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No. 698

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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984



ENROLLED

Committee Substitute for
SENATE BILL NO. 698

(By Mr. Tankevich)



PASSED March 10, 1984

In Effect sixty days from Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 698
(MR. TONKOVICH, *original sponsor*)

[Passed March 10, 1984; in effect ninety days from passage.]

AN ACT to amend and reenact sections nine and twenty, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section fourteen, article five, chapter twenty-one of said code; and to further amend article five of said chapter twenty-one by adding thereto a new section, designated section fourteen-a, all relating to prohibition of surface mining without a permit; permit requirements; providing that the director of the department of natural resources ascertain compliance with wage bond requirements prior to issuing any permit; public notice and hearings; requiring that the commissioner of labor, upon receipt of applicant's name and address from the director, notify the director as to applicant's compliance with wage bond requirements; wage payment and collection; requiring posting of wage bond prior to engaging in any construction work or the severance, production or transportation of minerals; insufficiency of bond; and manner of distribution.

Be it enacted by the Legislature of West Virginia:

That sections nine and twenty, article six, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one,

as amended, be amended and reenacted; that section fourteen, article five, chapter twenty-one of said code, be amended and reenacted; and that article five of said chapter twenty-one be further amended by adding thereto a new section, designated section fourteen-a, all to read as follows:

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 6. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

§20-6-9. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

1 No person may engage in surface-mining operations
2 unless such person has first obtained a permit from the
3 director in accordance with the following:
4 (a) Within two months after the secretary of the interior
5 approves a permanent state program for West Virginia, all
6 surface-mining operators shall file an application for a
7 permit or modification of a valid existing permit or
8 underground opening approval relating to those lands to be
9 mined eight months after that approval.
10 (b) No later than eight months after the secretary's
11 approval of a permanent state program for West Virginia,
12 no person may engage in or carry out, on lands within this
13 state, any surface-mining operations unless such person has
14 first obtained a permit from the director: *Provided*, That
15 those persons conducting such operations under a permit or
16 underground opening approval issued in accordance with
17 section 502(c) of Public Law 95-87, and in compliance
18 therewith, may conduct such operations beyond such
19 period if an application for a permit or modification of a
20 valid existing permit or underground opening approval was
21 filed within two months after the secretary's approval, and
22 the administrative decision pertaining to the granting or
23 denying of such permit has not been made by the director.
24 (c) All permits issued pursuant to the requirements of
25 this article shall be issued for a term not to exceed five
26 years: *Provided*, That if the applicant demonstrates that a
27 specified longer term is reasonably needed to allow the
28 applicant to obtain necessary financing for equipment and

29 the opening of the operation, and if the application is full
30 and complete for such specified longer term, the director
31 may extend a permit for such longer term: *Provided,*
32 *however,* That subject to the prior approval of the director,
33 a successor in interest to a permittee who applies for a new
34 permit within thirty days of succeeding to such interest, and
35 who is able to obtain the bond coverage of the original
36 permittee, may continue surface-mining and reclamation
37 operations according to the approved mining and
38 reclamation plan of the original permittee until such
39 successor's application is granted or denied.

40 (d) Proof of insurance shall be required on an annual
41 basis.

42 (e) A permit shall terminate if the permittee has not
43 commenced the surface-mining operations covered by such
44 permit within three years of the date the permit was issued:
45 *Provided,* That the director may grant reasonable
46 extensions of time upon a showing that such extensions are
47 necessary by reason of litigation precluding such
48 commencement, or threatening, substantial economic loss
49 to the permittee, or by reason of conditions beyond the
50 control and without the fault or negligence of the permittee:
51 *Provided, however,* That with respect to coal to be mined
52 for use in a synthetic fuel facility or specific major electric
53 generating facility, the permittee shall be deemed to have
54 commenced surface-mining operations at such time as the
55 construction of the synthetic fuel or generating facility is
56 initiated.

