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

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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article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed and a new article two-a be enacted in lieu thereof, to read as follows: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 view of the fact that the practice of surface mining of coal may and commonly does cause soil erosion, stream
pollution and the accumulation of stagnant water, increases the likelihood of floods, destroys the value of land for agricultural purposes, counteracts efforts for the conservation of soil, water and other natural resources of the state, and in general creates hazards dangerous to life and property, now, therefore, the Legislature declares that its purpose in the enactment of this article is to provide such regulation and control of surface mining of coal so as to minimize its injurious effects as much as may be possible.

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

Sec. 3. Permit Required; Fees and Use of Proceeds.—It shall hereafter be unlawful for any person, firm or corporation to engage in the surface mining of coal with-
out having first obtained from the director of the department of mines a permit therefor as provided in this section. The following information must be stated in the application for such a permit: (1) A description of the location and area of the land to be covered by the permit together with a map or plat of the portion to be surface mined; (2) the owner or owners of the surface of the land; (3) the owner or owners of the coal to be mined; (4) the source of the operator's legal right to enter and mine the coal on the land covered by the permit; (5) the permanent and temporary post office addresses of the operator; (6) whether any permits are now held, and if so, how many such permits and the numbers thereof.

Upon payment to the department of mines of a registration fee of one hundred dollars and the posting with the department of the bond required by the following section, the director of the department of mines shall upon proper application, issue the requested permit. The permit shall be for a period of one year from the date of issuance and shall be extended upon written request and by the payment of fifty dollars for each succeeding
Permits issued prior to the effective date of this article shall be renewable on the anniversary date of their issuance.

The registration and renewal fees heretofore or hereafter collected as provided in this article shall be deposited with the state treasurer to the credit of the general revenue fund.

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

Sec. 5. Duties of Operator.—It shall be the duty of each operator to: (1) Cover the face of the coal and so far as practicable, bury all roof coal and pyritic shales; (2) seal off with an earth fill any break-through to underground workings in the coal; (3) drain all the surface involved in the mining operation, and provide such outlets as may be necessary to conduct storm and seepage waters from such surface to a permanent stream or stream bed with
as little erosion as possible; (4) remove all metal, lumber
and other refuse resulting from the operation; (5) re-
grade, in a manner approved by the director of the state
department of mines and the agriculturist, the overburden
or other strata removed from the coal so as to refill any
ditches, trenches or excavations made in the mining op-
eration, in order to minimize the hazards of floods, pollu-
tion of streams and water, accumulation of stagnant
water, and the loss of soil for agricultural or grazing pur-
poses: Provided, however, That any lands upon which
stripping operations are conducted, which are not used
for agricultural or grazing purposes, and in the opinion
of the agriculturist, are not adapted therefor, shall be ex-
empted from the provisions of this requirement (5) by
the director of the department of mines, in the exercise
of his sound discretion; (6) to plant trees, shrubs, grasses
or vines upon the land affected in such a manner so as
to establish a satisfactory cover on the land in compliance
with rules and regulations approved and adopted by the
director of the state department of mines or to offer to
deposit with the soil conservation district in which the
operation covered by such permit is located, a sufficient amount of money to reclaim the area of the permit, as estimated by the district. If the offer is accepted by the district and the deposit made with the district, and approved by the director of the West Virginia department of mines, the district then assumes the responsibility for the reclamation work. If the district assumes the responsibility for the reclamation work, the director of the department of mines shall release the bonds.

If the operator, land owner, or coal owner, including the lessee desires to conduct drift mining upon the premises, he may designate drift locations, and also outside haulage ways along the exposed face of the coal at which places it will not be necessary to replace the overburden on the haulage way to the coal until such mining is completed.

For failure to do all the things required of the operator within one year after the completion of the mining operation on the land covered by the permit, and after receipt of a thirty-day notice in writing from the director of the department of mines, which notice may be sent by regis-
tered or certified mail, that any one or more of such
things have not been done, the permit covering the par-
ticular operation and any other surface mining permits
that may have been issued to the operator involved, shall
be revoked by the director of the department of mines,
and the performance bond shall be forfeited, unless such
operator shall comply with the provisions of this section
within said thirty-day period.

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

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

All such forfeitures, heretofore or hereafter collected,
as provided in this article, shall be deposited with the
state treasurer in a special fund to be designated "Sur-
face Mining Reclamation Fund" to the credit of the
state department of mines and shall be expended to
reclaim and rehabilitate land affected in accordance
with the provisions of this article.

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

The auditor shall issue his warrant for any or all money
in the special fund created by this section upon written
request of the director of the state department of mines.

The special fund heretofore designated "Strip Mining
Fund" shall be included in and made a part of the "Sur-
face Mining Reclamation Fund" herein provided for.

Sec. 7. Validity of Existing Permits and Bonds.—The
provisions of chapter eighty-four of the acts of the Legislature of West Virginia, regular session, one thousand nine hundred thirty-nine, shall continue to be in full force and govern in all respects every existing right for surface mining operations, every outstanding permit for surface mining operations and every existing cash or other bond posted in connection therewith, as though this law had never been passed, and the repeal herein made of said chapter eighty-four of said acts shall not affect any offenses or act committed or done, or any penalty or forfeiture incurred, or any right established, accrued, or accruing before the day this law takes effect: Provided, however, That any money received from the forfeiture of bonds given under the provisions of said act shall be deposited in the same fund and used in the same manner as forfeitures under this article: Provided further, That every operator under an existing permit under which actual mining operations have not been commenced prior to the effective date of this article, shall nevertheless, be required to perform all the duties specified in section five of this article, and that for failure to do so, his
bond shall be forfeited and he shall be subject to all
other penalties provided by the above mentioned former
act: And provided further, That every such operator
shall be required to comply with the provisions of sec-
tion four of this article under which actual mining
operations have not been commenced prior to the ef-
flective date of this article.

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

Sec. 9. Offenses; Penalty.—Any operator or surface
owner or owners or owner or owners of surface rights
who shall conduct any surface mining operation without a
permit, or, who shall carry on such operation or be a party
to such operations on land not covered by a permit, shall
be guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of one thousand dollars each or by imprisonment in jail for not more than one year each, or by both such fine and imprisonment at the discretion of the court. It shall be the duty of the director of the department of mines to see that prosecutions are instituted for any violation of the provisions of this section.

Sec. 10. State Surface Mines Supervisor; Surface Mine Inspectors; State Agriculturist; Eligibility; Salary and Expenses.---Five surface mine inspectors and the state surface mines supervisor shall be appointed by the director of the department of mines. The state agriculturist and his secretary shall be appointed by the director of the agricultural experiment station of West Virginia university, with the knowledge and consent of the director of the department of mines, and the state agriculturist shall maintain his office on the campus of West Virginia university. No person shall be eligible for appointment as state surface mines supervisor, surface mine inspector or state agriculturist unless he is a citizen of West Vir-
Virginia, in good health, not less than thirty nor more than fifty-five years of age, of good character and reputation, and temperate in his habits. The state surface mines supervisor and surface mine inspectors shall have had at least five years practical experience in strip and surface mining in West Virginia. The state agriculturist shall have had at least five years experience in agricultural work and shall have a degree in agriculture from an accredited college of agriculture, and shall be paid not less than seven thousand two hundred dollars and not more than seven thousand eight hundred dollars per annum. The state surface mines supervisor shall be paid not less than six thousand six hundred dollars and not more than seven thousand five hundred dollars per annum, and the surface mine inspectors shall be paid not less than six thousand dollars and not more than six thousand four hundred dollars per annum. Reasonable traveling expenses for the agriculturist, supervisors and inspectors shall be allowed from funds appropriated for the department of mines. Within the limits provided by law, the salary of each inspector
and the supervisor shall be fixed by the director of the department of mines, and the salary of the agriculturist shall be fixed by the director of the agricultural experiment station of West Virginia university; and in fixing such salaries the respective directors shall consider ability, performance of duty, responsibility and experience. No reimbursement for traveling expenses shall be made except upon an itemized statement of such expenses submitted by such person, who shall verify, upon oath, that such expenses were actually incurred in the discharge of his official duties.

Sec. 11. Same; Employment; Tenure; Oath; Bond.—No person shall be eligible for permanent appointment as state surface mine supervisor or surface mine inspector until he has served in a probationary status, to the satisfaction of the director of the department of mines, for a period of at least one year, and no person shall be eligible for permanent appointment as state agriculturist until he has served in a probationary status, to the satisfaction of the director of the agricultural experiment station of West Virginia university, for a period of at least one
Provided, however, That the state surface mine supervisor, the surface mine inspectors, and the state agriculturist serving on the effective date of this article shall receive permanent appointment after they have served in such capacity for a period of at least one year to the satisfaction of the respective directors.

Any person receiving permanent appointment as state surface mines supervisor, surface mine inspector, or state agriculturist shall have permanent tenure until he becomes sixty-five years of age, subject to removal only for physical or mental impairment, incompetency, neglect of duty, drunkenness, malfeasance in office, or official misconduct: Provided, however, That no person serving as surface mine inspector or agriculturist shall be interested, directly or indirectly, as owner, operator, or stockholder of any coal mine operation in the state of West Virginia.

Before any such officer shall enter upon the discharge of his duties he shall take and subscribe the oath of office prescribed by section five, article four of the constitution of this state and shall execute a bond in the penalty of two thousand dollars with surety to be ap-
proved by the director of the department of mines, and
conditioned upon the faithful discharge of his duties,
a certificate of which oath and bond shall be filed in the
office of the secretary of state.

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

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

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

Sec. 13. **Provisions of Article Separable.**—The various
provisions of this article shall be construed as separable
and severable, and should any of the provisions, sentences,
clauses, or parts thereof be construed or held unconstitu-
tional or for any reason be invalid, the remaining pro-
visions of this article shall not be thereby affected.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the House of Delegates

Takes effect from passage

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker, House of Delegates

The within approved this the 20th day of [Month], 1959.

[Signature]
Governor