WEST VIRGINIA CODE CHAPTER 22 ARTICLE 2

WV Legislature

§22-2-1. Short title.

This article shall be known and cited as the Abandoned Mine Lands and Reclamation Act.

WV Legislature

§22-2-2. Legislative findings; intent and purpose of article; jurisdiction and authority of director.

The Legislature finds that there are a substantial number of acres of land throughout the state that were disturbed by surface-mining operations prior to the time of present day effective control and regulation. There was little or no reclamation conducted and the impacts from these unreclaimed lands impose social and economic costs on residents in nearby and adjoining areas as well as continue to impair environmental quality, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public.

Further, the Legislature finds and declares that, due to the passage of the federal Surface Mining Control and Reclamation Act of 1977, certain areas within the boundaries of this state do not meet present day standards for reclamation.

Further, the Legislature finds that Title IV of the federal Surface Mining Control and Reclamation Act of 1977, Public Law 95-87, provides for the collection of 35¢ per ton of coal produced from surface-mine operations and 15¢ per ton of coal produced from underground mine operations in West Virginia to be collected by the secretary of the United States department of the interior until September 30, 2004. At least fifty percent of the funds collected are to be allocated directly to the State of West Virginia to accomplish reclamation of abandoned coal mining operations, as of the date the State of West Virginia obtained an approved abandoned mine reclamation plan in accordance with Sections 405 and 503 of the federal Surface Mining Control and Reclamation Act of 1977, as amended.

Therefore, it is the intent of the Legislature by this article to vest jurisdiction and authority in the director of the Division of Environmental Protection to maintain program approval by, and receipt of funds from, the United States department of the interior to accomplish the desired restoration and reclamation of our land and water resources.

WV Legislature

§22-2-3. Definitions.

(a) All definitions set forth in article three of this chapter apply to those defined terms which also appear in this article, if applicable.

(b) For the purposes of this article the following words have the meanings ascribed to them in this subsection:

(1) "Director" means the director of the Division of Environmental Protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one of this chapter;

(2) "Division" means the Division of Environmental Protection; and

(3) "Secretary" means the secretary of the United States Department of Interior.

WV Legislature

§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

(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

WV Legislature

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 associated administrative and personnel expenses; or

WV Legislature

(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.

(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

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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

§22-2-5. Powers and duties of director; program plans and reclamation projects.

(a) The director shall submit to the secretary a state reclamation plan and annual projects to carry out the purposes of this article.

(b) That reclamation plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded and the legal authority and programmatic capability to perform the work in conformance with the provisions of this article.

(c) On an annual basis, the director shall submit to the secretary an application for the support of the state program and implementation of specific reclamation projects. The annual requests shall include information as may be requested by the secretary including:

(1) A general description of each proposed project;

(2) A priority evaluation of each proposed project;

(3) A statement of the estimated benefits in such terms as number of acres restored, miles of stream improved, acres of surface lands protected from subsidence, population protected from subsidence, air pollution and hazards of mine and coal refuse disposal area fires;

(4) An estimate of the cost for each proposed project;

(5) In the case of proposed research and demonstration projects, a description of the specific techniques to be evaluated or objective to be attained;

(6) An identification of lands or interest therein to be acquired and the estimated cost; and

(7) In each year after the first in which a plan is filed under this article, an inventory of each project funded under the previous year's grant, which inventory shall include details of financial expenditures on the project together with a brief description of the project, including the project's location, the landowner's name, acreage and the type of reclamation performed.

(d) The costs for each proposed project under this section include actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs and other necessary administrative expenses.

WV Legislature

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

(1) The acquired land, after restoration, reclamation, abatement, control or prevention of the

WV Legislature

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-mining practices.

(i) In addition to the authority to acquire land under other provisions of this section, the

WV Legislature

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.

WV Legislature

§22-2-7. Liens against reclaimed land; petition by landowner; appeal; priority of liens.

(a) Within six months after the completion of a project to restore, reclaim, abate, control or prevent adverse effects of past coal surface-mining practices on a privately owned land, the director shall itemize the moneys so expended and may file a statement thereof in the office of the clerk of the county commission in the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control or prevention of adverse effects of past coal surface-mining practices, if the moneys so expended result in a significant increase in property value. The statement constitutes a lien upon the land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal surface-mining practices. No lien may be filed against the property of any person in accordance with this subsection, who owned the surface prior to May 2, 1977, and who neither consented to, nor participated in, nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

(b) The landowner may petition the director within sixty days of the filing of the lien to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past coal surface-mining practices. The amount reported to be the increase in value of the premises is the amount of lien and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal to the circuit court of the county in which the land is located.

(c) The statement filed pursuant to subsection (a) of this section is a lien upon the land as of the date of the expenditure of the moneys and has priority as a lien second only to the lien of real estate taxes imposed upon the land.

