WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1987

ENROLLED

SENATE BILL NO. 740
(Originating in the Committee on the Judiciary)

PASSED March 12, 1987
In Effect thirty days from Passage
ENROLLED
Senate Bill No. 740

(Originating in the Committee on the Judiciary)

[Passed March 12, 1987; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, fourteen, fifteen and
sixteen, article five, chapter twenty-one of the code of West
Virginia, one thousand nine hundred thirty-one, as
amended; and to amend and reenact section seven, article
three, chapter twenty-two-a of said code, all relating to the
requirement of the posting of bond or other security to
secure the payment of wages and fringe benefits by
employers engaged in construction work or in the severance,
production or transportation of minerals; defining certain
terms with respect thereto; establishing rules as to when
such bond would be required or exempted; the form of such
bond; requiring a copy of such bond to be filed in the office of
the clerk of the county commission wherein any such
employer is doing business; authorizing certain civil or
criminal proceedings to enforce the provisions of the article;
providing for the procedures of termination of such bond;
requiring certain notification to the commissioner of labor
by persons who contract or subcontract with employers who
are required to post such bonds; requiring the posting of
such bonds as condition precedent to the receipt of a
prospecting permit under the surface coal mining and
reclamation act; and prohibiting certain acts with respect to
violations of the provisions of said article as the same relates
to the bonding requirements thereof and providing for
penalties for violations thereof.

Be it enacted by the Legislature of West Virginia:

That sections one, fourteen, fifteen and sixteen, article five,
chapter twenty-one of the code of West Virginia, one thousand
nine hundred thirty-one, as amended, be amended and
reenacted; and that section seven, article three, chapter twenty-
two-a of said code, be amended and reenacted, all to read as
follows:

CHAPTER 21. LABOR.

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-1. Definitions.

1 As used in this article:
2 (a) The term “firm” includes any partnership,
3 association, joint-stock company, trust, division of a
corporation, the administrator or executor of the estate of a
decdeed individual, or the receiver, trustee, or successor of
any of the same, or officer thereof, employing any person.
4 (b) The term “employee” or “employees” includes any
person suffered or permitted to work by a person, firm or
corporation.
5 (c) The term “wages” means compensation for labor or
services rendered by an employee, whether the amount is
determined on a time, task, piece, commission or other basis
of calculation. As used in sections four, five, eight-a, ten and
twelve of this article, the term “wages” shall also include
then accrued fringe benefits capable of calculation and
payable directly to an employee: Provided, That nothing
herein contained shall require fringe benefits to be
calculated contrary to any agreement between an employer
and his employees which does not contradict the provisions
of this article.
6 (d) The term “commissioner” means commissioner of
labor or his designated representative.
7 (e) The term “railroad company” includes any firm or
corporation engaged primarily in the business of
transportation by rail.
8 (f) The term “special agreement” means an
arrangement filed with and approved by the commissioner
whereby a person, firm or corporation is permitted upon a compelling showing of good cause to establish regular paydays less frequently than once in every two weeks:

Provided, That in no event shall the employee be paid in full less frequently than once each calendar month on a regularly established schedule.

(g) The term “deductions” includes amounts required by law to be withheld, and amounts authorized for union or club dues, pension plans, payroll savings plans, credit unions, charities and hospitalization and medical insurance.

(h) The term “officer” shall include officers or agents in the management of a corporation or firm, who knowingly permit the corporation or firm to violate the provisions of this article.

(i) The term “wages due” shall include at least all wages earned up to and including the fifth day immediately preceding the regular payday.

(j) The term “construction” means the furnishing of work in the fulfillment of a contract for the construction, alteration, decoration, painting or improvement of a new or existing building, structure, roadway or pipeline, or any part thereof, or for the alteration, improvement or development of real property: Provided, That construction performed for the owner or lessee of a single family dwelling or a family farming enterprise is excluded.

(k) The term “minerals” means clay, coal, flagstone, gravel, limestone, manganese, sand, sandstone, shale, iron ore and any other metallurgical ore.

(l) The term “fringe benefits” means any benefit provided an employee or group of employees by an employer, or which is required by law, and includes regular vacation, graduated vacation, floating vacation, holidays, sick leave, personal leave, production incentive bonuses, sickness and accident benefits and benefits relating to medical and pension coverage.

