

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1959



ENROLLED

Committee Substitute for

HOUSE BILL No. 225

(By Mr. Common Mining)



PASSED March 13 1959

In Effect From Passage



Filed in Office of the Secretary of State
of West Virginia MAR 20 1959
JOE F. BURDETT
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE FOR

House Bill No. 225

(Originating in the Committee on Mining.)

[Passed March 13, 1959; in effect from passage.]

AN ACT to repeal article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to enact in lieu thereof a new article, designated article two-a, relating to the regulation of surface mining of coal and providing penalties in connection therewith.

Be it enacted by the Legislature of West Virginia:

That article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and a new article two-a be enacted in lieu thereof, to read as follows:

Section 1. *Declaration of Legislative Purpose.*—In
2 view of the fact that the practice of surface mining of
3 coal may and commonly does cause soil erosion, stream

4 pollution and the accumulation of stagnant water, in-
5 creases the likelihood of floods, destroys the value of
6 land for agricultural purposes, counteracts efforts for the
7 conservation of soil, water and other natural resources
8 of the state, and in general creates hazards dangerous
9 to life and property, now, therefore, the Legislature de-
10 clares that its purpose in the enactment of this article is
11 to provide such regulation and control of surface mining
12 of coal so as to minimize its injurious effects as much as
13 may be possible.

Sec. 2. *Definition of Surface Mining.*—The term sur-
2 face mining as used in this article shall mean the mining
3 or excavation of coal by any method from an open cut
4 or open pit in which the overburden or surface material
5 is or has been removed to expose the coal in such a man-
6 ner that the coal can be removed. Said term shall not
7 be deemed to include conventional deep mining and auger
8 mining.

Sec. 3. *Permit Required; Fees and Use of Proceeds.*—
2 It shall hereafter be unlawful for any person, firm or
3 corporation to engage in the surface mining of coal with-

4 out having first obtained from the director of the depart-
5 ment of mines a permit therefor as provided in this sec-
6 tion. The following information must be stated in the
7 application for such a permit: (1) A description of the
8 location and area of the land to be covered by the permit
9 together with a map or plat of the portion to be surface
10 mined; (2) the owner or owners of the surface of the
11 land; (3) the owner or owners of the coal to be mined;
12 (4) the source of the operator's legal right to enter and
13 mine the coal on the land covered by the permit; (5) the
14 permanent and temporary post office addresses of the
15 operator; (6) whether any permits are now held, and if
16 so, how many such permits and the numbers thereof.

17 Upon payment to the department of mines of a regis-
18 tration fee of one hundred dollars and the posting with
19 the department of the bond required by the following
20 section, the director of the department of mines shall
21 upon proper application, issue the requested permit. The
22 permit shall be for a period of one year from the date of
23 issuance and shall be extended upon written request
24 and by the payment of fifty dollars for each succeeding

25 year. Permits issued prior to the effective date of this
26 article shall be renewable on the anniversary date of
27 their issuance.

28 The registration and renewal fees heretofore or here-
29 after collected as provided in this article shall be de-
30 posited with the state treasurer to the credit of the gen-
31 eral revenue fund.

Sec. 4. *Performance Bond*.—Each operator shall give a
2 bond with satisfactory corporate surety, in a penalty of
3 five hundred dollars for each acre or fraction thereof
4 covered by said permit, with a minimum of one thousand
5 dollars, conditioned upon the faithful performance of the
6 requirements contained in section five hereof.

Sec. 5. *Duties of Operator*.—It shall be the duty of each
2 operator to: (1) Cover the face of the coal and so far as
3 practicable, bury all roof coal and pyritic shales; (2) seal
4 off with an earth fill any break-through to underground
5 workings in the coal; (3) drain all the surface involved
6 in the mining operation, and provide such outlets as may
7 be necessary to conduct storm and seepage waters from
8 such surface to a permanent stream or stream bed with

