WEST VIRGINIA CODE: §22-2-4

§22-2-4. Abandoned land reclamation fund and objectives of fund; lands eligible for reclamation.

(a) All abandoned land reclamation funds available under Title IV of the federal Surface Mining Control and Reclamation Act of 1977, as amended, private donations received, any state appropriated or transferred funds, or funds received from the sale of land by the secretary under this article shall be deposited with the Treasurer of the State of West Virginia to the credit of the abandoned land reclamation fund heretofore created, and expended pursuant to the requirements of this article.

(b) Moneys in the fund may be used by the secretary for the following:

(1) Reclamation and restoration of land and water resources adversely affected by past coal surface-mining operations, including, but not limited to, reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas and abandoned coal processing waste areas; sealing and filling abandoned deep mine entries and voids; planting of land adversely affected by past coal surface-mining operations to prevent erosion and sedimentation; prevention, abatement, treatment and control of water pollution created by coal mine drainage, including restoration of stream beds and construction and operation of water treatment plants; prevention, abatement and control of burning coal processing waste areas and burning coal in situ; prevention, abatement and control of coal mine subsidence; and payment of administrative expenses and all other necessary expenses incurred to accomplish the purpose of this article: *Provided*, That all expenditures from this fund shall reflect the following priorities in the order stated:

(A) The protection of public health, safety, general welfare and property from extreme danger of adverse effects of past surface-mining practices;

(B) The protection of public health, safety and general welfare from adverse effects of past coal surface-mining practices;

(C) The restoration of land and water resources and environment previously degraded by adverse effects of past coal surface-mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources and agricultural productivity;

(D) Research and demonstration projects relating to the development of surface-mining reclamation and water quality control program methods and techniques;

(E) The protection, repair, replacement, construction or enhancement of public facilities such as utilities, roads, recreation and conservation facilities adversely affected by past coal surface-mining practices; and

WV Legislature

(F) The development of publicly owned land adversely affected by past coal surface-mining practices, including land acquired as provided in this article for recreation and historic purposes, conservation and reclamation purposes and open space benefits.

(2)(A) The secretary may expend the funds allocated to the state in any year through the grants made available under paragraphs (1) and (5), subsection (g) of Section 402 of the federal Surface Mining Control and Reclamation Act of 1977, as amended, for the purpose of protecting, repairing, replacing, constructing or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal surface-mining practices.

(B) If the adverse effects on water supplies referred to in this subdivision occurred both prior to and after the August 3, 1977, subsection (c) of this section does not prohibit the state from using funds for the purposes of this subdivision if the secretary determines that the adverse effects occurred predominantly prior to August 3, 1977.

(3) In addition to other amounts authorized by this section, the secretary may receive and retain up to 30 percent of the total of the grants made annually to the state under any of the following:

(A) Grants made annually to the state under paragraphs (1) and (5), subsection (g), section 402 of the federal Surface Mining Control and Reclamation Act of 1977, as amended, if the amounts are deposited to the credit of:

(i) The Reclamation and Restoration Fund established in subsection (b)(1) of this section; and/or

(ii) The Acid Mine Drainage Abatement and Treatment Fund established in subsection (b)(2) of this section;

(B) Grants made annually to the state under any federal law authorizing the appropriation or distribution of abandoned mine land reclamation grants, including but not limited to laws enacted after the Surface Mining Control and Reclamation Act of 1977, provided such law authorizes the retention of a long-term set-aside. Such amounts may be deposited to the credit of:

(i) A long-term abandoned mine land reclamation fund established under state law for the purposes authorized by the applicable federal statute; and/or

(ii) The Acid Mine Drainage Abatement and Treatment Fund established in subsection (b)(2) of this section, provided that such funds are separately accounted for and expended only for the purposes authorized by the applicable federal statute;

(C) The special account in the State Treasury designated the "Reclamation and Restoration Fund" is hereby continued. Moneys in the fund may be expended by the secretary to achieve the priorities stated in subdivision (1) of this subsection after September 30, 1995 and for

WV Legislature

associated administrative and personnel expenses; or

(D) The special account in the State Treasury designated the "Acid Mine Drainage Abatement and Treatment Fund" is hereby continued. Moneys in the fund may be expended by the secretary to implement, in consultation with the United States soil conservation service, acid mine drainage abatement and treatment plans approved by the secretary of the United States department of interior and for associated administrative and personnel expenses. The plans shall provide for the comprehensive abatement of the causes and treatment of the effects of acid mine drainage within qualified hydrologic units affected by coal surface-mining practices. The moneys accrued in this fund, any earnings thereon, and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this section of the code. Any interest accrued on any moneys deposited into the Acid Mine Drainage Abatement and Treatment Fund which previously defaulted from that account into general revenue shall be credited back to the fund on or before July 1, 2014.

(c) Except as provided for in this subsection, lands and water eligible for reclamation or drainage abatement expenditures under this article are those which were mined for coal or which were affected by the mining, wastebanks, coal processing or other coal mining processes, and abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility: *Provided*, That moneys from the funds made available by the secretary of the United States Department of Interior pursuant to paragraphs (1) and (5), subsection (g), Section 402 of the federal Surface Mining Control and Reclamation Act of 1977, as amended, may be expended for the reclamation or drainage abatement of a site that: (1) The surface-mining operation occurred during the period beginning on August 4, 1977, and ending on or before January 21, 1981, and that any funds for reclamation or abatement which are available pursuant to a bond or other financial guarantee or from any other source, and not sufficient to provide for adequate reclamation or abatement of the site; or (2) the surface-mining operation occurred during the period beginning on August 4, 1977, and ending on or before November 5, 1990, and that the surety of the surface-mining operation became insolvent during that period, and as of November 5, 1990, funds immediately available from proceeding relating to the insolvency or from any financial guarantees or other sources are not sufficient to provide for adequate reclamation of the site: *Provided, however*, That the secretary, with the concurrence of the secretary of the United States Department of Interior, makes either of the above-stated findings, and that the site is eligible, or more urgent than the reclamation priorities set forth in paragraphs (A) and (B), subdivision (1), subsection (b) of this section.

(d) One purpose of this article is to provide additional and cumulative remedies to abate the pollution of the waters of the state, and nothing contained in this article abridges or alters rights of action or remedies now or hereafter existing, nor do any provisions in this article or any act done by virtue of this article estop the state, municipalities, public health officers or persons as riparian owners or otherwise in the exercise of their rights to suppress nuisances or to abate any pollution now or hereafter existing or to recover damages.

WV Legislature

(e) Where the Governor certifies that the above objectives of the fund have been achieved and there is a need for construction of specific public facilities in communities impacted by coal development, and other sources of federal funds are inadequate and the secretary of the United States Department of Interior concurs, then the secretary may expend money from the fund for the construction.

WV Legislature