57 (f) Each application for a new surface-mining permit
58 filed pursuant to this article shall be accompanied by a fee
59 of five hundred dollars. All permit fees provided for in this
60 section or elsewhere in this article shall be collected by the
61 director and deposited with the treasurer of the state of
62 West Virginia to the credit of the operating permit fees fund
63 and shall be used, upon requisition of the director, for the
64 administration of this article.

65 (g) Prior to the issuance of any permit, the director shall
66 ascertain from the commissioner of labor compliance with
67 section fourteen, article five, chapter twenty-one of this
68 code. Upon issuance of the permit, the director shall
69 forward a copy to the commissioner of labor, who shall
70 assure continued compliance under such permit.

§20-6-20. Public notice; written objections; public hearings; informal conferences.

1 (a) At the time of submission of an application for a
2 surface-mining permit or a significant revision of an
3 existing permit pursuant to the provisions of this article,
4 the applicant shall submit to the department a copy of the
5 required advertisement. At the time of submission, the
6 applicant shall place the advertisement in a local
7 newspaper of general circulation in the county of the
8 proposed surface-mining operation at least once a week for
9 four consecutive weeks. The director shall notify various
10 appropriate federal and state agencies as well as local
11 governmental bodies, planning agencies and sewage and
12 water treatment authorities or water companies in the
13 locality in which the proposed surface-mining operation
14 will take place, notifying them of the operator's intention to
15 mine on a particularly described tract of land and
16 indicating the application number and where a copy of the
17 proposed mining and reclamation plan may be inspected.
18 These local bodies, agencies, authorities or companies may
19 submit written comments within a reasonable period
20 established by the director on the mining application with
21 respect to the effect of the proposed operation on the
22 environment which is within their area of responsibility.
23 Such comments shall be immediately transmitted by the
24 director to the applicant and to the appropriate office of the
25 department. The director shall provide the name and
26 address of each applicant to the commissioner of labor who
27 shall within fifteen days from receipt notify the director as
28 to the applicant's compliance, if necessary, with section
29 fourteen, article five, chapter twenty-one of this code.

CHAPTER 21. LABOR.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-14. Employer's bond for wages and benefits.

1 (a) With the exception of those who have been doing
2 business in this state for at least five consecutive years,
3 every person, firm or corporation engaged in or about to
4 engage in construction work, or the severance, production
5 or transportation (excluding railroads and water
6 transporters) of minerals, shall, prior to engaging in any

7 construction work, or the severance, production, or
8 transportation of minerals, furnish a bond on a form
9 prescribed by the commissioner, payable to the state of
10 West Virginia with the condition that the person, firm or
11 corporation pay the wages and fringe benefits of his or its
12 employees when due. The amount of the bond shall be equal
13 to the total of the employer's gross payroll for four weeks at
14 full capacity or production, plus fifteen percent of the said
15 total of the employer's gross payroll for four weeks at full
16 capacity or production. The amount of the bond shall
17 increase or decrease as the employer's payroll increases or
18 decreases: *Provided*, That the amount of the bond shall not
19 be decreased, except with the commissioner's approval and
20 determination that there are not outstanding claims against
21 the bond.

22 (b) The commissioner may waive the posting of any
23 bond required by subsection (a) of this section upon this
24 determination that an employer is of sufficient financial
25 responsibility to pay wages and fringe benefits. The
26 commissioner shall promulgate rules and regulations
27 according to the provisions of chapter twenty-nine-a of this
28 code which prescribe standards for the granting of such
29 waivers.