9 as little erosion as possible; (4) remove all metal, lumber
10 and other refuse resulting from the operation; (5) re-
11 grade, in a manner approved by the director of the state
12 department of mines and the agriculturist, the overburden
13 or other strata removed from the coal so as to refill any
14 ditches, trenches or excavations made in the mining op-
15 eration, in order to minimize the hazards of floods, pollu-
16 tion of streams and water, accumulation of stagnant
17 water, and the loss of soil for agricultural or grazing pur-
18 poses: *Provided, however,* That any lands upon which
19 stripping operations are conducted, which are not used
20 for agricultural or grazing purposes, and in the opinion
21 of the agriculturist, are not adapted therefor, shall be ex-
22 empted from the provisions of this requirement (5) by
23 the director of the department of mines, in the exercise
24 of his sound discretion; (6) to plant trees, shrubs, grasses
25 or vines upon the land affected in such a manner so as
26 to establish a satisfactory cover on the land in compliance
27 with rules and regulations approved and adopted by the
28 director of the state department of mines or to offer to
29 deposit with the soil conservation district in which the

30 operation covered by such permit is located, a sufficient
31 amount of money to reclaim the area of the permit, as
32 estimated by the district. If the offer is accepted by the
33 district and the deposit made with the district, and ap-
34 proved by the director of the West Virginia department
35 of mines, the district then assumes the responsibility for
36 the reclamation work. If the district assumes the respon-
37 sibility for the reclamation work, the director of the de-
38 partment of mines shall release the bonds.

39 If the operator, land owner, or coal owner, including
40 the lessee desires to conduct drift mining upon the prem-
41 ises, he may designate drift locations, and also outside
42 haulage ways along the exposed face of the coal at which
43 places it will not be necessary to replace the overburden
44 on the haulage way to the coal until such mining is com-
45 pleted.

46 For failure to do all the things required of the operator
47 within one year after the completion of the mining opera-
48 tion on the land covered by the permit, and after receipt
49 of a thirty-day notice in writing from the director of the
50 department of mines, which notice may be sent by regis-

51 tered or certified mail, that any one or more of such
52 things have not been done, the permit covering the par-
53 ticular operation and any other surface mining permits
54 that may have been issued to the operator involved, shall
55 be revoked by the director of the department of mines,
56 and the performance bond shall be forfeited, unless such
57 operator shall comply with the provisions of this section
58 within said thirty-day period.

59 Any operator whose surface mining permit has been
60 revoked shall not be eligible to receive another such per-
61 mit until he shall have complied with the requirements
62 of all the laws in respect to former permits issued him.

Sec. 6. *Bond Forfeitures; Surface Mining Fund and*
2 *Use of Proceeds.*—Upon default in the performance of the
3 conditions of the performance bond, the director of the
4 state department of mines shall give notice to the attorney
5 general and it shall be his duty to collect the forfeiture
6 without delay.

7 All such forfeitures, heretofore or hereafter collected,
8 as provided in this article, shall be deposited with the
9 state treasurer in a special fund to be designated “Sur-

10 face Mining Reclamation Fund” to the credit of the
11 state department of mines and shall be expended to
12 reclaim and rehabilitate land affected in accordance
13 with the provisions of this article.

14 It shall then be the duty of the director of the state
15 department of mines with the knowledge and concurrence
16 of the agriculturist to reclaim and rehabilitate land af-
17 fected in accordance with the provisions of section five of
18 this article. Insofar as is reasonably practicable, the mon-
19 eys in the fund shall be expended upon the lands upon
20 which the permit was issued and for which the bond was
21 given. The state department of mines may, when deemed
22 necessary, avail itself of any services which may be pro-
23 vided by the state or federal government.

24 The auditor shall issue his warrant for any or all money
25 in the special fund created by this section upon written
26 request of the director of the state department of mines.
27 The special fund heretofore designated “Strip Mining
28 Fund” shall be included in and made a part of the “Sur-
29 face Mining Reclamation Fund” herein provided for.

