

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

ENROLLED

House Bill 2839

BY DELEGATES ANDERSON, ZATEZALO, HECKERT,

COOPER, REYNOLDS, SHEEDY, HOTT, STREET,

BARNHART AND RILEY

[Passed March 3, 2023; in effect ninety days from passage.]

1 AN ACT to amend and reenact §22-2-10 of the Code of West Virginia, 1931, as amended; and to
2 further amend said code by adding thereto a new section, designated §22-3-39, all relating
3 to declaring the benefits and effects of the extraction of useful substances from the waters
4 of the state; clarifying the applicability of state policy for provisions of the Abandoned Mine
5 Lands and Reclamation Act and of the Surface Coal Mining and Reclamation Act; and
6 correcting the name of a receiving fund for proceeds received by the Department of
7 Environmental Protection.

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

8 (b) *Legislative Findings, Intent, and Purpose.* — The Legislature finds that treatment of
9 mine drainage reduces environmental harm by reducing toxic substances and pollution in the
10 waters of the state. The Legislature finds that the necessary and expensive treatment of mine
11 drainage to remove pollution from the waters of the state, and disposal of the same, may produce
12 materials that contain valuable concentrations of rare earth elements, critical materials, and other
13 substances which may be utilized for commercial gain. The Legislature finds that these materials
14 found within the waters of the state are part of the water and can only be separated from the water

15 with expensive and continuing investments of resources which may last for decades. The
16 Legislature enacts this section with the intent of fulfilling the state's obligations to maintain
17 reasonable standards of purity and quality of the waters of the state, consistent with public health
18 and the protection of all forms of life, by encouraging investments into the treatment of mine
19 drainage.

20 (c) Notwithstanding any provision of this code or common law to the contrary, all chemical
21 compounds, elements, and other potentially toxic materials which are found within the waters of
22 this state, which are derived from the treatment of mine drainage, and which have economic
23 value, may be used, sold, or transferred by the Department of Environmental Protection, or its
24 designee, for commercial gain and benefit. All funds received by the department shall be
25 deposited at the discretion of the secretary into the Special Reclamation Water Trust Fund or the
26 Acid Mine Drainage Abatement and Treatment Fund, and used by the department to fulfill its
27 obligations under this code: *Provided*, That nothing in this subsection shall be construed to
28 interfere with any existing contract or the ability of the department to enter into an agreement with
29 private parties with respect to the removal, sale, or transfer of said chemical compounds,
30 elements, and other potentially toxic materials.

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

40 (e) The provisions of this section concerning the treatment of mine drainage are applicable
41 to property governed by §22-2-1 *et seq.* of this code and §22-3-1 *et seq.* of this code.

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

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

**§22-3-39. Benefits derived from substances separated by treatment of pollution from mine
drainage in the waters of the state; applicability.**

1 The provisions of §22-2-10 of this code concerning the treatment of mine drainage are
2 applicable to property governed by §22-3-1 *et seq.* of this code.

The Clerk of the House of Delegates and the Clerk of the Senate hereby certify that the foregoing bill is correctly enrolled.

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Clerk of the House of Delegates

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Clerk of the Senate

Originated in the House of Delegates.

In effect ninety days from passage.

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Speaker of the House of Delegates

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President of the Senate

The within is this the.....
Day of, 2023.

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Governor