WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984

ENROLLED
Committee Substitute for
SENATE BILL NO. 698

(By Mr. Toner)

PASSED March 10, 1984
In Effect thirty 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; permit requirements; 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 unless such person has first obtained a permit from the director in accordance with the following:
2 (a) Within two months after the secretary of the interior approves a permanent state program for West Virginia, all surface-mining operators shall file an application for a permit or modification of a valid existing permit or underground opening approval relating to those lands to be mined eight months after that approval.
3 (b) No later than eight months after the secretary's approval of a permanent state program for West Virginia, no person may engage in or carry out, on lands within this state, any surface-mining operations unless such person has first obtained a permit from the director: Provided, That those persons conducting such operations under a permit or underground opening approval issued in accordance with section 502(c) of Public Law 95-87, and in compliance therewith, may conduct such operations beyond such period if an application for a permit or modification of a valid existing permit or underground opening approval was filed within two months after the secretary's approval, and the administrative decision pertaining to the granting or denying of such permit has not been made by the director.
4 (c) All permits issued pursuant to the requirements of this article shall be issued for a term not to exceed five years: Provided, That if the applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and
the opening of the operation, and if the application is full
and complete for such specified longer term, the director
may extend a permit for such longer term: Provided,
however, That subject to the prior approval of the director,
a successor in interest to a permittee who applies for a new
permit within thirty days of succeeding to such interest, and
who is able to obtain the bond coverage of the original
permittee, may continue surface-mining and reclamation
operations according to the approved mining and
reclamation plan of the original permittee until such
successor's application is granted or denied.
(d) Proof of insurance shall be required on an annual
basis.
(e) A permit shall terminate if the permittee has not
commenced the surface-mining operations covered by such
permit within three years of the date the permit was issued:
Provided, That the director may grant reasonable
extensions of time upon a showing that such extensions are
necessary by reason of litigation precluding such
commencement, or threatening, substantial economic loss
to the permittee, or by reason of conditions beyond the
control and without the fault or negligence of the permittee:
Provided, however, That with respect to coal to be mined
for use in a synthetic fuel facility or specific major electric
generating facility, the permittee shall be deemed to have
commenced surface-mining operations at such time as the
construction of the synthetic fuel or generating facility is
initiated.
(f) Each application for a new surface-mining permit
filed pursuant to this article shall be accompanied by a fee
of five hundred dollars. All permit fees provided for in this
section or elsewhere in this article shall be collected by the
director and deposited with the treasurer of the state of
West Virginia to the credit of the operating permit fees fund
and shall be used, upon requisition of the director, for the
administration of this article.
(g) Prior to the issuance of any permit, the director shall
ascertain from the commissioner of labor compliance with
section fourteen, article five, chapter twenty-one of this
code. Upon issuance of the permit, the director shall
forward a copy to the commissioner of labor, who shall
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 surface-mining permit or a significant revision of an existing permit pursuant to the provisions of this article, the applicant shall submit to the department a copy of the required advertisement. At the time of submission, the applicant shall place the advertisement in a local newspaper of general circulation in the county of the proposed surface-mining operation at least once a week for four consecutive weeks. The director shall notify various appropriate federal and state agencies as well as local governmental bodies, planning agencies and sewage and water treatment authorities or water companies in the locality in which the proposed surface-mining operation will take place, notifying them of the operator's intention to mine on a particularly described tract of land and indicating the application number and where a copy of the proposed mining and reclamation plan may be inspected. These local bodies, agencies, authorities or companies may submit written comments within a reasonable period established by the director on the mining application with respect to the effect of the proposed operation on the environment which is within their area of responsibility. Such comments shall be immediately transmitted by the director to the applicant and to the appropriate office of the department. The director shall provide the name and address of each applicant to the commissioner of labor who shall within fifteen days from receipt notify the director as to the applicant's compliance, if necessary, with section fourteen, article five, chapter twenty-one of this code.

CHAPTER 21. LABOR.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.


1 (a) With the exception of those who have been doing business in this state for at least five consecutive years, every person, firm or corporation engaged in or about to engage in construction work, or the severance, production or transportation (excluding railroads and water transporters) of minerals, shall, prior to engaging in any
construction work, or the severance, production, or transportation of minerals, furnish a bond on a form prescribed by the commissioner, payable to the state of West Virginia with the condition that the person, firm or corporation pay the wages and fringe benefits of his or its employees when due. The amount of the bond shall be equal to the total of the employer's gross payroll for four weeks at full capacity or production, plus fifteen percent of the said total of the employer's gross payroll for four weeks at full capacity or production. The amount of the bond shall increase or decrease as the employer's payroll increases or decreases: Provided, That the amount of the bond shall not be decreased, except with the commissioner's approval and determination that there are not outstanding claims against the bond.

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

(c) The bond may include, with the approval of the commissioner, surety bonding, collateral bonding (including cash and securities), establishment of an escrow amount or a combination of these methods. If collateral bonding is used, the employer may deposit cash, or collateral securities or certificates as follows: Bonds of the United States or its possessions, or of the federal land bank, or of the homeowner's loan corporation; full faith and credit general obligation bonds of the state of West Virginia or other states, and of any county, district or municipality of the state of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the state. The cash deposit or market value of such securities or certificates shall be equal to or greater than the sum of the bond. The commissioner shall, upon receipt of any such deposit of cash, securities or certificates, promptly place the same with the state treasurer whose duty it shall be to receive and hold the same in the name of the state in trust for the purpose for which such deposit is made. The
employer making the deposit shall be entitled from time to
time to receive from the state treasurer, upon the written
approval of the commissioner, the whole or any portion of
any cash, securities or certificates so deposited, upon
depositing with him in lieu thereof, cash or other securities
or certificates of the classes herein specified having value
equal to or greater than the sum of the bond.

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

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

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

(g) The bond may be terminated, with the approval of
the commissioner, after an employer submits a statement,
under oath or affirmation lawfully administered, to the
commissioner that the following has occurred: The
employer has ceased doing business and all wages and
fringe benefits have been paid, or the employer has been
doing business in this state for at least five consecutive
years and has paid all wages and fringe benefits. The bond
may also be terminated upon a determination by the
commissioner that an employer is of sufficient financial
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
employees having wages and fringe benefits unpaid is in an
amount in excess of the bond required in section fourteen of
this article, the manner of distribution and order of priority
of claims shall be as follows: Unpaid wages; unpaid fringe
benefits; damages or expenses incurred or arising out of
actual injury: Provided, That nothing contained in this
section shall be construed so as to limit any other cause of
action against any person, firm or corporation.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor