

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

House Bill 4120

By Delegate Fehrenbacher

[Introduced January 14, 2026; 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; providing 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 "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 "The secretary" means the secretary of the West Virginia Department of Environmental
22 Protection.

23 "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 hereafter 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 shall

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

52 (4) The owner or operator of the surface mine may, having found a qualified new energy
53 generation project developer as defined in subsection (3) of this section, apply for a Productive
54 Energy Site Reclamation Waiver either at the time of the original permit application as defined by
55 §22-3-9 of this code; at the midpoint of the surface mining operation and without regard to any
56 previously agreed upon contour reclamation plans as defined by §22-3-10 of this code; or at or
57 near the conclusion of the surface mining operation.

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

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

67 (7) For all applications for Productive Energy Site Reclamation Waivers where the new
68 energy generation developer does not meet the criteria listed in subsection (b)(3) of this section,
69 the secretary may 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 the
71 original mine owner or operator is unable to locate a new clean energy generation project
72 developer. An unsuccessful attempt to sell, lease, or deed a former surface mine site for a new
73 energy generation project may not foreclose any future attempts to do so and which would then be
74 eligible for a waiver.

75 (8) The secretary may promulgate any other rules or processes for the implementation of
76 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.