WEST VIRGINIA CODE CHAPTER 33 ARTICLE 61

WV Legislature

§33-61-1. Scope.

This article applies only to the Mining Mutual Insurance Company created pursuant to this article.

WV Legislature

§33-61-2. Findings and purpose.

(a) The Legislature finds that:

(1) There has been a nationwide downturn in the coal mining industry which was especially difficult in West Virginia;

(2) Coal mining permit holders across the state have faced economic circumstances that forced many of them into difficult financial situations;

(3) Insolvent permit holders may be unable to continue operations, thus jeopardizing their ability to properly reclaim lands as required under §22-3-1 *et seq.* of this code;

(4) Any shortfall would be paid from the state's Special Reclamation Fund which could become strained if the coal industry and/ or reclamation surety bond providers would experience unforeseen circumstances;

(5) An increase in bonding amounts would cause undue financial hardships and coal mining permit holders in West Virginia may find it increasingly difficult to comply with the financial assurance provisions of §22-3-1 *et seq.* of this code;

(6) The difficulty or impossibility of obtaining private performance bonds on reasonable economic terms may result in challenges for operators to receive new coal-mining permits;

(7) Having a robust guarantee of proper reclamation of mining operations is of utmost importance to the citizens of West Virginia;

(8) A mechanism is needed for an alternative provider in the state's current coal mining bonding system to provide for additional coverage and further bolster an efficient and effective method of complying with the reclamation requirements and the financial assurance provisions of §22-3-1 *et seq.* of this code;

(9) A state assisted mutual insurance company or a similar entity has proven to be a successful mechanism in West Virginia for helping stabilize certain insurance markets such as medical professional liability and worker compensation;

(10) There is a substantial public interest in creating a method to provide an enhanced mining reclamation performance bond insurance market in this state;

(11) The state currently funds reclamation at former coal-mining sites, where the bond has been forfeited, through a combination of bond proceeds and, if needed, moneys from the Special Reclamation Fund as approved by the Surface Mining Control and Reclamation Act;

(12) There is substantial public benefit in maintaining a stable self-sufficient entity which can be a source of performance bond insurance coverage for permit holders in this state;

WV Legislature

(13) A stable, financially viable insurer in the private sector will provide a continuing source of insurance funds to accomplish reclamation as needed to protect the environment of the state; and

(14) Because the public will greatly benefit from the formation of a Mining Mutual Insurance Company, state efforts to encourage and support the formation of such an entity, including providing a loan of the entity's initial capital, is in the clear public interest.

(b) The purpose of this article is to create a mechanism for the formation of a mining mutual insurance company that will provide:

(1) An option for mining permit holders to obtain performance bond insurance that is available and affordable; and

(2) Assure that reclamation will occur in a timely and predictable fashion in those instances where a permit holder fails to perform under the terms of the permit issued pursuant to §22-3-1 *et seq.* of this code.

WV Legislature

§33-61-3. Definitions.

For purposes of this article, the term:

“Commissioner” means the Insurance Commissioner as provided in §33-2-1 of this code.

“Company” means the Mining Mutual Insurance Company created pursuant to the terms of this article.

“Operator” has the same meaning as provided in §22-3-3 of this code and means any person who is granted or who should obtain a permit to engage in any activity covered by §22-3-1, *et seq*. of this code and any rule promulgated pursuant thereto and includes any person who engages in surface mining or surface mining and reclamation operations, or both. The term shall also be construed in a manner consistent with the federal program pursuant to the federal Surface Mining Control and Reclamation Act of 1977, as amended.

WV Legislature

§33-61-4. Authorization for creation of company; requirements and limitations.

(a) A Mining Mutual Insurance Company may be created as a domestic, private, nonstock corporation in this state. The company shall remain for the duration of its existence a domestic mutual insurance company owned by its policyholders and may not be converted into a stock corporation or any other entity not owned by its policyholders.

(b) For the duration of its existence, the company shall not be considered a department, unit, agency, or instrumentality of this state for any purpose. All debts, claims, obligations, and liabilities of the company, whenever incurred, are the debts, claims, obligations, and liabilities of the company only and not of this state or of any department, unit, agency, instrumentality, officer, or employee of this state.

(c) The moneys of the company shall not be considered part of the General Revenue Fund of the state. The debts, claims, obligations, and liabilities of the company are not and may not be considered a debt of the state or a pledge of the credit of the state.

(d) The company is not subject to provisions of §6-9A-1 *et seq*. of this code or the provisions of §29B-1-1, *et seq*. of this code.

(e) All premiums collected by the company are subject to the premium taxes, additional premium taxes, additional fire and casualty insurance premium taxes and surcharges contained in §33-3-14, §33-3-14a, §33-3-14d, and §33-3-33 of this code to the extent applicable.

WV Legislature

§33-61-5. Governance and organization.

(a) The company shall initially be governed by a provisional board of directors consisting of five directors. The provisional board shall act as the incorporators of the company and shall prepare and file articles of incorporation and bylaws in accordance with the provisions of this article and all of the provisions of this code. The provisional board of directors shall be appointed as follows:

(1) The chair shall be appointed by the Governor. The chair shall be an individual with at least five years' experience as a CEO and board member of a mutual insurance company.

(2) One member of the board shall be selected by the Secretary of the Department of Environmental Protection. This provisional board member shall have extensive experience in environmental management and shall have at least five years' experience in coal mine reclamation.

(3) One member of the provisional board shall be selected by the Insurance Commissioner. This provisional board member shall have insurance experience and shall have served at least five years as an officer of a board of directors of a mutual insurance company.

