

740

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1987

—•—

ENROLLED

SENATE BILL NO. 740

Originating in the Committee
[REDACTED] on the Judiciary)

—•—

PASSED March 12, 1987

In Effect ninety 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
4 corporation, the administrator or executor of the estate of a
5 deceased individual, or the receiver, trustee, or successor of
6 any of the same, or officer thereof, employing any person.

7 (b) The term "employee" or "employees" includes any
8 person suffered or permitted to work by a person, firm or
9 corporation.

10 (c) The term "wages" means compensation for labor or
11 services rendered by an employee, whether the amount is
12 determined on a time, task, piece, commission or other basis
13 of calculation. As used in sections four, five, eight-a, ten and
14 twelve of this article, the term "wages" shall also include
15 then accrued fringe benefits capable of calculation and
16 payable directly to an employee: *Provided*, That nothing
17 herein contained shall require fringe benefits to be
18 calculated contrary to any agreement between an employer
19 and his employees which does not contradict the provisions
20 of this article.

21 (d) The term "commissioner" means commissioner of
22 labor or his designated representative.

23 (e) The term "railroad company" includes any firm or
24 corporation engaged primarily in the business of
25 transportation by rail.

26 (f) The term "special agreement" means an
27 arrangement filed with and approved by the commissioner

28 whereby a person, firm or corporation is permitted upon a
29 compelling showing of good cause to establish regular
30 paydays less frequently than once in every two weeks:
31 *Provided*, That in no event shall the employee be paid in full
32 less frequently than once each calendar month on a
33 regularly established schedule.

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

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

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

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

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

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

64 (m) The term "employer" means any person, firm or
65 corporation employing any employee.

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

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

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

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

31 (c) *Form of bond; filing in office of circuit clerk.* — The
32 bond may include, with the approval of the commissioner,
33 surety bonding, collateral bonding (including cash and
34 securities), letters of credit, establishment of an escrow
35 account or a combination of these methods. If collateral
36 bonding is used, the employer may deposit cash, or
37 collateral securities or certificates as follows: Bonds of the
38 United States or its possessions, or of the federal land bank,
39 or of the home owner's loan corporation; full faith and
40 credit general obligation bonds of the state of West Virginia
41 or other states, and of any county, district or municipality of

42 the state of West Virginia or other states; or certificates of
43 deposit in a bank in this state, which certificates shall be in
44 favor of the state. The cash deposit or market value of such
45 securities or certificates shall be equal to or greater than the
46 sum of the bond. The commissioner shall, upon receipt of
47 any such deposit of cash, securities or certificates, promptly
48 place the same with the state treasurer whose duty it shall
49 be to receive and hold the same in the name of the state in
50 trust for the purpose for which such deposit is made. The
51 employer making the deposit shall be entitled from time to
52 time to receive from the state treasurer, upon the written
53 approval of the commissioner, the whole or any portion of
54 any cash, securities or certificates so deposited, upon
55 depositing with him in lieu thereof, cash or other securities
56 or certificates of the classes herein specified having value
57 equal to or greater than the sum of the bond. The
58 commissioner shall cause a copy of the bond to be filed in
59 the office of the clerk of the county commission of the
60 county wherein the person, firm or corporation is doing
61 business to be available for public inspection.

62 (d) *Employee cause of action.* — Notwithstanding any
63 other provision in this article, any employee, whose wages
64 and fringe benefits are secured by the bond, as specified in
65 subsection (c) of this section, has a direct cause of action
66 against the bond for wages and fringe benefits that are due
67 and unpaid.

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

85 defaulting employer for that part of the claim the employee
86 paid. The procedure specified herein shall not be construed
87 to preclude other actions by the commissioner or employee
88 to seek enforcement of the provisions of this article by any
89 civil proceedings for the payment of wages and fringe
90 benefits or by criminal proceedings as may be deemed
91 appropriate.

92 (f) *Posting and reporting by employer.* — With the
93 exception of those exempt under subsection (a) of this
94 section, any employer who is engaged in construction work
95 or the severance, production or transportation (excluding
96 railroad and water transporters) of minerals shall post the
97 following in a place accessible to his or its employees:

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

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

117 (g) *Termination of bond.* — The bond may be
118 terminated, with the approval of the commissioner, after an
119 employer submits a statement, under oath or affirmation
120 lawfully administered, to the commissioner that the
121 following has occurred: The employer has ceased doing
122 business and all wages and fringe benefits have been paid,
123 or the employer has been doing business in this state for at
124 least five consecutive years and has paid all wages and
125 fringe benefits. The approval of the commissioner will be
126 granted only after the commissioner has determined that
127 the wages and fringe benefits of all employees have been

128 paid. The bond may also be terminated upon a
129 determination by the commissioner that an employer is of
130 sufficient financial responsibility to pay wages and fringe
131 benefits.

