WEST VIRGINIA CODE CHAPTER 5B ARTICLE 2A

WV Legislature

§5B-2A-1. Legislative findings and declaration.

The Legislature hereby finds and declares the following:

(a) Coal mining has made and continues to make significant contributions to the economy of West Virginia. These contributions include the creation of quality jobs that pay high wages and provide good benefits; the consequent stimulation and support of mining contractors, suppliers of mining equipment and services, other mining-related industries and numerous providers of goods and services that are indirectly related to coal mining and dependent upon its existence and prosperity; the generation of significant severance and other tax revenues that support important economic development, infrastructure and education initiatives in mining communities and throughout the state; the support of civic, education and service groups in mining communities; and, in the case of surface mining operations, including mountaintop mining, the creation of much-needed flat land for economic development and recreational uses.

(b) The development and increasing prominence of surface mining operations, including mountaintop mining, has brought increasingly high levels of productivity, safety and efficiency to the state's mining industry, enabling the recovery of coal that could not otherwise be mined and marketed profitably, increasing the severance tax revenues and other economic benefits described in subsection (a) of this section and ensuring the competitiveness of the state's coal industry from a national and international perspective.

(c) Where implemented, surface mining operations, particularly mountaintop mining, tend to extract most, if not all, of the recoverable coal reserves in an accelerated fashion. For a state long dependent on the employment and revenue coal mining provides, this reality should be sobering and there is no place in which the comprehension of this reality is more crucial than the coalfields of West Virginia. Long dependent primarily on mining, this area must plan for a future without coal. The state and its subdivisions have a legitimate interest in securing that future.

(d) The coal industry and those related to the extraction of mineral resources benefit from the mining of our state's coal through mining practices which impact its citizens — some in a negative way — and through practices which will extract significant portions of coal reserves in an accelerated fashion. Those industries must therefore accept a greater responsibility to help address the long-term needs of the communities and citizens impacted by their activities.

(e) Once it becomes public knowledge that a permit is being sought, the marketability of property may change and the relative bargaining power of the parties may change with it. The potential for negative impact on those living in communities near surface mining operations may limit the options and bargaining power of the property owners.

(f) Surface mining operations, including mountaintop mining, present unique challenges to the coal mining industry and the state and its citizens, especially those living and working in

WV Legislature

communities that rely heavily upon these methods of mining. This requires that these communities, in conjunction with county commissions, state, local, county and regional development authorities, landowners and civic, community and business groups and interested citizens, develop plans related to the communities' long-term economic viability.

(g) The Office of Energy, as the state agency charged with energy policy and development activities, shall engage in planning and coordinating the long-term economic development of communities in which these mining methods are prevalent and shall establish a formal process to assist property owners in the determination of the fair market value where the property owner and the coal company voluntarily enter into an agreement relating to the purchase and sale of such property.

WV Legislature

§5B-2A-2. Application of article.

(a) The provisions of this article shall apply to all surface-mining operations, except:

(1) The surface operations and surface impacts incident to an underground coal mine; and

(2) Surface-mining operations of operators that: (A) Establish that their probable total annual coal production from all locations during any consecutive twelve-month period, either during the term of the permit or during the first five years after issuance of the permit, whichever period is shorter, will not exceed three hundred thousand tons, as determined pursuant to rules promulgated by the division; and (B) otherwise qualify for the small operator assistance program authorized under the federal Surface-Mining Control and Reclamation Act of 1977, as amended, and the federal regulations promulgated thereunder, as amended.

(b) The provisions of this article shall not apply: (1) To underground coal mining operations; or (2) to the extraction of minerals by underground mining methods or the surface impacts thereof.

WV Legislature

§5B-2A-3. Definitions.

