ENROLLED

Committee Substitute for

HOUSE BILL No. 1404

(By Mr. Speaker, Mr. Lee, and 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 [Enr. Com. Sub. for H. B. 1404

lic Law 95-87, enacted by the Congress of the United States and approved on the third day of August, one thousand nine hundred seventy-seven, hereinafter in this section referred to as the "federal surface mining act," establishes a nationwide program of environmental requirements relating to surface coal mining operations and the surface effects of underground coal mining operations; that the federal surface mining act was intended in part to equalize the regulatory requirements among the states relating to surface mining operations and the surface effects of underground coal mining operations and to ensure competitive balance among producers and sellers of coal; that the federal surface mining act provides for assistance to the states in developing and implementing programs to achieve the purposes thereof; that nothing in this section shall be construed as an expression of approval of or satisfaction with the federal surface mining act or any rule or regulation promulgated pursuant thereto or thereunder, so as to limit or affect any suit, action or other proceeding brought to invalidate, set aside or modify, in whole or in part, the federal surface mining act or any rule or regulation promulgated pursuant thereto or thereunder; that because of the diversity in terrain and climate and biologic, chemical and other physical conditions in and among areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing and enforcing regulations for mining and reclamation operations should rest with the states; that the authority to regulate surface mining and reclamation operations in the state has already been vested in the department of natural resources and the reclamation commission; that the laws and regulations of the state relating to mining and reclamation operations are in many instances at variance with the provisions of the federal surface mining act and regulations promulgated pursuant thereto; that under the federal surface mining act, and particularly section five hundred three thereof, if the state desires to be the primary governmental agency responsible for mining and reclamation operations in the state, it must submit to the secretary of the United States department of interior by the third day of August, one thousand nine hundred seventy-nine, a state program which demonstrates that the state has the capability of carrying out the provisions of the federal surface mining act and meeting its
purposes; that if a state program is approved pursuant to the
provisions of the federal surface mining act, the state will as-
sume exclusive jurisdiction over the regulation of surface coal
mining and reclamation operations and the surface effects of
underground coal mining operations in the state; that if a state
program is not submitted to the secretary of the United States
department of interior by no later than the third day of Aug-
ust, one thousand nine hundred seventy-nine, and is not there-
after approved, the federal surface mining act provides that a
federal program will be implemented in the state no later than
the third day of June, one thousand nine hundred eighty; and
that it would be in the best interest of this state for this state
rather than the federal government to have primary govern-
mental responsibility for mining and reclamation operations
in this state.

(b) In view of the foregoing findings and declarations,
it is the purpose of this section to authorize the director of the
department of natural resources and the reclamation commis-
sion to undertake certain actions, including the preparation of
proposed legislation and proposed rules and regulations as more
specifically directed hereinafter; the submission of such pro-
posed legislation and proposed rules and regulations to the
joint committee on government and finance for its review;
and obtaining the necessary approvals of such state program,
all for the purpose of assuring that the state ultimately as-
sumes exclusive jurisdiction of the regulation of surface coal
mining and reclamation operations and the surface effects of
underground coal mining operations in the state as contem-
plated under and permitted by the federal surface mining act:
Provided, That no part of such state program shall require
standards more stringent than or inconsistent with those
contained in the federal surface mining act or any valid rule
or regulation promulgated pursuant thereto or thereunder:
Provided, however, That before any existing statute or rule
or regulation which is or may be more stringent than those
required by the federal surface mining act or any valid rule or
regulation promulgated pursuant thereto or thereunder is
changed or modified, the director shall, on or before the
thirty-first day of May, one thousand nine hundred seventy-
nine, identify and report (1) all existing statutes and rules and
regulations which are more stringent than the requirements of the federal surface mining act or any valid rule or regulation promulgated thereto or thereunder; (2) whether any such existing statutes and rules and regulations substantially impair the competitive position of West Virginia coal in the coal industry, and, if so, (3) why any such existing statutes and rules and regulations are reasonably necessary to the regulation of surface mining and reclamation or the surface effects of underground coal mining.

(c) In addition to other powers, duties and authority of the director and the reclamation commission provided elsewhere in this code, the director and the reclamation commission, on or before the third day of August, one thousand nine hundred seventy-nine, shall prepare a state program for submission to the federal office of surface mining; submit such state program for approval as provided under the federal surface mining act; and do all such further acts as may be required to assure that this state will on or before the third day of June, one thousand nine hundred eighty, 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 as contemplated by the federal surface mining act:

Provided, That no part of such state program shall require standards more stringent than or inconsistent with those contained in the federal surface mining act or any valid rule or regulation promulgated pursuant thereto or thereunder: Provided, however, That before any existing statute or rule or regulation which is or may be more stringent than those required by the federal surface mining act or any valid rule or regulation promulgated pursuant thereto or thereunder is changed or modified, the director shall, on or before the thirty-first day of May, one thousand nine hundred seventy-nine, identify and report (1) all existing statutes and rules and regulations which are more stringent than the requirements of the federal surface mining act or any valid rule or regulation promulgated thereto or thereunder; (2) whether any such existing statutes and rules and regulations substantially impair the competitive position of West Virginia coal in the coal industry, and, if so, (3) why any such existing statutes and rules and regulations are reasonably necessary to the regulation of surface
mining and reclamation or the surface effects of underground
coz mining.

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

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

(f) Notwithstanding anything to the contrary contained in
this code, the proposed rules and regulations prepared pur-
suant to the provisions of this section shall not become opera-
tive in this state until such time as the state program of which
they are a part shall have been approved by the secretary of
the United States department of interior and the state, pursuant to such approval, has assumed exclusive jurisdiction over the regulation of surface coal mining and reclamation operations and the surface effects of underground mining operations as provided under the federal surface mining act. At the time such rules and regulations become operative, any rules and regulations theretofore promulgated by the director or the reclamation commission for the purpose of regulation of surface coal mining and reclamation operations or the surface effects of underground coal mining operations in this state shall, to the extent that such prior rules and regulations are inconsistent with such operative rules and regulations approved pursuant to the federal surface mining act, become inoperative, null and void and no longer of any force and effect in this state.

(g) Notwithstanding any other provision of this code or any rule or regulation promulgated by the director or the reclamation commission, if the Congress or the United States department of interior or any final judicial action amends, modifies, affects or invalidates any provision of the federal surface mining act or any rule or regulation promulgated pursuant thereto or thereunder so as to change or eliminate deadlines, performance standards, procedural requirements or any other provision thereof, the applicable provisions of any state law, rule and regulation or program respecting surface mining and reclamation operations and the surface effects of underground coal mining operations shall be similarly applied and construed.

(h) Any valid rules and regulations promulgated by the director or the reclamation commission under section twenty-three-a of this article and permits issued pursuant thereto shall not be affected in any way by the expiration of rule-making authority under section twenty-three-a.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James A. Davis  
Chairman Senate Committee

Florence E. Christian  Jr.  
Chairman House Committee

Originated in the House.

Takes effect from passage.

J. W. Contento  
Clerk of the Senate

M. G. Bennett  
Clerk of the House of Delegates

A. W. Blankenship  
President of the Senate

John H. B. Warner  
Speaker House of Delegates

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

John D. Robisky  
Governor