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

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

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

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

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

1 Whenever a person, firm or corporation (hereinafter
2 referred to in this section as 'the prime contractor')
3 contracts or subcontracts with an employer and such

4 contract or subcontract contemplates the performance of
5 either construction work or the severance, production or
6 transportation (excluding railroads or water transporters)
7 of minerals or any combination of the foregoing, then the
8 prime contractor shall, within ten days next following the
9 execution of such contract or subcontract, notify the
10 commissioner in writing by certified mail, return receipt
11 requested, of such contract, which notice shall include the
12 employee's name, the location of the job site and the
13 employer's principal business location: *Provided*, That if it
14 is ascertained by the prime contractor from the
15 commissioner that the commissioner has obtained the
16 information required to be included in such notice from
17 another agency of this state, then the filing of such notice by
18 the prime contractor shall not be required. If the prime
19 contractor is a firm, corporation or association, then any
20 and all of the officers of such firm, corporation or
21 association shall be responsible to see to the proper
22 notification required by this section. If any prime
23 contractor fails to give the notice required by this section
24 when required to do so, such prime contractor is guilty of a
25 misdemeanor, and, upon conviction thereof, shall be fined
26 not less than five hundred dollars nor more than five
27 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.

1 (a) Any person intending to prospect for coal in an area
2 not covered by a surface-mining permit, in order to
3 determine the location, quantity or quality of a natural coal
4 deposit, making feasibility studies or for any other purpose,
5 shall file with the commissioner, at least fifteen days prior
6 to commencement of any disturbance associated with
7 prospecting, a notice of intention to prospect, which notice
8 shall include a description of the prospecting area, the
9 period of supposed prospecting and such other information
10 as required by rules or regulations promulgated pursuant to

11 this section: *Provided*, That prior to the commencement of
12 such prospecting, the commissioner may issue an order
13 denying or limiting permission to prospect where he finds
14 that prospecting operations will damage or destroy a
15 unique natural area, or will cause serious harm to water
16 quality, or that the operator has failed to satisfactorily
17 reclaim other prospecting sites, or that there has been an
18 abuse of prospecting by previous prospecting operations in
19 the area.

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

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

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

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

52 (f) No operator shall remove more than two hundred
53 and fifty tons of coal without the specific written approval

54 of the commissioner, which may be granted only after the
55 commissioner has ascertained compliance pursuant to
56 subsection (g), section eight of this article.

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

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

69 (i) For the purpose of this section, the word "prospect"
70 or "prospepecting" does not include core drilling related
71 solely to taxation or highway construction.

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

[Signature]

 Chairman Senate Committee

Bernard V. Kelly

 Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Todd A. Huth

 Clerk of the Senate

Donald L. Hopp

 Clerk of the House of Delegates

Sam Tanenhaus

 President of the Senate

W. C. Calkins

 Speaker House of Delegates

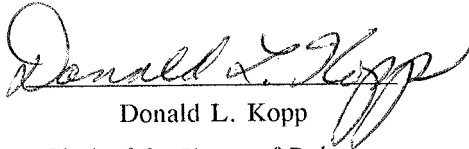
The within *disappeared* this the *20th*
which
 day of 1987.

Rutha. Phares Jr.

 Governor

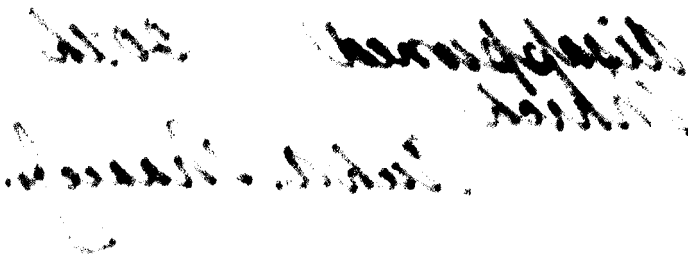
TO THE HONORABLE SECRETARY OF STATE:

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.*



PRESENTED TO THE

GOVERNOR

Date 3/16/87

Time 3:23 p.m.

RECEIVED

1987 JUL 30 PM 1:51

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE