# WEST VIRGINIA CODE: §22-2-6

**§22-2-6. Acquisition and reclamation of land adversely affected by past coal surface-mining practices.**

(a) If the director makes a finding of fact that:

(1) Land or water resources have been adversely affected by past coal surface-mining practices;

(2) The adverse effects are at a stage where, in the public interest, action to restore, reclaim, abate, control or prevent should be taken;

(3) The owners of the land or water resources where entry must be made to restore, reclaim, abate, control or prevent the adverse effects of past coal surface-mining practices are not known or readily available; or

(4) The owners will not give permission for the director, his or her agents, employees or contractors to enter upon the property to restore, reclaim, abate, control or prevent the adverse effects of past coal surface-mining practices, then, upon giving notice by mail to the owners, if known, or if not known by posting notice upon the premises and advertising once in a newspaper of general circulation in the county in which the land lies, the director, his or her agents, employees or contractors have the right to enter upon the property adversely affected by past coal surface-mining practices and any other property to have access to the property to do all things necessary or expedient to restore, reclaim, abate, control or prevent the adverse effects. The entry shall be construed as an exercise of the police power of the state for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor of trespass thereon. The moneys expended for the work and the benefits accruing to any premises so entered upon is chargeable against the land and mitigates or offsets any claim in or any action brought by any owner of any interest in the premises for any alleged damages by virtue of the entry: Provided, That this provision is not intended to create new rights of action or eliminate existing immunities.

(b) The director, his or her agents, employees or contractors have the right to enter upon any property for the purpose of conducting studies or exploratory work to determine the existence of adverse effects of past coal surface-mining practices and to determine the feasibility of restoration, reclamation, abatement, control or prevention of the adverse effects. The entry shall be construed as an exercise of the police power of the state for the protection of public health, safety and general welfare and shall not be construed as an act of condemnation of property nor trespass thereon.

(c) The director may acquire any land by purchase, donation or condemnation, which is adversely affected by past coal surface-mining practices, if the director determines that

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acquisition of the land is necessary to successful reclamation and that:

(1) The acquired land, after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal surface-mining practices will serve recreation, historic, conservation or reclamation purposes or provide open space benefits;

(2) Permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal surface-mining practices; or

(3) Acquisition of coal refuse disposal sites and all coal refuse thereon will serve the purposes of this article or that public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal surface-mining practices.

(d) Title to all lands acquired pursuant to this section shall be in the name of the State of West Virginia, by the West Virginia Division of Environmental Protection. The price paid for land acquired under this section shall reflect the fair market value of the land as adversely affected by past coal surface-mining practices.

(e) The director is hereby authorized to transfer land obtained under subsection (c) of this section to the secretary. The director may purchase the land from the secretary after reclamation at the fair market value less the state's original acquisition price.

(f) The director may accept and local political subdivisions may transfer to the director land belonging to them to carry out the purposes set out in this article and in that event they have a preferential right to purchase the land after reclamation at the fair market value less the political subdivision's cost of acquisition, but at no time shall the director sell the land to a political subdivision at a price less than the cost of the acquisition and reclamation of the land: Provided, That if any land sold to a political subdivision under this subsection is not used for a valid public purpose as specified by the director in the terms and conditions of the sales agreement, then all rights, title and interest in the land revert to the West Virginia Division of Environmental Protection. Any moneys received from the sale shall be deposited in the abandoned land reclamation fund.

(g) Where land acquired pursuant to this section is considered to be suitable for industrial, commercial, residential or recreational development, the director may sell the land by public sale under a system of competitive bidding at not less than fair market value and pursuant to rules promulgated to ensure that the lands are put to proper use consistent with state and local land use plans.

(h) The director, if requested and after appropriate public notice, shall hold a public hearing in the county in which land acquired pursuant to this section is located. The hearing shall be held at a time which affords local citizens and government the maximum opportunity to participate in the decision concerning the use and disposition of the land after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal surface-

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mining practices.

(i) In addition to the authority to acquire land under other provisions of this section, the director is authorized to use money in the fund to acquire land from any federal, state or local government or from a political subdivision thereof, or from any person, firm, association or corporation, if he or she determines that such is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effects of coal surface-mining practices which constitute an emergency as provided in section 410 of the federal Surface Mining Control and Reclamation Act of 1977, as amended, or persons dislocated as the result of natural disasters or catastrophic failures from any cause. The activities shall be accomplished under such terms and conditions as the director requires, which may include transfers of land with or without monetary consideration: Provided, That to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association or corporation. No part of the funds provided under this article may be used to pay the actual construction costs of housing. The director may carry out the purposes of this subsection directly or he or she may make grants and commitments for grants, and may advance money under such terms and conditions as he or she may require to any department, agency or political subdivision of this state, or any public body or nonprofit organization designated by the director.

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