any department, unit, agency, instrumentality, officer,
9 or employee of this state.

10 (c) The moneys of the company shall not be considered part of the General Revenue Fund
11 of the state. The debts, claims, obligations, and liabilities of the company are not and may not be
12 considered a debt of the state or a pledge of the credit of the state.

13 (d) The company is not subject to provisions of §6-9A-1 et seq. of this code or the
14 provisions of §29B-1-1, et seq. of this code.

15 (e) All premiums collected by the company are subject to the premium taxes, additional
16 premium taxes, additional fire and casualty insurance premium taxes and surcharges contained
17 in §33-3-14, §33-3-14a, §33-3-14d, and §33-3-33 of this code.

§33-61-5. Governance and organization.

1 (a) The company shall initially be governed by a provisional board of directors consisting
2 of five directors. The provisional board shall act as the incorporators of the company and shall
3 prepare and file articles of incorporation and bylaws in accordance with the provisions of this
4 article and the provisions of this chapter and chapter 31 of this code. The provisional board of
5 directors shall be appointed as follows:

6 (1) The chair shall be appointed by the Governor. The chair shall be an individual with at
7 least five years' experience as a CEO and board member of a mutual insurance company.

8 (2) One member of the board shall be selected by the Secretary of the Department of
9 Environmental Protection. This provisional board member shall have extensive experience in
10 environmental management and shall have at least five years' experience in coal mine
11 reclamation.

12 (3) One member of the provisional board shall be selected by the Insurance

13 Commissioner. This provisional board member shall have insurance experience and shall have
14 served at least five years as an officer of a board of directors of a mutual insurance company.

15 (4) One member of the provisional board shall be selected by the President of the Senate.
16 This provisional board member shall have experience in coal mine operations, reclamation, and
17 land management.

18 (5) One member of the provisional board shall be selected by the Speaker of the House
19 of Delegates. This provisional board member shall have experience in coal mine operations,
20 reclamation, and land management.

21 (b) Upon the filing of the company's articles of incorporation and bylaws, the directors and
22 officers of the company are to be chosen in accordance with such articles of incorporation and
23 bylaws: *Provided*, That the company's articles of incorporation and bylaws shall specifically state
24 that the terms of boards members shall be as follows: (1) Two members shall be for a term of four
25 years; (2) one member shall be for a term of three years; (3) one member shall be for a term of
26 two years; and (4) one member shall be for a term of one year. Thereafter, the directors shall
27 serve staggered terms of four years. If additional directors are added to the board as provided in
28 the company's bylaws, the term shall be for four years.

§33-61-6. Management and administration of the company.

1 (a) If the company's board of directors determines that the affairs of the company may be
2 administered suitably and efficiently, the company may enter into a contract with a licensed
3 insurer, licensed health service plan, insurance service organization, third-party administrator,
4 insurance brokerage firm or other firm or company with suitable qualifications and experience to
5 administer some or all of the affairs of the company, subject to the continuing direction of the
6 board of directors as required by the articles of incorporation and bylaws of the company, and the
7 contract. All such contracts shall be awarded by competitive bidding.

8 (b) The company shall file a true copy of the contract with the commissioner.

§33-61-7. Application for license; authority of commissioner.

1 (a) As soon as practical, the company established pursuant to the provisions of this article
2 shall file its corporate charter and bylaws with the commissioner and apply for a license to transact
3 insurance in this state. Notwithstanding any other provision of this code, the commissioner shall
4 act on the documents within 15 days of the filing by the company.

5 (b) The Legislature authorizes the commissioner to review the documentation submitted
6 by the company and to determine the initial capital and surplus requirements of the company,
7 notwithstanding the provisions of §33-3-5b of this code. The commissioner has the sole discretion
8 to determine the capital and surplus funds of the company and to monitor the economic viability
9 of the company during its initial operation and duration on not less than a monthly basis. The
10 company shall furnish the commissioner with all information and cooperate in all respects
11 necessary for the commissioner to perform the duties set forth in this section and in other
12 provisions of this chapter, including annual audited financial statements required by §33-33-1 et
13 seq. of this code and fidelity bond coverage for each of the directors of the company.

14 (c) Subject to the provisions of subsection (d) of this section, the commissioner may waive
15 other requirements imposed on mutual insurance companies by the provisions of this chapter as
16 the commissioner determines is necessary to enable the company to begin issuing performance
17 bonds in this state at the earliest possible date.

18 (d) Within 40 months of the date of the issuance of its license to transact insurance, the
19 company shall comply with the capital and surplus requirements set forth in §33-3-5b of this code.

§33-61-8. Initial capital and surplus.

1 (a) There is hereby created in the State Treasury a special revenue account designated
2 as the Department of Environmental Protection Mining Mutual Insurance Company Fund solely
3 for the purpose of receiving moneys transferred from various funds at the Department of
4 Environmental Protection.

5 (b) As soon as practical, but within 30 days of the effective date of this act, the Treasurer
6 shall, with the full cooperation of the Department of Environmental Protection, cause the transfer

7 of \$50,000,000 from such funds as the Secretary of the Department of Environmental Protection
8 shall specify into the Department of Environmental Protection Mining Mutual Insurance Company
9 Fund: *Provided*, That the funds shall not be transferred from the existing Special Reclamation
10 Fund.

11 (c) As soon as practical, but within 30 days of the transfer described in subsection (b) of
12 this section, the Treasurer shall cause the funds in the Department of Environmental Protection
13 Mining Mutual Insurance Company Fund as described in subsection (b) of this section to be
14 transferred to the Mining Mutual to be used as initial capital and surplus in the form of a Surplus
15 Note. These funds shall be deemed a noninterest loan and shall be paid back as credits as
16 reclamation activities are accomplished.

17 (d) As soon as practical, but within 30 days of gaining any necessary approvals, including
18 specific approval of the Insurance Commissioner, the Treasurer shall, with the full cooperation of
19 the Department of Environmental Protection, cause the transfer of such other funds as may, from
20 time to time, be needed for capital by the Mining Mutual Insurance Company from such funds as
21 the Secretary of the Department of Environmental Protection shall specify into the Department of
22 Environmental Protection Mining Mutual Insurance Company Fund: *Provided*, That the funds shall
23 not be transferred from the existing Special Reclamation Fund. Such funds may or may not be
24 from special grants or other funding mechanisms from the federal government.

25 (e) As soon as practical, but within 30 days of the transfer described in subsection (d) of
26 this section, the Treasurer shall cause the funds in the Department of Environmental Protection
27 Mining Mutual Insurance Company Fund as described in subsection (d) of this section to be
28 transferred to the Mining Mutual to be used as capital and surplus in the form of a Surplus Note.
29 These funds shall be deemed a noninterest loan and shall be paid back as credits as reclamation
30 activities are accomplished.

§33-61-9. Types of coverage authorized; discretionary participation.

1 (a) Upon approval by the commissioner for a license to transact insurance in this state,

2 the company may issue nonassessable policies of performance bonds.

3 (b) Operators may procure nonassessable policies of performance bonds from the
4 company or other allowable providers to satisfy the requirements of §22-3-11 of this code.

5 (c) Nothing in this article shall require compulsory participation in purchasing bonds from
6 the company by operators.

§33-61-10. Applicable law.

1 To the extent applicable, and when not in conflict with the provisions of this article, the
2 provisions of chapters 31 and 33 of this code apply to the company created pursuant to the
3 provisions of this article. If a provision of this article and another provision of this code are in
4 conflict, the provision of this article controls.