(a) For the purpose of this article:

(1) "Department" means the Department of Environmental Protection established in §22-1-1 *et seq*. of this code;

(2) "Office" means the Office of Energy established in §5B-2F-1 *et seq*. of this code;

(3) "Operator" means the definition in §22-3-3 of this code;

(4) "Program" means the Coalfield Community Development Program within the Office of Energy;

(5) "Alternative energy" means energy produced or generated from natural or replenishable resources other than traditional fossil fuels or nuclear resources and includes, without limitation, hydropower, geothermal energy, biomass energy, biologically derived fuels, energy produced with advanced coal technologies, coalbed methane, fuel produced by a coal gasification or liquefaction facility, synthetic gas, waste coal, tire-derived fuel, pumped storage hydroelectric power or similar energy sources; and

(6) "Secretary" means the Secretary of the Department of Commerce.

(b) Unless used in a context that clearly requires a different meaning or as otherwise defined herein, terms used in this article shall have the definitions set forth in this section.

WV Legislature

§5B-2A-4. Transferring the powers, duties, and responsibilities of the Office of Coalfield Community Development into a program within the Office of Energy.

(a) The Office of Coalfield Community Development all the powers, rules, duties, and responsibilities previously granted and authorized to the Office pursuant to this article are hereby transferred into a program within the Office of Energy.

(b) The Director of the Office of Energy may hire such assistants and clerical staff as may be necessary to carry out the responsibilities of the program.

WV Legislature

§5B-2A-5. Powers and duties.

The office has and may exercise the following duties, powers, and responsibilities:

(1) To establish a procedure for determining the assets that could be developed in and maintained by the community to foster its long-term viability as provided in §5B-2A-8 of this code and to administer the procedure so established;

(2) To establish a procedure for determining the land and infrastructure needs in the general area of the surface mining operations as provided in §5B-2A-9 of this code and to administer the procedure so established;

(3) To establish a procedure to develop action reports and quarterly updates as provided in §5B-2A-10 of this code and to administer the procedure so established;

(4) To determine the need for meetings to be held among the various interested parties in the communities impacted by surface mining operations and, when appropriate, to facilitate the meetings;

(5) To establish a procedure to assist property owners in the sale of their property as provided in §5B-2A-11 of this code and to administer the procedure so established;

(6) In conjunction with the department, to maintain and operate a system to receive and address questions, concerns, and complaints relating to surface mining;

(7) To coordinate the expenditure of grants issued by the United States Department of Energy and the U.S. Department of Commerce's Economic Development Administration for coalfield economic development or coalfield revitalization projects;

(8) To identify coal assets, including, but not limited to, coal mine operations, coal-fired electric utilities, and coal-based manufacturing or steelmaking facilities, within West Virginia or in states that provide markets for, and consume, West Virginia steam or metallurgical coal and offer assistance and to sustain, protect, and expand their continued operation and reliance on West Virginia coal;

(9) On its own initiative or at the request of a community or a mining operation, offer assistance to facilitate the development of economic or community assets. Such assistance may include the preparation of a master land use plan pursuant to the provisions of §5B-2A-9 of this code;

(10) To develop an educational program and policy materials in support of West Virginia's coal industry, to be incorporated into a program designed to educate the public on the economic and societal benefits provided by the coal industry, including the provision of reliable baseload electric generation by coal-fired power plants; and

(11) To coordinate a program of recruitment and training of industrial workers in

WV Legislature

conjunction with the West Virginia Office of Miners' Health Safety and Training and Workforce West Virginia to respond to West Virginia's growing manpower needs generally and coal mining particularly. The state-of-art training facility in Julian (Boone County) will serve as host to the "West Virginia Mine Safety and Training Academy" to attract, train new and experience miners and other industrial workers.

WV Legislature

§5B-2A-6. Community impact review.

(a) The office shall, no less frequently than quarterly, either consult with representatives of the department's Office of Mining and Reclamation or review the department's permit application database(s) to determine whether newly proposed surface mines or significant modifications to existing surface mining operations may present opportunities for mine operators to cooperate with local landowners and local governmental officials to mine and reclaim properties so as to develop community assets or secure developable land and infrastructure pursuant to this article.