30 (c) The bond may include, with the approval of the
31 commissioner, surety bonding, collateral bonding
32 (including cash and securities), establishment of an escrow
33 amount or a combination of these methods. If collateral
34 bonding is used, the employer may deposit cash, or
35 collateral securities or certificates as follows: Bonds of the
36 United States or its possessions, or of the federal land bank,
37 or of the homeowner's loan corporation; full faith and
38 credit general obligation bonds of the state of West Virginia
39 or other states, and of any county, district or municipality of
40 the state of West Virginia or other states; or certificates of
41 deposit in a bank in this state, which certificates shall be in
42 favor of the state. The cash deposit or market value of such
43 securities or certificates shall be equal to or greater than the
44 sum of the bond. The commissioner shall, upon receipt of
45 any such deposit of cash, securities or certificates, promptly
46 place the same with the state treasurer whose duty it shall
47 be to receive and hold the same in the name of the state in
48 trust for the purpose for which such deposit is made. The

49 employer making the deposit shall be entitled from time to
50 time to receive from the state treasurer, upon the written
51 approval of the commissioner, the whole or any portion of
52 any cash, securities or certificates so deposited, upon
53 depositing with him in lieu thereof, cash or other securities
54 or certificates of the classes herein specified having value
55 equal to or greater than the sum of the bond.

56 (d) Notwithstanding any other provision in this article,
57 any employee, whose wages and fringe benefits are secured
58 by the bond, as specified in subsection (c) of this section, has
59 a direct cause of action against the bond for wages and
60 fringe benefits that are due and unpaid.

61 (e) Any employee having wages and fringe benefits
62 unpaid, may inform the commissioner of the claim for
63 unpaid wages and fringe benefits and request certification
64 thereof. If the commissioner, upon notice to the employer
65 and investigation finds that such wages and fringe benefits
66 or a portion thereof are unpaid, he shall make demand of
67 such employer for the payment of such wages and fringe
68 benefits. If payment for such wages and fringe benefits is
69 not forthcoming within the time specified by the
70 commissioner, not to exceed thirty days, the commissioner
71 shall certify such claim or portion thereof, and forward the
72 certification to the bonding company or the state treasurer,
73 who shall provide payment to the affected employee within
74 fourteen days of receipt of such certification. The bonding
75 company, or any person, firm, or corporation posting a
76 bond, thereafter shall have the right to proceed against a
77 defaulting employer for that part of the claim *of the* 
78 employee paid.

79 (f) With the exception of those exempt under subsection
80 (a) of this section, any employer who is engaged in
81 construction work or the severance, production or
82 transportation (excluding railroad and water transporters)
83 of minerals shall post one of the following in a place
84 accessible to his or its employees: A copy of the bond
85 provided under subsection (a) of this section, or notification
86 that the posting of a bond has been waived by the
87 commissioner.

88 (g) The bond may be terminated, with the approval of
89 the commissioner, after an employer submits a statement,

90 under oath or affirmation lawfully administered, to the
91 commissioner that the following has occurred: The
92 employer has ceased doing business and all wages and
93 fringe benefits have been paid, or the employer has been
94 doing business in this state for at least five consecutive
95 years and has paid all wages and fringe benefits. The bond
96 may also be terminated upon a determination by the
97 commissioner that an employer is of sufficient financial
98 responsibility to pay wages and fringe benefits.

§21-5-14a. Insufficiency of bond; manner of distribution.

1 In the event that the claim of any employee or group of
2 employees having wages and fringe benefits unpaid is in an
3 amount in excess of the bond required in section fourteen of
4 this article, the manner of distribution and order of priority
5 of claims shall be as follows: Unpaid wages; unpaid fringe
6 benefits; damages or expenses incurred or arising out of
7 actual injury: *Provided*, That nothing contained in this
8 section shall be construed so as to limit any other cause of
9 action against any person, firm or corporation.

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

Harrell E. ...
Chairman Senate Committee

Ronald Anello
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Jedd C. Viles
Clerk of the Senate

Donald L. Voss
Clerk of the House of Delegates

Wanda ...
President of the Senate

John M. Lee, Jr.
Speaker House of Delegates

The within *is approved* this the *30*
day of *March*, 1984.

John ...
Governor

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