

West Virginia Legislature

House Bill 4003 History

From the 2022 Regular Session

**Printed on Tuesday 27th of February 2024
At 09:26:29 AM**

This document contains all available Bill revisions, roll-call votes and amendments pertaining to the legislation.

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Committee Substitute

for

House Bill 4003

BY DELEGATES KEATON, BARRETT, HANSHAW, MR.

SPEAKER, SUMMERS, ESPINOSA, RILEY, HOWELL,

BURKHAMMER, CLARK, PACK, AND MAYNOR

[Originating in the Committee on the Judiciary,

January 31, 2022.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §22-2-10, relating generally to the ownership and commercial benefit of
3 substances removed from waters of the state by the treatment of mine drainage; restating
4 public policies concerning the maintenance of reasonable standards of purity and quality
5 of the waters of the state consistent with public health and the protection of all forms of
6 life; providing for legislative findings, intent, and purpose, including that treatment of mine
7 drainage reduces environmental harm by reducing toxic substances and pollution in the
8 waters of the state, that such treatment may produce valuable concentrations of materials
9 which may be utilized for commercial gain, and that said materials are part of the water;
10 stating the legislative intent of fulfilling the state's obligations to maintain reasonable
11 standards of purity and quality of the waters of the state by encouraging investments into
12 the treatment of mine drainage; providing that all chemical compounds, elements, and
13 other potentially toxic materials found within the waters of this state and derived from the
14 treatment of mine drainage which have economic value may be used, sold, or transferred
15 by the Department of Environmental Protection or its designee for commercial gain and
16 benefit; providing that all funds received by said department shall be deposited and used
17 at the discretion of the secretary into already established environmental funds; providing
18 that all chemical compounds, elements, and other potentially toxic materials found within
19 the waters of this state and derived from the treatment of mine drainage which have
20 economic value may be used, sold, or transferred by any party who successfully removes
21 the same from the waters of this state for commercial gain and benefit; and providing a
22 severability clause.

Be it enacted by the Legislature of West Virginia:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

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

7 (b) Legislative Findings, Intent, and Purpose. The Legislature finds that treatment of mine
8 drainage reduces environmental harm by reducing toxic substances and pollution in the waters
9 of the state. The Legislature finds that the necessary and expensive treatment of mine drainage
10 to remove pollution from the waters of the state and disposal of the same may produce materials
11 that contain valuable concentrations of rare earth elements, critical materials, and other
12 substances which may be utilized for commercial gain. The Legislature finds that these materials
13 found within the waters of the state are part of the water and can only be separated from the water
14 with expensive and continuing investments of resources which may last for decades. The
15 Legislature enacts this section with the intent of fulfilling the state's obligations to maintain
16 reasonable standards of purity and quality of the waters of the state, consistent with public health
17 and the protection of all forms of life, by encouraging investments into the treatment of mine
18 drainage.

19 (c) Notwithstanding any provision of this code or the common law to the contrary, all
20 chemical compounds, elements, and other potentially toxic materials which are found within the
21 waters of this state and which are derived from the treatment of mine drainage, and which have
22 economic value, may be used, sold, or transferred by the Department of Environmental
23 Protection, or its designee, for commercial gain and benefit. All funds received by said department

24 shall be deposited at the discretion of the secretary into the Special Reclamation Water Trust
25 Fund (3312) or the Acid Mine Drainage Set-Aside Fund (8796), and used by said department to
26 fulfill its obligations under this code.

27 (d) Notwithstanding any provision of this code or the common law to the contrary, all
28 chemical compounds, elements, and other potentially toxic materials which are found within the
29 waters of this state and which are derived from the treatment of mine drainage, and which have
30 economic value, may be used, sold, or transferred by any party, other than the department, who
31 successfully removes said chemical compounds, elements, and other potentially toxic materials
32 from the waters of this state for commercial gain and benefit.

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

NOTE: The purpose of this bill is to establish legal rights to chemical compounds, elements, and substances that are derived from the treatment of mine drainage.

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

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 4003

BY DELEGATES KEATON, BARRETT, HANSHAW (MR.

SPEAKER), SUMMERS, ESPINOSA, RILEY, HOWELL,

BURKHAMMER, CLARK, PACK, AND MAYNOR

[Passed March 10, 2022; in effect ninety days from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §22-2-10, relating generally to the ownership and commercial benefit of
3 substances removed from waters of the state by the treatment of mine drainage; restating
4 public policies concerning the maintenance of reasonable standards of purity and quality
5 of the waters of the state consistent with public health and the protection of all forms of
6 life; providing for legislative findings, intent, and purpose, including that treatment of mine
7 drainage reduces environmental harm by reducing toxic substances and pollution in the
8 waters of the state, that such treatment may produce valuable concentrations of materials
9 which may be utilized for commercial gain, and that said materials are part of the water;
10 stating the legislative intent of fulfilling the state's obligations to maintain reasonable
11 standards of purity and quality of the waters of the state by encouraging investments into
12 the treatment of mine drainage; providing that all chemical compounds, elements, and
13 other potentially toxic materials found within the waters of this state and derived from the
14 treatment of mine drainage which have economic value may be used, sold, or transferred
15 by the Department of Environmental Protection or its designee for commercial gain and
16 benefit; providing that all funds received by said department shall be deposited and used
17 at the discretion of the secretary into already established environmental funds; providing
18 that all chemical compounds, elements, and other potentially toxic materials found within
19 the waters of this state and derived from the treatment of mine drainage which have
20 economic value may be used, sold, or transferred by any party who successfully removes
21 the same from the waters of this state for commercial gain and benefit; providing for the
22 protection of existing and future contracts; and providing a severability clause.

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

7 (b) *Legislative Findings, Intent, and Purpose.* The Legislature finds that treatment of mine
8 drainage reduces environmental harm by reducing toxic substances and pollution in the waters
9 of the state. The Legislature finds that the necessary and expensive treatment of mine drainage
10 to remove pollution from the waters of the state, and disposal of the same, may produce materials
11 that contain valuable concentrations of rare earth elements, critical materials, and other
12 substances which may be utilized for commercial gain. The Legislature finds that these materials
13 found within the waters of the state are part of the water and can only be separated from the water
14 with expensive and continuing investments of resources which may last for decades. The
15 Legislature enacts this section with the intent of fulfilling the state's obligations to maintain
16 reasonable standards of purity and quality of the waters of the state, consistent with public health
17 and the protection of all forms of life, by encouraging investments into the treatment of mine
18 drainage.

19 (c) Notwithstanding any provision of this code or common law to the contrary, all chemical
20 compounds, elements, and other potentially toxic materials which are found within the waters of
21 this state, which are derived from the treatment of mine drainage, and which have economic
22 value, may be used, sold, or transferred by the Department of Environmental Protection, or its
23 designee, for commercial gain and benefit. All funds received by the department shall be

24 deposited at the discretion of the secretary into the Special Reclamation Water Trust Fund or the
25 Acid Mine Drainage Set-Aside Fund, and used by the department to fulfill its obligations under
26 this code: *Provided*, That nothing in this subsection shall be construed to interfere with any
27 existing contract or the ability of the department to enter into an agreement with private parties
28 with respect to the removal, sale, or transfer of said chemical compounds, elements, and other
29 potentially toxic materials.

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

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

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman, House Committee

.....
Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

.....
Clerk of the House of Delegates

.....
Clerk of the Senate

.....
Speaker of the House of Delegates

.....
President of the Senate

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

.....
Governor

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

House Bill 4003

BY DELEGATES KEATON, BARRETT, HANSHAW, MR.

SPEAKER, SUMMERS, ESPINOSA, RILEY, HOWELL,

BURKHAMMER, CLARK, PACK, AND MAYNOR

[Introduced January 13, 2022; Referred to the
Committee on Energy and Manufacturing then the
Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §22-2-10, relating generally to establishing and implementing a program to
3 explore and capitalize on the potential for recovering valuable and strategically important
4 rare earth elements and critical materials from acid mine drainage. The research has
5 further demonstrated that treatment of acid mine drainage can be configured to both
6 improve the quality of mine discharges while recovering rare earth elements and critical
7 materials. Previously considered a liability, ownership of acid mine drainage treatment
8 byproducts is poorly defined. This legislation seeks to clarify ownership of these
9 byproducts in order to incentivize acid mine drainage treatment while recovering rare earth
10 elements and critical materials.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ABANDONED MINE LANDS AND RECLAMATION ACT.

§22-2-10. Ownership of Substances Derived from Treatment of Acid Mine Drainage.

1 Treatment of acid mine drainage reduces its environmental harm by reducing metal and
2 acid pollution of receiving streams. Treatment also produces materials that may contain valuable
3 concentrations of rare earth elements and critical materials. Various parties may elect or be
4 compelled to treat acid mine drainage. In order to encourage the treatment of acid mine drainage,
5 the State of West Virginia determines that all chemical compounds, elements, and other materials
6 of value derived from the byproducts of acid mine drainage treatment may, at the discretion of the
7 treating party, be used by the treating party or its designee for its commercial benefit. This
8 condition applies regardless of land or other mineral ownership claims.

9 The Department of Environmental Protection may promulgate such emergency,
10 interpretive, legislative, and procedural rules as the secretary deems to be useful or necessary to
11 carry out the purpose of this article and to implement the intent of the Legislature.

NOTE: The purpose of this bill is to establish clear legal right to title of chemical compounds, elements, and substances that are derived from the treatment of acid mine drainage on mined lands.

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

West Virginia Senate

Roll Call

HB 4003

Relating generally to commercial benefit of substances removed from waters of the state by the treatment of mine drainage

Yea: 34 Nay: 0 Absent: 0 Excused: 0

Y AZINGER	Y LINDSAY	Y STOLLINGS
Y BALDWIN	Y MARONEY	Y STOVER
Y BEACH	Y MARTIN	Y SWOPE
Y BOLEY	Y MAYNARD	Y SYPOLT
Y BROWN	Y NELSON	Y TAKUBO
Y CAPUTO	Y PHILLIPS	Y TARR
Y CLEMENTS	Y PLYMALE	Y TRUMP
Y GEFERT	Y ROBERTS	Y WELD
Y GRADY	Y ROMANO	Y WOELFEL
Y HAMILTON	Y RUCKER	Y WOODRUM
Y JEFFRIES	Y SMITH	Y MR PRESIDENT
Y KARNES		

Concur and Pass

West Virginia House of Delegates

85th Legislature - Regular Session 2022

HB 4003

Relating generally to commercial benefit of substances removed from waters of the state by the treatment of mine drainage

RCS# 435

3/9/2022 11:50 AM

Senate Amended House Bill

Yeas: 91 Nays: 7 Absent: 2 Passed

Yea: 91

Anderson	Forsht	Kessinger	Riley
Barach	Foster	Kimble	Rohrbach
Barnhart	Garcia	Kimes	Rowan
Barrett	Gearheart	Linville	Rowe
Bates	Graves	Longanacre	Skaff
Boggs	Griffith	Lovejoy	Smith
Booth	Hanna	Mallow	Statler
Bridges	Hansen	Mandt	Steele
Brown	Hardy	Maynard	Storch
Burkhammer	Haynes	Maynor	Summers
Capito	Holstein	Mazzocchi	Sypolt
Clark	Honaker	McGeehan	Toney
Conley	Hornbuckle	Miller	Tully
Cooper	Horst	Nestor	Wamsley
Criss	Hott	Pack	Ward, B.
Crouse	Householder	Paynter	Ward, G.
Dean	Howell	Pethtel	Westfall
Doyle	Jeffries, D.	Phillips	Williams
Ellington	Jeffries, J.	Pinson	Worrell
Espinosa	Jennings	Pritt	Young
Evans	Keaton	Queen	Zatezalo
Fast	Kelly, D.	Reed	Mr. Speaker
Ferrell	Kelly, J.	Reynolds	

Nay: 7

Diserio	Fluharty	Thompson	Zukoff
Fleischauer	Pushkin	Walker	

Not Voting: 2

Hamrick	Martin
---------	--------

West Virginia Senate

Roll Call

HB 4003

Relating generally to commercial benefit of substances removed from waters of the state by the treatment of mine drainage

Yea: 33 Nay: 0 Absent: 1 Excused: 0

Y AZINGER	Y LINDSAY	Y STOLLINGS
Y BALDWIN	Y MARONEY	Y STOVER
Y BEACH	Y MARTIN	A SWOPE
Y BOLEY	Y MAYNARD	Y SYPOLT
Y BROWN	Y NELSON	Y TAKUBO
Y CAPUTO	Y PHILLIPS	Y TARR
Y CLEMENTS	Y PLYMALE	Y TRUMP
Y GEFFERT	Y ROBERTS	Y WELD
Y GRADY	Y ROMANO	Y WOELFEL
Y HAMILTON	Y RUCKER	Y WOODRUM
Y JEFFRIES	Y SMITH	Y MR PRESIDENT
Y KARNES		

3rd Reading

West Virginia House of Delegates

85th Legislature -Regular Session 2022

HB 4003

Relating generally to commercial benefit of substances removed from waters of the state by the treatment of mine drainage

RCS# 82

2/7/2022 11:34 AM

Passage

Yeas: 94 Nays: 1 Absent: 5 Passed

Yea: 94

Anderson	Fleischauer	Kimble	Rowan
Barach	Forsht	Kimes	Rowe
Barnhart	Foster	Linville	Skaff
Barrett	Garcia	Longanacre	Smith
Bates	Gearheart	Lovejoy	Statler
Boggs	Graves	Mallow	Steele
Booth	Griffith	Mandt	Storch
Bridges	Hamrick	Maynard	Summers
Brown	Hanna	Maynor	Sypolt
Burkhammer	Hansen	Mazzocchi	Thompson
Capito	Hardy	McGeehan	Toney
Clark	Haynes	Miller	Tully
Conley	Holstein	Pack	Walker
Cooper	Honaker	Paynter	Wamsley
Criss	Hornbuckle	Pethtel	Ward, B.
Crouse	Hott	Phillips	Ward, G.
Dean	Householder	Pinson	Westfall
Diserio	Howell	Pritt	Williams
Doyle	Jeffries, D.	Pushkin	Worrell
Ellington	Jennings	Queen	Young
Espinosa	Keaton	Reed	Zatezalo
Evans	Kelly, D.	Reynolds	Mr. Speaker
Fast	Kelly, J.	Riley	
Ferrell	Kessinger	Rohrbach	

Nay: 1

Fluharty

Not Voting: 5

Horst	Martin	Zukoff
Jeffries, J.	Nestor	

Paired (Yea/Nay): 2

Clark / Fluharty

HB4003 HFAT Anderson 3-8

Akers 3254

Delegate Anderson moves to amend the bill by striking out the title and substituting therefor a new title, to read as follows:

Eng. House Bill No. 4003 -- H. B. 4003 -- A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22-2-10, relating generally to the ownership and commercial benefit of substances removed from waters of the state by the treatment of mine drainage; restating public policies concerning the maintenance of reasonable standards of purity and quality of the waters of the state consistent with public health and the protection of all forms of life; providing for legislative findings, intent, and purpose, including that treatment of mine drainage reduces environmental harm by reducing toxic substances and pollution in the waters of the state, that such treatment may produce valuable concentrations of materials which may be utilized for commercial gain, and that said materials are part of the water; stating the legislative intent of fulfilling the state's obligations to maintain reasonable standards of purity and quality of the waters of the state by encouraging investments into the treatment of mine drainage; providing that all chemical compounds, elements, and other potentially toxic materials found within the waters of this state and derived from the treatment of mine drainage which have economic value may be used, sold, or transferred by the Department of Environmental Protection or its designee for commercial gain and benefit; providing that all funds received by said department shall be deposited and used at the discretion of the secretary into already established environmental funds; providing that all chemical compounds, elements, and other potentially toxic materials found within the waters of this state and derived from the treatment of mine drainage which have economic value may be used, sold, or transferred by any party who successfully removes the same from the waters of this state for commercial gain and benefit; providing for the protection of existing and future contracts; and providing a severability clause.