(b) The provisions of this section shall apply to all surface mining permit applications granted after July 1, 2018.

WV Legislature

§5B-2A-7.

Repealed.

Acts, 2002 Reg. Sess., Ch. 58.

WV Legislature

§5B-2A-8. Determining and developing needed community assets.

(a) The office shall determine the community assets that may be developed by the community, county, or region to foster its viability when surface mining operations are completed.

(b) Community assets to be identified pursuant to subsection (a) of this section may include the following:

(1) Water and wastewater services;

(2) Developable land for housing, commercial development, or other community purposes;

(3) Recreation facilities and opportunities; and

(4) Education facilities and opportunities.

(c) In determining the nature and extent of the needed community assets, the office shall consider at least the following:

(1) An evaluation of the future of the community once mining operations are completed;

(2) The prospects for the long-term viability of any asset developed under this section;

(3) The desirability of foregoing some or all of the asset development required by this section in lieu of the requirements of §5B-2A-9 of this code; and

(4) The extent to which the community, local, state, or the federal government may participate in the development of assets the community needs to assure its viability.

WV Legislature

§5B-2A-9. Securing developable land and infrastructure.

(a) The office shall determine the land and infrastructure needs in the general area of the surface mining operations for which it makes the determination authorized in §5B-2A-6 of this code.

(b) For the purposes of this section, the term "general area" shall mean the county or counties in which the mining operations are being conducted or any adjacent county.

(c) To assist the office, the operator, upon request by the office, shall be required to prepare and submit to the office the information set forth in this subsection as follows:

(1) A map of the area for which a permit under §22-3-1 *et seq*. of this code is being sought or has been obtained;

(2) The names of the surface and mineral owners of the property to be mined pursuant to the permit; and

(3) A statement of the post-mining land use for all land which may be affected by the mining operations.

(d) In making a determination of the land and infrastructure needs in the general area of the mining operations, the office shall consider at least the following:

(1) The availability of developable land in the general area;

(2) The needs of the general area for developable land;

(3) The availability of infrastructure, including, but not limited to, access roads, water service, wastewater service, and other utilities;

(4) The amount of land to be mined and the amount of valley to be filled;

(5) The amount, nature, and cost to develop and maintain the community assets identified in §5B-2A-8 of this code; and

(6) The availability of federal, state, and local grants and low-interest loans to finance all or a portion of the acquisition and construction of the identified land and infrastructure needs of the general area.

(e) In making a determination of the land and infrastructure needs in the general area of the surface mining operations, the office shall give significant weight to developable land on or near existing or planned multilane highways.

(f) The office may secure developable land and infrastructure for a Development Office or county through the preparation of a master land use plan for inclusion into a reclamation

WV Legislature

plan prepared pursuant to the provisions of §22-3-10 of this code. No provision of this section may be construed to modify requirements of §22-3-1 *et seq*. of this code.

(1) The county commission or other governing body for each county in which there are surface mining operations that are subject to this article shall determine land and infrastructure needs within their jurisdictions through the development of a master land use plan which incorporates post-mining land use needs, including, but not limited to, alternative energy uses, residential uses, highway uses, industrial uses, commercial uses, agricultural uses, public facility uses, or recreational facility uses. A county commission or other governing body of a county may designate a local, county, or regional development or redevelopment authority to assist in the preparation of a master land use plan. A county commission or other governing body of a county may adopt a master land use plan developed after July 1, 2026, only after a reasonable public comment period.

(2) Upon the request of a county or designated development or redevelopment authority, the office shall assist the county or development or redevelopment authority with the development of a master land use plan.

(3)(A) The Department of Environmental Protection and the Office shall review master land use plans existing as of July 1, 2026. If the office determines that a master land use plan complies with the requirements of this article and the rules promulgated pursuant to this article, the office shall approve the plan on or before July 1, 2027.

