

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

**Introduced**

### **House Bill 3498**

By Delegates Fehrenbacher, Linville, Moore, Phillips,  
and G. Howell

[Introduced March 18, 2025; referred to the  
Committee on Energy and Public Works]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new section,  
2 designated §22-3-13b, relating to the creation of the Productive Energy Site Reclamation  
3 Waiver grant for variances by the West Virginia Department of Environmental Protection  
4 under the Surface Mine Control and Reclamation Act to convert formerly mined sites into  
5 productive energy sites; creating definitions; identifying criteria for application; and  
6 empowering the secretary to promulgate rules to implement this program

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.**

**§22-3-13b. Productive Energy Site Reclamation Waiver.**

1 (a) Legislative Findings:

2 (1) The legislature finds and declares that it is in the public interest to transition surface  
3 mine sites, having exhausted their capacity for the extraction of coal and other materials, into new  
4 productive energy sites where possible.

5 (2) The delegated authority to the state of West Virginia to administer the Surface Mine  
6 Control and Reclamation Act has created an obligation for contour restoration upon the state  
7 where the actual cost will exceed the bonded amount and that this obligation may, in the  
8 aggregate, amount to a burden on the state of several billion dollars.

9 (3) At the conclusion of a surface mine operation the contour restoration process is unlikely  
10 to meet the highest and best use of that land where other opportunities for economic development  
11 will have a greater positive impact to the local community.

12 (4) West Virginia's mountainous topography has made opportunities for energy generation  
13 sites that require flat surfaces scarce and has therefore negatively impacted the opportunities for  
14 investment by energy companies in West Virginia.

15 (5) There exists an opportunity to invite economic investment into West Virginia for the  
16 creation of new energy generation sites to meet the demands of the forecasted exponential growth  
17 in energy demand.

18 (b) Definitions. As used in this section:

19 (1) "New energy generation project" means any electricity generating facility not currently  
20 found on the site in question and which generates at minimum 10 megawatts (MW) of electricity.

21 (2) "The secretary" means the secretary of the West Virginia Department of Environmental  
22 Protection.

23 (3) "Contour restoration requirements" exclusively refers to the restoration of the original  
24 mountain contour of the site in question found in §22-3-13b(b) of this code and does not extend to  
25 any other environmental or water reclamation obligations, including but not limited to, removal of  
26 toxic materials from the soil or water.

27 (c) Creation of the Productive Energy Site Reclamation Waiver.

28 (1) The secretary shall grant to any surface mine owner or operator as defined by §22-3-  
29 3(u) of this code with regard to the contour restoration requirements found in §22-3-13b(b)(3) of  
30 this code a Productive Energy Site Reclamation Waiver for mined lands which have been leased,  
31 sold, or deeded to a new energy generation project to take place on the location of the former  
32 surface mine.

33 (2) A Productive Energy Site Reclamation Waiver shall release the current owner or  
34 operator of the surface mine specified in the waiver application from any contour restoration  
35 requirements as defined by §22-3-13b(b)(3) of this code.

36 (A) Any bonds that have been held to support the contour restoration requirements  
37 referenced as defined by §22-3-11 of this code shall be released back to the mine owner or  
38 operator in proportion to the amount needed for contour restoration.

39 (B) Any outstanding financial obligations on the state of West Virginia for contour  
40 restoration for formerly mined sites, including those where the bond amount is less than the real  
41 cost of the contour restoration, upon the grant of the Productive Energy Site Reclamation Waiver,  
42 shall henceforth be obviated as the site is converted into a new and productive use.

43 (3) The owner or operator of any proposed new energy generation project must

demonstrate to the secretary and with any additional criteria to be developed by the secretary a reasonable demonstration of capability to fulfill the financial and technical obligations proposed by the new energy generation project including but not limited to: a history of successfully completed energy generation projects of the kind proposed for the Productive Energy Site Reclamation Waiver; the requisite capital required for the planning, construction, and operation of the new energy generation project; the personnel required for the planning, construction, and operation of the project; a reasonable and sufficient business use case for the construction of the project as determined by the secretary.

(4) The owner or operator of the surface mine may, having found a qualified new energy generation project developer as defined in subsection (3) of this section, apply for a Productive Energy Site Reclamation Waiver either at the time of the original permit application as defined by §22-3-9 of this code; at the midpoint of the surface mining operation and without regard to any previously agreed upon contour reclamation plans as defined by §22-3-10 of this code; or at or near the conclusion of the surface mining operation.

(5) Surface mine sites where the original owner or operator of the surface mine is insufficiently capitalized for the full contour restoration requirements or where surety bonds do not meet the full financial requirements may see those obligations released by the state if a new energy generation project developer as defined by subsection (b)(3) of this section is found and a waiver is granted under this article.

(6) Where surface mines exist that have ceased to have active mining operations regardless of whether the reclamation process has begun or where the corporate entity of the original mine owner or operator has ceased to exist, the secretary shall prioritize granting waivers for these lands for qualified new energy generation project developers.

(7) For all applications for Productive Energy Site Reclamation Waivers where the new energy generation developer does not meet the criteria listed in subsection (b)(3) of this section the secretary shall not grant a waiver and the original mine owner or operator shall be held

70 responsible for all original contour restoration activities as defined by §22-3-10 of this code if they  
71 are unable to locate a new clean energy generation project developer. An unsuccessful attempt to  
72 sell, lease, or deed a former surface mine site for a new energy generation project shall not  
73 foreclose any future attempts to do so and which would then be eligible for a waiver.  
74 (8) The secretary shall promulgate any other rules or processes for the implementation of  
75 the Productive Energy Site Reclamation Waiver program.

NOTE: The purpose of this bill is to create the Productive Energy Site Reclamation Waiver Program to streamline the process of transferring former surface mine sites into productive sites for new energy generation projects and to optimize the flat land for energy projects that is otherwise in short supply in the state of West Virginia.

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