(4) One member of the provisional board shall be selected by the President of the Senate. This provisional board member shall have experience in coal mine operations, reclamation, and land management.

(5) One member of the provisional board shall be selected by the Speaker of the House of Delegates. This provisional board member shall have experience in coal mine operations, reclamation, and land management.

(b) Upon the filing of the company's articles of incorporation and bylaws, the directors and officers of the company are to be chosen in accordance with such articles of incorporation and bylaws: *Provided*, That the company's articles of incorporation and bylaws shall specifically state that the terms of boards members shall be as follows: (1) Two members shall be for a term of four years; (2) one member shall be for a term of three years; (3) one member shall be for a term of two years; and (4) one member shall be for a term of one year. Thereafter, the directors shall serve staggered terms of four years. If additional directors are added to the board as provided in the company's bylaws, the term shall be for four years.

WV Legislature

§33-61-6. Management and administration of the company.

(a) If the company's board of directors determines that the affairs of the company may be administered suitably and efficiently, the company may enter into a contract with a licensed insurer, licensed health service plan, insurance service organization, third-party administrator, insurance brokerage firm or other firm or company with suitable qualifications and experience to administer some or all of the affairs of the company, subject to the continuing direction of the board of directors as required by the articles of incorporation and bylaws of the company, and the contract. All such contracts shall be awarded by competitive bidding.

(b) The company shall file a true copy of the contract with the commissioner.

WV Legislature

§33-61-7. Application for license; authority of commissioner.

(a) As soon as practical, the company established pursuant to the provisions of this article shall file its corporate charter and bylaws with the commissioner and apply for a license to transact insurance in this state. Notwithstanding any other provision of this code, the commissioner shall act on the documents within 15 days of the filing by the company.

(b) The Legislature authorizes the commissioner to review the documentation submitted by the company and to determine the initial capital and surplus requirements of the company, notwithstanding the provisions of §33-3-5b of this code. The commissioner has the sole discretion to determine the capital and surplus funds of the company and to monitor the economic viability of the company during its initial operation and duration on not less than a monthly basis. The company shall furnish the commissioner with all information and cooperate in all respects necessary for the commissioner to perform the duties set forth in this section and in other provisions of this chapter, including annual audited financial statements required by §33-33-1 *et seq*. of this code and fidelity bond coverage for each of the directors of the company.

(c) Subject to the provisions of subsection (d) of this section, the commissioner may waive other requirements imposed on mutual insurance companies by the provisions of this chapter as the commissioner determines is necessary to enable the company to begin issuing performance bonds in this state at the earliest possible date.

(d) Within 40 months of the date of the issuance of its license to transact insurance, the company shall comply with the capital and surplus requirements set forth in §33-3-5b of this code.

WV Legislature

§33-61-8. Initial capital and surplus.

(a) There is hereby created in the State Treasury a special revenue account designated as the Department of Environmental Protection Mining Mutual Insurance Company Fund solely for the purpose of receiving moneys transferred from various funds at the Department of Environmental Protection.

(b) As soon as practical, but within 30 days of the effective date of this act, the Treasurer shall, with the full cooperation of the Department of Environmental Protection, cause the transfer of $50,000,000 from such funds as the Secretary of the Department of Environmental Protection shall specify into the Department of Environmental Protection Mining Mutual Insurance Company Fund: *Provided*, That the funds shall not be transferred from the existing Special Reclamation Fund.

(c) As soon as practical, but within 30 days of the transfer described in subsection (b) of this section, the Treasurer shall cause the funds in the Department of Environmental Protection Mining Mutual Insurance Company Fund as described in subsection (b) of this section to be transferred to the Mining Mutual to be used as initial capital and surplus in the form of a Surplus Note. These funds shall be deemed a noninterest loan and shall be paid back as credits as reclamation activities are accomplished.

(d) As soon as practical, but within 30 days of gaining any necessary approvals, including specific approval of the Insurance Commissioner, the Treasurer shall, with the full cooperation of the Department of Environmental Protection, cause the transfer of such other funds as may, from time to time, be needed for capital by the Mining Mutual Insurance Company from such funds as the Secretary of the Department of Environmental Protection shall specify into the Department of Environmental Protection Mining Mutual Insurance Company Fund: *Provided*, That the funds shall not be transferred from the existing Special Reclamation Fund. Such funds may or may not be from special grants or other funding mechanisms from the federal government.

(e) As soon as practical, but within 30 days of the transfer described in subsection (d) of this section, the Treasurer shall cause the funds in the Department of Environmental Protection Mining Mutual Insurance Company Fund as described in subsection (d) of this section to be transferred to the Mining Mutual to be used as capital and surplus in the form of a Surplus Note. These funds shall be deemed a noninterest loan and shall be paid back as credits as reclamation activities are accomplished.

WV Legislature

§33-61-9. Types of coverage authorized; discretionary participation.

(a) Upon approval by the commissioner for a license to transact insurance in this state, the company may issue nonassessable policies of performance bonds.

(b) Operators may procure nonassessable policies of performance bonds from the company or other allowable providers to satisfy the requirements of §22-3-11 of this code.

(c) Nothing in this article shall require compulsory participation in purchasing bonds from the company by operators.

WV Legislature

§33-61-10. Applicable law.

To the extent applicable, and when not in conflict with the provisions of this article, the provisions of chapters 31, 31D, 31E, and 33 of this code apply to the company created pursuant to the provisions of this article. If a provision of this article and another provision of this code are in conflict, the provision of this article controls.

WV Legislature