(B) Master land use plans developed after July 1, 2026, shall be submitted to the department and the office for review. The office shall determine whether to approve a master land use plan submitted pursuant to this subdivision within three months of submission. The office shall approve the plan if it complies with the requirements of this article and the rules promulgated pursuant to this article.

(C) The office shall review a master land use plan approved under this section every three years. No later than six months before the review of a master land use plan, the county or designated development or redevelopment authority shall submit an updated master land use plan to the department and the office for review. The county may submit its updated master land use plan only after a reasonable public comment period. The office shall approve the master land use plan if the updated plan complies with the requirements of this article and the rules promulgated pursuant to this article.

(D) If the office does not approve a master land use plan, the county or designated development or redevelopment authority shall submit a supplemental master land use plan to the office for approval.

(4) The required infrastructure component standards needed to accomplish the designated post-mining land uses identified in a master land use plan shall be developed by the county or its designated development or redevelopment authority. These standards shall be in place before the respective county or development or redevelopment authority can accept

WV Legislature

ownership of property donated pursuant to a master land use plan. Acceptance of ownership of such property by a county or development or redevelopment authority may not occur unless it is determined that:

(A) The property use is compatible with adjacent land uses;

(B) The use satisfies the relevant county or development or redevelopment authority's anticipated need and market use;

(C) The property has in place necessary infrastructure components needed to achieve the anticipated use;

(D) The use is supported by all other appropriate public agencies;

(E) The property is eligible for bond release in accordance with §22-3-23 of this code; and

(F) The use is feasible.

Required infrastructure component standards require approval of the relevant county commission, commissions, or other county governing body before such standards are accepted. County commission or other county governing body approval may be rendered only after a reasonable public comment period.

(5) The provisions of this subsection shall not take effect until legislative rules are promulgated pursuant to this code governing bond releases which assure sound future maintenance by the local or regional economic development, redevelopment, or planning agencies.

WV Legislature

§5B-2A-10. Action report; annual update.

[Repealed]

WV Legislature

§5B-2A-11. Land acquisitions.

The office shall establish a procedure to assist property owners who desire voluntarily to sell their property to the operator or any person, firm or corporation directly or indirectly affiliated with the operator. The procedure developed shall be subject to the following:

(1) The procedure only shall apply if all the following conditions are met:

(A) The operator or any person, firm or corporation directly or indirectly affiliated with the operator, makes an offer in writing to purchase the property stating all the terms and conditions of the proposed purchase;

(B) The property to be purchased is located within one thousand feet of property which actually is or will be mined; and

(C) The structures are actually being used for commercial purposes or are occupied residences situate on the property to be purchased;

(2) Once a permit application has been filed, the operator shall notify the office of any intended property acquisitions to which this section applies;

(3) The office shall cause notice to be given to potential sellers of the procedure established by this section, but shall provide no other assistance unless requested by the potential seller;

(4) If requested by the potential seller, the office shall make a determination as to whether the value of the property intended to be acquired is diminished by ongoing or intended mining operations and that the purchase price offered by the purchaser is less than the value the property would have had prior to any diminution of value. The office only shall provide assistance if it determines that the value of such property is diminished and that the offer made by the operator is less than the value the property would have had prior to any diminution of value; and

(5) If the office determines that the value of such property is diminished and that the offer made by the operator is less than the value the property would have had prior to any diminution of value, then the office shall establish the value of such property prior to any diminution and shall certify the same to the parties.

WV Legislature

§5B-2A-12. Rulemaking.

The office shall propose rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code to establish, implement and enforce the provisions of this article, which rules shall include, but not be limited to:

(1) The development of standards for establishing the value of property by the office; and

(2) Criteria for the development of a master plan by local, county, regional or redevelopment authorities which coordinates the permitting and reclamation requirements of the Department of Environmental Protection with these authorities.

WV Legislature

§5B-2A-13.

Repealed.

Acts, 2010 Reg. Sess., Ch. 32.

WV Legislature

§5B-2A-14. Sunset

[Repealed.]

WV Legislature