Sec. 7. *Validity of Existing Permits and Bonds.*—The

2 provisions of chapter eighty-four of the acts of the Legis-
3 lature of West Virginia, regular session, one thousand
4 nine hundred thirty-nine, shall continue to be in full
5 force and govern in all respects every existing right for
6 surface mining operations, every outstanding permit for
7 surface mining operations and every existing cash or
8 other bond posted in connection therewith, as though this
9 law had never been passed, and the repeal herein made
10 of said chapter eighty-four of said acts shall not affect
11 any offenses or act committed or done, or any penalty or
12 forfeiture incurred, or any right established, accrued, or
13 accruing before the day this law takes effect: *Provided,*
14 *however,* That any money received from the forfeiture
15 of bonds given under the provisions of said act shall be
16 deposited in the same fund and used in the same manner
17 as forfeitures under this article: *Provided further,* That
18 every operator under an existing permit under which
19 actual mining operations have not been commenced prior
20 to the effective date of this article, shall nevertheless,
21 be required to perform all the duties specified in sec-
22 tion five of this article, and that for failure to do so, his

23 bond shall be forfeited and he shall be subject to all
24 other penalties provided by the above mentioned former
25 act: *And provided further*, That every such operator
26 shall be required to comply with the provisions of sec-
27 tion four of this article under which actual mining
28 operations have not been commenced prior to the ef-
29 fective date of this article.

Sec. 8. *Certificate of Release*.—If and when each opera-
2 tor has completed the requirements of the law under that
3 permit granted him by the department of mines, in ac-
4 cordance and in full compliance with the provisions of
5 this article, thereupon the director of the department of
6 mines and the agriculturist shall issue to such operator
7 a certificate, wherein and whereby the bond given by
8 said operator shall be discharged and the surety there-
9 on released.

Sec. 9. *Offenses; Penalty*.—Any operator or surface
2 owner or owners or owner or owners of surface rights
3 who shall conduct any surface mining operation without a
4 permit, or, who shall carry on such operation or be a party
5 to such operations on land not covered by a permit, shall

6 be guilty of a misdemeanor, and upon conviction thereof
7 shall be punished by a fine of one thousand dollars each
8 or by imprisonment in jail for not more than one year
9 each, or by both such fine and imprisonment at the dis-
10 cretion of the court. It shall be the duty of the director
11 of the department of mines to see that prosecutions are
12 instituted for any violation of the provisions of this sec-
13 tion.

Sec. 10. *State Surface Mines Supervisor; Surface Mine*
2 *Inspectors; State Agriculturist; Eligibility; Salary and*
3 *Expenses.*—Five surface mine inspectors and the state
4 surface mines supervisor shall be appointed by the direc-
5 tor of the department of mines. The state agriculturist
6 and his secretary shall be appointed by the director of
7 the agricultural experiment station of West Virginia uni-
8 versity, with the knowledge and consent of the director
9 of the department of mines, and the state agriculturist
10 shall maintain his office on the campus of West Virginia
11 university. No person shall be eligible for appointment
12 as state surface mines supervisor, surface mine inspector
13 or state agriculturist unless he is a citizen of West Vir-

14 ginia, in good health, not less than thirty nor more than
15 fifty-five years of age, of good character and reputation,
16 and temperate in his habits. The state surface mines
17 supervisor and surface mine inspectors shall have had at
18 least five years practical experience in strip and surface
19 mining in West Virginia. The state agriculturist shall
20 have had at least five years experience in agricultural
21 work and shall have a degree in agriculture from an
22 accredited college of agriculture, and shall be paid not
23 less than seven thousand two hundred dollars and not
24 more than seven thousand eight hundred dollars per
25 annum. The state surface mines supervisor shall be paid
26 not less than six thousand six hundred dollars and not
27 more than seven thousand five hundred dollars per
28 annum, and the surface mine inspectors shall be paid
29 not less than six thousand dollars and not more than
30 six thousand four hundred dollars per annum. Reason-
31 able traveling expenses for the agriculturist, super-
32 visors and inspectors shall be allowed from funds ap-
33 propriated for the department of mines. Within the
34 limits provided by law, the salary of each inspector

35 and the supervisor shall be fixed by the director of the
36 department of mines, and the salary of the agriculturist
37 shall be fixed by the director of the agricultural experi-
38 ment station of West Virginia university; and in fixing
39 such salaries the respective directors shall consider ability,
40 performance of duty, responsibility and experience. No
41 reimbursement for traveling expenses shall be made
42 except upon an itemized statement of such expenses sub-
43 mitted by such person, who shall verify, upon oath, that
44 such expenses were actually incurred in the discharge
45 of his official duties.