Adopted

Rejected

HB4003 HFAT Anderson 3-8

Akers 3254

Delegate Anderson moves to amend the bill by striking out the title and substituting therefor a new title, to read as follows:

Eng. House Bill No. 4003 -- H. B. 4003 -- A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22-2-10, relating generally to the ownership and commercial benefit of substances removed from waters of the state by the treatment of mine drainage; restating public policies concerning the maintenance of reasonable standards of purity and quality of the waters of the state consistent with public health and the protection of all forms of life; providing for legislative findings, intent, and purpose, including that treatment of mine drainage reduces environmental harm by reducing toxic substances and pollution in the waters of the state, that such treatment may produce valuable concentrations of materials which may be utilized for commercial gain, and that said materials are part of the water; stating the legislative intent of fulfilling the state's obligations to maintain reasonable standards of purity and quality of the waters of the state by encouraging investments into the treatment of mine drainage; providing that all chemical compounds, elements, and other potentially toxic materials found within the waters of this state and derived from the treatment of mine drainage which have economic value may be used, sold, or transferred by the Department of Environmental Protection or its designee for commercial gain and benefit; providing that all funds received by said department shall be deposited and used at the discretion of the secretary into already established environmental funds; providing that all chemical compounds, elements, and other potentially toxic materials found within the waters of this state and derived from the treatment of mine drainage which have economic value may be used, sold, or transferred by any party who successfully removes the same from the waters of this state for commercial gain and benefit; providing for the protection of existing and future contracts; and providing a severability clause.

Adopted

Rejected

HB4003 S EIM AM #1 3-2

Childs 7879

The Committee on Energy, Industry, and Mining moved to amend the bill by striking out everything after the enacting clause and inserting in lieu thereof the following:

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.

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

(b) Legislative Findings, Intent, and Purpose. The Legislature finds that treatment of mine drainage reduces environmental harm by reducing toxic substances and pollution in the waters of the state. The Legislature finds that the necessary and expensive treatment of mine drainage to remove pollution from the waters of the state, and disposal of the same, may produce materials that contain valuable concentrations of rare earth elements, critical materials, and other substances which may be utilized for commercial gain. The Legislature finds that these materials found within the waters of the state are part of the water and can only be separated from the water with expensive and continuing investments of resources which may last for decades. The Legislature enacts this section with the intent of fulfilling the state's obligations to maintain reasonable standards of purity and quality of the waters of the state, consistent with public health and the protection of all forms of life, by encouraging investments into the treatment of mine drainage.

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

chemical compounds, elements, and other potentially toxic materials.

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

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

Adopted

Rejected

HB4003 S EIM AM #1 3-2

Childs 7879

The Committee on Energy, Industry, and Mining moved to amend the bill by striking out everything after the enacting clause and inserting in lieu thereof the following:

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.

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

(b) Legislative Findings, Intent, and Purpose. The Legislature finds that treatment of mine drainage reduces environmental harm by reducing toxic substances and pollution in the waters of the state. The Legislature finds that the necessary and expensive treatment of mine drainage to remove pollution from the waters of the state, and disposal of the same, may produce materials that contain valuable concentrations of rare earth elements, critical materials, and other substances which may be utilized for commercial gain. The Legislature finds that these materials found within the waters of the state are part of the water and can only be separated from the water with expensive and continuing investments of resources which may last for decades. The Legislature enacts this section with the intent of fulfilling the state's obligations to maintain reasonable standards of purity and quality of the waters of the state, consistent with public health and the protection of all forms of life, by encouraging investments into the treatment of mine drainage.