WV Legislature

§22-2-8. Filling voids and sealing tunnels.

(a) The Legislature declares that voids, open and abandoned tunnels, shafts and entryways and subsidence resulting from any previous coal surface-mining operation are a hazard to the public welfare and safety and that surface impacts of any underground or surface-mining operation may degrade the environment. The director is authorized to fill the voids, seal the abandoned tunnels, shafts and entryways, and reclaim surface impacts of underground or surface mines and remove water and other matter from mines which the director determines could endanger life and property, are a hazard to the public welfare and safety or degrade the environment.

(b) In those instances where coal mine waste piles are being reworked for conservation purposes, the incremental costs of disposing of the wastes from such operations by filling voids and sealing tunnels may be eligible for funding, if the disposal of those wastes meets the purposes of this article.

(c) The director may acquire by purchase, donation, easement or otherwise such interest in land as he or she determines necessary to carry out the provisions of this section.

WV Legislature

§22-2-9. General and miscellaneous powers and duties of director; cooperative agreements; injunctive relief; water treatment plants and facilities; transfer of funds and interagency cooperation.

(a) The director is authorized to engage in any work and to do all things necessary and proper, including promulgation of rules, to implement and administer the provisions of this article.

(b) The director is authorized to engage in cooperative projects under this article with any other agency of the United States of America, any state, county or municipal agency or subdivision thereof.

(c) The director may request the Attorney General, who is hereby authorized to initiate, in addition to any other remedies provided for in this article, in any court of competent jurisdiction, an action in equity for an injunction to restrain any interference with the exercise of the right to enter or to conduct any work provided in this article.

(d) The director has the authority to construct and operate a plant or any facilities for the control and treatment of water pollution resulting from mine drainage. The extent of this control and treatment may be dependent upon the ultimate use of the water: Provided, That this subsection does not repeal or supersede any portion of the applicable federal or state water pollution control laws and no control or treatment under this section may be less than that required under any applicable federal or state water pollution control law. The construction of any facilities may include major interceptors and other facilities appurtenant to the plant.

(e) All departments, boards, commissions and agencies of the state shall cooperate with the director by providing technical expertise, personnel, equipment, materials and supplies to implement and administer the provisions of this article.

WV Legislature

§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 Abatement and Treatment 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

WV Legislature

said chemical compounds, elements, and other potentially toxic materials.

(e) The provisions of this section concerning the treatment of mine drainage are applicable to property governed by §22-2-1 *et seq*. of this code and §22-3-1 *et seq*. of this code.

(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.

WV Legislature

§22-2-11. Prequalification process for consultants; project assignments.

(a) For purposes of this section, "professional services" means engineering services provided by firms and includes those professional services of an engineering nature as well as incidental services that members of those professions and those in their employ may logically or justifiably perform.

(b) The secretary shall publish a Class II legal advertisement to solicit letters of interest for professional services used in engineering procurement. The advertisement:

(1) Shall comply with the Class II legal advertisement provisions of §59-3-1 *et seq*. of this code;

(2) State a time and place for submitting letters of interest and a description of the services required;

(3) Specify the secretary's right to reject any letter of interest; and

(4) Shall be published at least once in at least one daily newspaper published in the city of Charleston and in other journals or magazines as the secretary determines is advisable.

(c) The department shall evaluate any letter of interest received and generate from the letters received a list of all qualified firms, designated the "Prequalified List of Firms".

(d) Upon the department's recommendation, the Purchasing Division shall enter into a prequalification agreement with the qualified firms pursuant to §5A-3-10e of this code. The agreement shall cover the services defined in the letters of interest and have a one-year term, with an optional two-year extension if requested by the department.

(e) For all project assignments:

(1) The department shall issue an expression of interest for any project that needs to be solicited and deliver it to those prequalified firms with which the Purchasing Division has an active prequalification agreement;

(2) The department may review and consider responses only from prequalified consultants with active prequalification agreements;

(3) The department shall conduct discussions with three or more professional services firms solicited on the basis of known or submitted qualifications for the project prior to awarding a contract. If the secretary determines that special circumstances exist such that seeking competition is not practical, the department may, with the Director of Purchasing's prior approval, select a professional services firm on the basis of previous satisfactory performance and knowledge of the department's facilities and needs. After selection, the department and firm shall develop the scope of services required and negotiate a contract;

WV Legislature

(4) The department shall notify its procurement division and the Division of Purchasing of the firm that it selected;

(5) The department shall schedule and conduct a scope of work meeting with the selected firm within 45 days of selection;

(6) Within 60 days of selection, unless an extension is requested by both parties, the department and firm shall complete cost negotiations;

(7) The department shall provide to its own procurement division and the Purchasing Division information regarding the agreed upon costs and all required forms necessary to initiate a contract; and

(8) The department may issue an advanced notice to proceed, if requested by the firm.

WV Legislature