(m) The term “employer” means any person, firm or corporation employing any employee.

(n) The term “doing business in this state” means having employees actively engaged in the intended principal activity of the person, firm or corporation in West Virginia.

(a) Bond required. — With the exception of those who have been doing business in this state for at least five consecutive years, every employer, 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 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) Waiver. — The commissioner shall waive the posting of any bond required by subsection (a) of this section upon his 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) Form of bond; filing in office of circuit clerk. — The bond may include, with the approval of the commissioner, surety bonding, collateral bonding (including cash and securities), letters of credit, establishment of an escrow account 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 home owner'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. The
commissioner shall cause a copy of the bond to be filed in
the office of the clerk of the county commission of the
county wherein the person, firm or corporation is doing
business to be available for public inspection.

(d) Employee cause of action. — Notwithstanding any
other provision in this article, any 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) Action of commissioner. — 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 the employee
paid. The procedure specified herein shall not be construed
to preclude other actions by the commissioner or employee
to seek enforcement of the provisions of this article by any
civil proceedings for the payment of wages and fringe
benefits or by criminal proceedings as may be deemed
appropriate.

(f) Posting and reporting by employer. — 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 the
following in a place accessible to his or its employees:

(1) A copy of the bond or other evidence of surety
specifying the number of employees covered as provided
under subsection (a) of this section, or notification that the
posting of a bond has been waived by the commissioner; and

(2) A copy of the notice in the form prescribed by the
commissioner regarding the duties of employers under this
section. During the first two years that any person, firm or
corporation is doing business in this state in construction
work, or in the severance, production or transportation of
minerals, such person, firm or corporation shall on or before
the first day of February, May, August and November of
each calendar year file with the department a verified
statement of the number of employees, or a copy of the
quarterly premium report filed with the workers’
compensation fund showing the accurate number of
employees, unless the commissioner waives the filing of the
report upon his determination that the person, firm or
corporation is of sufficient stability that the reporting is
unnecessary.

(g) Termination of bond. — 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 approval of the commissioner will be
granted only after the commissioner has determined that
the wages and fringe benefits of all employees have been
7  [Enr. S. B. No. 740

paid. 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.

§21-5-15. Violations; criminal penalties.

(a) Any person, firm or corporation who knowingly and
willfully fails to provide and maintain an adequate bond as
required by section fourteen of this article is guilty of a
misdemeanor, and, upon conviction thereof, shall be fined
not less than two hundred dollars nor more than five
thousand dollars, or imprisoned in the county jail not more
than one month, or both fined and imprisoned.

(b) Any person, firm or corporation who knowingly,
willfully and fraudulently disposes of or relocates assets
with intent to deprive employees of their wages and fringe
benefits is guilty of a felony, and, upon conviction thereof,
shall be fined not less than five thousand dollars nor more
than thirty thousand dollars, or imprisoned in the
penitentiary not less than one nor more than three years, or
both fined and imprisoned.

(c) At any time the commissioner determines that a
person, firm or corporation has not provided or maintained
an adequate bond, as required by section fourteen of this
article, the commissioner shall cause a cease and desist
order to be issued and posted requiring that said person,
firm or corporation either post an adequate bond or cease
further operations in this state within a period specified by
the commissioner of not less than five nor more than
fourteen days. Any person, firm or corporation who
continues to engage in construction work or the severance,
production or transportation of minerals without an
approved bond after specified period shall be guilty of a
felony, and, upon conviction thereof, shall be fined not less
than five thousand dollars nor more than thirty thousand
dollars, or imprisoned in the penitentiary not less than one
nor more than three years, or both fined and imprisoned.

§21-5-16. Contractors and subcontractors to notify
commissioner.

Whenever a person, firm or corporation (hereinafter
referred to in this section as 'the prime contractor')
contracts or subcontracts with an employer and such
contract or subcontract contemplates the performance of either construction work or the severance, production or transportation (excluding railroads or water transporters) of minerals or any combination of the foregoing, then the prime contractor shall, within ten days next following the execution of such contract or subcontract, notify the commissioner in writing by certified mail, return receipt requested, of such contract, which notice shall include the employee’s name, the location of the job site and the employer’s principal business location: Provided, That if it is ascertained by the prime contractor from the commissioner that the commissioner has obtained the information required to be included in such notice from another agency of this state, then the filing of such notice by the prime contractor shall not be required. If the prime contractor is a firm, corporation or association, then any and all of the officers of such firm, corporation or association shall be responsible to see to the proper notification required by this section. If any prime contractor fails to give the notice required by this section when required to do so, such prime contractor is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than five hundred dollars nor more than five thousand dollars.

CHAPTER 22A. MINES AND MINERALS.

ARTICLE 3. WEST VIRGINIA SURFACE COAL MINING AND RECLAMATION ACT.

§22A-3-7. Notice of intention to prospect, requirements therefor; bonding; commissioner's authority to deny or limit; postponement of reclamation; prohibited acts; exceptions.

(a) Any person intending to prospect for coal in an area not covered by a surface-mining permit, in order to determine the location, quantity or quality of a natural coal deposit, making feasibility studies or for any other purpose, shall file with the commissioner, at least fifteen days prior to commencement of any disturbance associated with prospecting, a notice of intention to prospect, which notice shall include a description of the prospecting area, the period of supposed prospecting and such other information as required by rules or regulations promulgated pursuant to
Provided, That prior to the commencement of such prospecting, the commissioner may issue an order denying or limiting permission to prospect where he finds that prospecting operations will damage or destroy a unique natural area, or will cause serious harm to water quality, or that the operator has failed to satisfactorily reclaim other prospecting sites, or that there has been an abuse of prospecting by previous prospecting operations in the area.

(b) Notice of intention to prospect shall be made in writing on forms prescribed by the commissioner and shall be signed and verified by the applicant. The notice shall be accompanied by (1) a United States geological survey topographic map showing by proper marking the crop line and the name, where known, of the seam or seams to be prospected, and (2) a bond, or cash, or collateral securities or certificates of the same type and form and in the same manner as provided in section eleven of this article, in the amount of five hundred dollars per acre or fraction thereof for the total estimated disturbed area. If such bond is used, it shall be payable to the state of West Virginia and conditioned that the operator shall faithfully perform the requirements of this article as they relate to backfilling and revegetation of the disturbed area.

(c) Any person prospecting under the provisions of this section shall ensure that such prospecting operation is conducted in accordance with the performance standards in section twelve of this article for all lands disturbed in explorations, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

(d) Information submitted to the commissioner pursuant to this section as confidential, concerning trade secrets or privileged commercial or financial information, which relates to the competitive rights of the person or entity intended to prospect the described area, shall not be available for public examination.

(e) Any person who conducts any prospecting activities which substantially disturb the natural land surface in violation of this section or regulations issued pursuant thereto shall be subject to the provisions of sections sixteen and seventeen of this article.

(f) No operator shall remove more than two hundred and fifty tons of coal without the specific written approval
of the commissioner, which may be granted only after the commissioner has ascertained compliance pursuant to subsection (g), section eight of this article.

(g) The bond accompanying said notice of intention to prospect shall be released by the commissioner when the operator demonstrates that a permanent species of vegetative cover is established.

(h) In the event an operator desires to mine the area currently being prospected, and has requested and received an appropriate surface mine application (S.M.A.) number, the commissioner may permit the postponement of the reclamation of the area prospected. Any part of a prospecting operation, where reclamation has not been postponed as provided above, shall be reclaimed within a period of three months from disturbance.

(i) For the purpose of this section, the word “prospect” or “prospecting” does not include core drilling related solely to taxation or highway construction.
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...........................this the............

20th

day of ................................1987.

Governor
TO THE HONORABLE SECRETARY OF STATE:

I, DONALD L. KOPP, Clerk of the House of Delegates, and as such Clerk, Keeper of the Rolls of the Legislature of West Virginia, hereby certify that the foregoing bill, S. B. 740, disapproved by the Governor on the 20th day of March, 1987, was subsequently repassed by the Legislature, notwithstanding the objections of the Governor, on the 7th day of April, 1987.

Donald L. Kopp

Clerk of the House of Delegates and Keeper of the Rolls of the Legislature.