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

chemical compounds, elements, and other potentially toxic materials.

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

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

Adopted

Rejected

HB4003 H ENG AMT

Akers 3254

The Committee on Energy and Manufacturing moves to amend the bill by striking out the title and substituting therefor a new title, to read as follows:

H. B. 4003 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22-2-10, relating generally to the treatment of mine drainage to remove harmful pollutants from the waters of the state; restating public policies concerning the maintenance of reasonable standards of purity and quality of the waters of the state consistent with public health and the protection of all forms of life; providing for legislative findings, intent, and purpose, including that treatment of mine drainage reduces environmental harm by reducing toxic substances and pollution in the waters of the state, that such treatment may produce materials that contain valuable concentrations of materials which may be utilized for commercial gain, that said materials are part of the water; stating the legislative intent of fulfilling the state's obligations to maintain reasonable standards of purity and quality of the waters of the state by encouraging investments into the treatment of mine drainage; providing that all chemical compounds, elements, and other potentially toxic materials found within the waters of this state and derived from the treatment of mine drainage which have economic value may be used, sold, or transferred by the Department of Environmental Protection or its designee for commercial gain and benefit to offset the costs of investments made to maintain reasonable standards of purity and quality of the waters of the state; providing that all funds received by said department shall be deposited and used at the discretion of the secretary into already established environmental funds; providing that all chemical compounds, elements, and other potentially toxic materials found within the waters of this state and derived from the treatment of mine drainage which have economic value may be used, sold, or transferred by any party who successfully removes the same from the waters of this state for commercial gain and benefit to maintain reasonable standards of purity and quality of the waters of the state; providing for rule making by the department; and providing a severability clause."

Adopted

Rejected

The Committee on Energy and Manufacturing moves to amend the bill after the enacting clause by striking out the remainder of the bill and inserting in lieu thereof the following:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

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; rule-making; severability.

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

(b) *Legislative Findings, Intent, and Purpose.* The Legislature finds that treatment of mine drainage reduces environmental harm by reducing toxic substances and pollution in the waters of the state. The Legislature finds that the necessary and expensive treatment of mine drainage to remove pollution from the waters of the state and disposal of the same may produce materials that contain valuable concentrations of rare earth elements, critical materials, and other substances which may be utilized for commercial gain. The Legislature finds that these materials found within the waters of the state are part of the water and can only be separated from the water with expensive and continuing investments of resources which may last for decades. This section is enacted with the legislative intent of fulfilling the state's obligations to maintain reasonable standards of purity and quality of the waters of the state, consistent with public health and the protection of all forms of life, by encouraging investments into the treatment of mine drainage and offsetting the costs of said investments.

(c) Notwithstanding any provision of this code or the common law to the contrary, all chemical compounds, elements, and other potentially toxic materials which are found within the waters of this state and which are derived from the treatment of mine drainage, and which have economic value, may be used, sold, or transferred by the Department of Environmental Protection, or its designee, for commercial gain and benefit to offset the costs of treatment made to maintain reasonable standards of purity and quality of the waters of the state. All funds received by said department shall be deposited at the discretion of the secretary into the Special Reclamation Water Trust Fund (3312) or the Acid Mine Drainage Set-Aside Fund (8796), and used by said department to fulfill its obligations under this code.

(d) Notwithstanding any provision of this code or the common law to the contrary, all chemical compounds, elements, and other potentially toxic materials which are found within the waters of this state and which are derived from the treatment of mine drainage, and which have economic value, may be used, sold, or transferred by any party, other than the department, who successfully removes said chemical compounds, elements, and other potentially toxic materials from the waters of this state for commercial gain and benefit to offset the the costs of treatment and to maintain reasonable standards of purity and quality of the waters of the state.

(e) The Department of Environmental Protection may promulgate such emergency, interpretive, legislative, and procedural rules as the secretary deems useful or necessary to carry out the purpose of this section and to implement the intent of the Legislature.

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

Adopted

Rejected