Sec. 11. *Same; Employment; Tenure; Oath; Bond.*—No
2 person shall be eligible for permanent appointment as
3 state surface mine supervisor or surface mine inspector
4 until he has served in a probationary status, to the satis-
5 faction of the director of the department of mines, for a
6 period of at least one year, and no person shall be eligible
7 for permanent appointment as state agriculturist until
8 he has served in a probationary status, to the satisfaction
9 of the director of the agricultural experiment station of
10 West Virginia university, for a period of at least one

11 year: *Provided, however,* That the state surface mines
12 supervisor, the surface mine inspectors, and the state agri-
13 culturist serving on the effective date of this article shall
14 receive permanent appointment after they have served
15 in such capacity for a period of at least one year to the
16 satisfaction of the respective directors.

17 Any person receiving permanent appointment as state
18 surface mines supervisor, surface mine inspector, or state
19 agriculturist shall have permanent tenure until he be-
20 comes sixty-five years of age, subject to removal only for
21 physical or mental impairment, incompetency, neglect of
22 duty, drunkenness, malfeasance in office, or official mis-
23 conduct: *Provided, however,* That no person serving as
24 surface mine inspector or agriculturist shall be interested,
25 directly or indirectly, as owner, operator, or stockholder
26 of any coal mine operation in the state of West Virginia.
27 Before any such officer shall enter upon the discharge
28 of his duties he shall take and subscribe the oath of
29 office prescribed by section five, article four of the con-
30 stitution of this state and shall execute a bond in the
31 penalty of two thousand dollars with surety to be ap-

32 proved by the director of the department of mines, and
33 conditioned upon the faithful discharge of his duties,
34 a certificate of which oath and bond shall be filed in the
35 office of the secretary of state.

Sec. 12. *Surface Mines Division; Additional Employees.*

2 —The director of the department of mines shall divide
3 the state into not more than five surface mine divisions,
4 so as to equalize, so far as may be practicable, the work
5 of each inspector. He shall assign a surface mine inspector
6 to each division.

7 The director of the department of mines may employ
8 such assistants, clerks, stenographers and other employees
9 as may be necessary to the efficient operation of the sur-
10 face mines division and may fix their compensation, ex-
11 cept as otherwise provided in this article.

Sec. 13. *Provisions of Article Separable.*—The various
2 provisions of this article shall be construed as separable
3 and severable, and should any of the provisions, sentences,
4 clauses, or parts thereof be construed or held unconstitu-
5 tional or for any reason be invalid, the remaining pro-
6 visions of this article shall not be thereby affected.

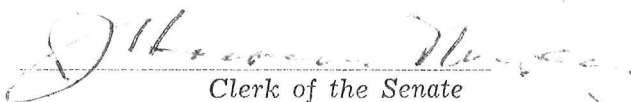
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee



Chairman House Committee

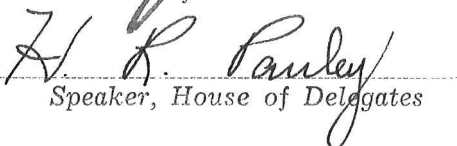
Originated in the House of Delegates

Takes effect From passage

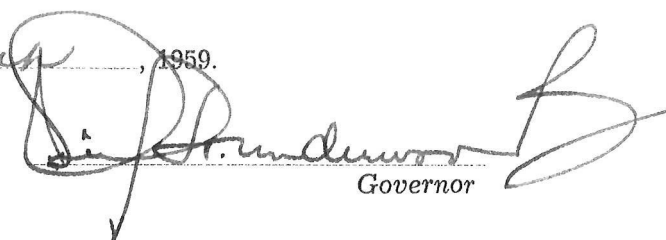

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker, House of Delegates

The within approved this the 20th
day of March, 1959.


Governor