

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-27-79

Time 5:15 p.m.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979

— ● —

ENROLLED

Committee Substitute for

HOUSE BILL No. 1404

(By Mr. *Speaker, Mr. Lee, + Mr. Tompkins*)

— ● —

Passed March 8, 1979

In Effect From Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1404

(By MR. SPEAKER, MR. SEE and MR. TOMPKINS)

[Passed March 8, 1979; in effect from passage.]

AN ACT to amend article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-three-b, relating to surface coal mining and reclamation operations and the surface effects of underground coal mining operations; setting forth legislative findings, declarations and purpose; authorizing the director of the department of natural resources and the reclamation commission to prepare proposed legislation and proposed rules and regulations to conform the state's statutory and regulatory requirements regarding mining activities with the federal surface mining control and reclamation act of one thousand nine hundred seventy-seven and any valid rule or regulation promulgated pursuant thereto or thereunder; requiring such director and reclamation commission to do such acts as may be required to assure that the state of West Virginia will timely assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations and the surface effects of underground coal mining operations in the state; requiring the director and the reclamation commission to submit such proposed legislation and proposed rules and regulations by a certain date to the joint committee on government and finance for its review of such proposed legislation and such proposed rules and regulations; requiring the

joint committee on government and finance to report its recommendations with recommended legislation to the next session of the Legislature; expressing the intention of the Legislature to follow such recommendations and enact necessary legislation; providing that such proposed rules and regulations prepared by the director and the reclamation commission shall not become operative until made a part of an approved state program; providing that no state law or rule and regulation included in such state program shall be more stringent than or inconsistent with the requirements of the federal surface mining control and reclamation act or regulations promulgated pursuant thereto or thereunder; requiring the director to identify and report all existing statutes and rules and regulations more stringent than the federal act, including those which impair the competitive position of West Virginia coal and, if so, why they are reasonably necessary to state regulation; providing that if any provisions of federal law or rules and regulations regarding surface mining and reclamation or the surface effects of underground coal mining are amended, modified, affected or invalidated, the state program under which exclusive jurisdiction thereof is assumed shall be similarly applied and construed; and providing that expiration of expanded rule-making authority of the director and the reclamation commission under section twenty-three-a, article six, chapter twenty of the code shall not affect valid rules and regulations promulgated under such authority.

Be it enacted by the Legislature of West Virginia:

That article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-three-b, to read as follows:

ARTICLE 6. SURFACE MINING AND RECLAMATION.

§20-6-23b. Legislative findings and purposes; expanded duties of director and reclamation commission; state program under the federal surface mining control and reclamation act of 1977.

- 1 (a) The Legislature hereby finds and declares that the
- 2 "Surface Mining Control and Reclamation Act of 1977," Pub-

3 lic Law 95-87, enacted by the Congress of the United States
4 and approved on the third day of August, one thousand nine
5 hundred seventy-seven, hereinafter in this section referred to as
6 the "federal surface mining act," establishes a nationwide pro-
7 gram of environmental requirements relating to surface coal
8 mining operations and the surface effects of underground
9 coal mining operations; that the federal surface mining act was
10 intended in part to equalize the regulatory requirements among
11 the states relating to surface mining operations and the surface
12 effects of underground coal mining operations and to ensure
13 competitive balance among producers and sellers of coal; that
14 the federal surface mining act provides for assistance to the
15 states in developing and implementing programs to achieve the
16 purposes thereof; that nothing in this section shall be construed
17 as an expression of approval of or satisfaction with the federal
18 surface mining act or any rule or regulation promulgated pur-
19 suant thereto or thereunder, so as to limit or affect any suit,
20 action or other proceeding brought to invalidate, set aside or
21 modify, in whole or in part, the federal surface mining act or
22 any rule or regulation promulgated pursuant thereto or there-
23 under; that because of the diversity in terrain and climate and
24 biologic, chemical and other physical conditions in and among
25 areas subject to mining operations, the primary governmental
26 responsibility for developing, authorizing, issuing and enforc-
27 ing regulations for mining and reclamation operations should
28 rest with the states; that the authority to regulate surface min-
29 ing and reclamation operations in the state has already been
30 vested in the department of natural resources and the reclama-
31 tion commission; that the laws and regulations of the state re-
32 lating to mining and reclamation operations are in many in-
33 stances at variance with the provisions of the federal surface
34 mining act and regulations promulgated pursuant thereto; that
35 under the federal surface mining act, and particularly section
36 five hundred three thereof, if the state desires to be the primary
37 governmental agency responsible for mining and reclamation
38 operations in the state, it must submit to the secretary of the
39 United States department of interior by the third day of August,
40 one thousand nine hundred seventy-nine, a state program which
41 demonstrates that the state has the capability of carrying out
42 the provisions of the federal surface mining act and meeting its

43 purposes; that if a state program is approved pursuant to the
44 provisions of the federal surface mining act, the state will as-
45 sume exclusive jurisdiction over the regulation of surface coal
46 mining and reclamation operations and the surface effects of
47 underground coal mining operations in the state; that if a state
48 program is not submitted to the secretary of the United States
49 department of interior by no later than the third day of Aug-
50 ust, one thousand nine hundred seventy-nine, and is not there-
51 after approved, the federal surface mining act provides that a
52 federal program will be implemented in the state no later than
53 the third day of June, one thousand nine hundred eighty; and
54 that it would be in the best interest of this state for this state
55 rather than the federal government to have primary govern-
56 mental responsibility for mining and reclamation operations
57 in this state.

58 (b) In view of the foregoing findings and declarations,
59 it is the purpose of this section to authorize the director of the
60 department of natural resources and the reclamation commis-
61 sion to undertake certain actions, including the preparation of
62 proposed legislation and proposed rules and regulations as more
63 specifically directed hereinafter; the submission of such pro-
64 posed legislation and proposed rules and regulations to the
65 joint committee on government and finance for its review;
66 and obtaining the necessary approvals of such state program,
67 all for the purpose of assuring that the state ultimately as-
68 sumes exclusive jurisdiction of the regulation of surface coal
69 mining and reclamation operations and the surface effects of
70 underground coal mining operations in the state as contem-
71 plated under and permitted by the federal surface mining act:
72 *Provided*, That no part of such state program shall require
73 standards more stringent than or inconsistent with those
74 contained in the federal surface mining act or any valid rule
75 or regulation promulgated pursuant thereto or thereunder:
76 *Provided, however*, That before any existing statute or rule
77 or regulation which is or may be more stringent than those
78 required by the federal surface mining act or any valid rule or
79 regulation promulgated pursuant thereto or thereunder is
80 changed or modified, the director shall, on or before the
81 thirty-first day of May, one thousand nine hundred seventy-
82 nine, identify and report (1) all existing statutes and rules and

83 regulations which are more stringent than the requirements of
84 the federal surface mining act or any valid rule or regulation
85 promulgated thereto or thereunder; (2) whether any such
86 existing statutes and rules and regulations substantially impair
87 the competitive position of West Virginia coal in the coal in-
88 dustry, and, if so, (3) why any such existing statutes and rules
89 and regulations are reasonably necessary to the regulation of
90 surface mining and reclamation or the surface effects of under-
91 ground coal mining.

92 (c) In addition to other powers, duties and authority of the
93 director and the reclamation commission provided elsewhere
94 in this code, the director and the reclamation commission, on
95 or before the third day of August, one thousand nine hundred
96 seventy-nine, shall prepare a state program for submission to
97 the federal office of surface mining; submit such state program
98 for approval as provided under the federal surface mining act;
99 and do all such further acts as may be required to assure that
100 this state will on or before the third day of June, one thousand
101 nine hundred eighty, assume exclusive jurisdiction over the
102 regulation of surface coal mining and reclamation operations
103 and the surface effects of underground coal mining operations
104 in the state as contemplated by the federal surface mining act:
105 *Provided*, That no part of such state program shall require
106 standards more stringent than or inconsistent with those con-
107 tained in the federal surface mining act or any valid rule or
108 regulation promulgated pursuant thereto or thereunder:
109 *Provided, however*, That before any existing statute or rule or
110 regulation which is or may be more stringent than those re-
111 quired by the federal surface mining act or any valid rule or
112 regulation promulgated pursuant thereto or thereunder is
113 changed or modified, the director shall, on or before the thirty-
114 first day of May, one thousand nine hundred seventy-nine,
115 identify and report (1) all existing statutes and rules and regu-
116 lations which are more stringent than the requirements of the
117 federal surface mining act or any valid rule or regulation pro-
118 mulgated thereto or thereunder; (2) whether any such existing
119 statutes and rules and regulations substantially impair the com-
120 petitive position of West Virginia coal in the coal industry, and,
121 if so, (3) why any such existing statutes and rules and regula-
122 tions are reasonably necessary to the regulation of surface

123 mining and reclamation or the surface effects of underground
124 coal mining.

125 (d) The state program required to be prepared pursuant to
126 the provisions of subsection (c) of this section or a proposal of
127 such program, shall be prepared and submitted to the joint
128 committee on government and finance no later than the thirty-
129 first day of May, one thousand nine hundred seventy-nine. It is
130 the intention of the Legislature that the joint committee on
131 government and finance shall cause the proposed legislation and
132 the proposed rules and regulations submitted to it to be re-
133 viewed to ensure compliance with the provisions of this section.
134 The director, the reclamation commission and the joint commit-
135 tee on government and finance shall work together to ensure
136 that proper proposed legislation and proposed rules and regula-
137 tions are developed and included in a comprehensive state pro-
138 gram and that such state program is timely submitted for ap-
139 proval as provided by the federal surface mining act. The joint
140 committee on government and finance may hold public hearings
141 where interested persons may comment upon any such pro-
142 posed legislation and proposed rules and regulations.

143 (e) The joint committee on government and finance shall
144 report to the next session of the Legislature on or before the
145 fourteenth day of January, one thousand nine hundred eighty,
146 its recommendations to ensure that the intent and purposes of
147 this section are fulfilled, together with a draft of any legislation
148 and rules and regulations necessary to effectuate its recom-
149 mendations. It is the intention of the Legislature by enacting
150 this section to enact legislation necessary to effectuate and carry
151 out the intent and purposes of this section and specifically to
152 grant to the director and the reclamation commission the au-
153 thority to promulgate the proposed rules and regulations, if by
154 so doing the comprehensive state program prepared as required
155 by and in accordance with the provisions of this section will be
156 finally approved as provided in the federal surface mining act.

157 (f) Notwithstanding anything to the contrary contained in
158 this code, the proposed rules and regulations prepared pur-
159 suant to the provisions of this section shall not become opera-
160 tive in this state until such time as the state program of which
161 they are a part shall have been approved by the secretary of

162 the United States department of interior and the state,
163 pursuant to such approval, has assumed exclusive jurisdiction
164 over the regulation of surface coal mining and reclamation
165 operations and the surface effects of underground mining oper-
166 ations as provided under the federal surface mining act. At the
167 time such rules and regulations become operative, any rules
168 and regulations theretofore promulgated by the director or the
169 reclamation commission for the purpose of regulation of sur-
170 face coal mining and reclamation operations or the surface ef-
171 fects of underground coal mining operations in this state shall,
172 to the extent that such prior rules and regulations are inconsis-
173 tent with such operative rules and regulations approved pur-
174 suant to the federal surface mining act, become inoperative,
175 null and void and no longer of any force and effect in this state.

176 (g) Notwithstanding any other provision of this code or any
177 rule or regulation promulgated by the director or the reclama-
178 tion commission, if the Congress or the United States depart-
179 ment of interior or any final judicial action amends, modifies,
180 affects or invalidates any provision of the federal surface min-
181 ing act or any rule or regulation promulgated pursuant thereto
182 or thereunder so as to change or eliminate deadlines, perform-
183 ance standards, procedural requirements or any other pro-
184 vision thereof, the applicable provisions of any state law, rule
185 and regulation or program respecting surface mining and
186 reclamation operations and the surface effects of underground
187 coal mining operations shall be similarly applied and con-
188 strued.

189 (h) Any valid rules and regulations promulgated by the
190 director or the reclamation commission under section twenty-
191 three-a of this article and permits issued pursuant thereto shall
192 not be affected in any way by the expiration of rule-making
193 authority under section twenty-three-a.

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

James L. Davis
Chairman Senate Committee

Florence C. Christian Jr.
Chairman House Committee

Originated in the House.

Takes effect from passage.

J. P. McLaughlin
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

Clerk of the House of Delegates

[Signature]

President of the Senate

President of the Senate
 Clyde M. Lee,
 Speaker House of Delegates

The within is approved this the 21
day of March, 1979.


Governor

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