WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1990

ENROLLED

HOUSE BILL No. 735

(By Delegate Harkey)

Passed March 10, 1990

In Effect From Passage
AN ACT to amend article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section five-a; and to amend and reenact section eleven, article three, chapter twenty-two-a of said code, all relating to the use of special revenue funds by the commissioner of energy to administer the division of energy; providing that federal funds may not be expended contrary to federal law; providing that moneys in the special reclamation fund are reserved for certain purposes; requiring the commissioner to develop a long-range planning process; restricting the amount of moneys which the commissioner may use for certain purposes; increasing the fee per ton of clean coal mined and specifying when it shall be collected; and removing provisions regarding assessments when the fund goes below a certain amount.

Be it enacted by the Legislature of West Virginia:

That article one, chapter twenty-two of the code of West Virginia, one thousand nine-hundred thirty-one, as amended, be amended by adding thereto a new section, designated section five-a; and that section eleven, article three, chapter twenty-two-a of said code be amended and reenacted, all to read as follows:

ARTICLE 1. COMMISSIONER OF ENERGY.
§22-1-5a. Special revenue.

1 Except as herein exempted and notwithstanding any
2 other provisions in this code to the contrary, the
3 commissioner may, with the exception of the special
4 reclamation fund established in section eleven, article
5 three, chapter twenty-two-a of this code, expend, in
6 accordance with the provisions of chapter five-a of this
7 code, from special revenue accounts, and funds estab-
8 lished pursuant to this chapter and chapters twenty-two-
9 a and twenty-two-b of this code, amounts necessary to
10 implement and administer the general powers, duties
11 and responsibilities of the division of energy: Provided,
12 That federal funds required by law to be expended for
13 a specific purpose may not be expended for any purpose
14 contrary to the laws, rules or regulations of the federal
15 government.

CHAPTER 22A. MINES AND MINERALS.

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

§22A-3-11. Performance bonds; amount and method of
bonding; bonding requirements; special
reclamation tax and fund; prohibited acts;
period of bond liability.

1 (a) After a surface-mining permit application has
2 been approved pursuant to this article, but before a
3 permit has been issued, each operator shall furnish
4 bond, on a form to be prescribed and furnished by the
5 commissioner, payable to the state of West Virginia and
6 conditioned upon the operator faithfully performing all
7 of the requirements of this article and of the permit. The
8 amount of the bond shall be one thousand dollars for
9 each acre or fraction thereof. The bond shall cover (1)
10 the entire permit area, or (2) that increment of land
11 within the permit area upon which the operator will
12 initiate and conduct surface-mining and reclamation
13 operations within the initial term of the permit. If the
14 operator chooses to use incremental bonding, as succeed-
15 ing increments of surface mining and reclamation
16 operations are to be initiated and conducted within the
17 permit area, the operator shall file with the commis-
sioner an additional bond or bonds to cover such
increments in accordance with this section: Provided,
That once the operator has chosen to proceed with
bonding either the entire permit area or with incremen-
tal bonding, he shall continue bonding in that manner
for the term of the permit: Provided, however, That the
minimum amount of bond furnished shall be ten
thousand dollars.

(b) The period of liability for performance bond
coverage shall commence with issuance of a permit and
continue for the full term of the permit plus any
additional period necessary to achieve compliance with
the requirements in the reclamation plan of the permit.

(c) (1) The form of the performance bond shall be
approved by the commissioner and may include, at the
option of the operator, surety bonding, collateral
bonding (including cash and securities), establishment
of an escrow account, self-bonding or a combination of
these methods. If collateral bonding is used, the operator
may elect to deposit cash, or collateral securities or
certificates as follows: Bonds of the United States or its
possessions, of the federal land bank, or of the ho-
meowners' 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 department. 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 treasurer of the state of West Virginia whose
duty it shall be to receive and hold the same in the name
of the state in trust for the purpose for which the deposit
is made when the permit is issued. The operator 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.

(2) The commissioner may approve an alternative bonding system if it will (A) reasonably assure that sufficient funds will be available to complete the reclamation, restoration and abatement provisions for all permit areas which may be in default at any time, and (B) provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

(d) The commissioner may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the commissioner the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient for authorization to self-insure.

(e) It shall be unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge of his obligations to the state for the reclamation of lands disturbed by him.

(f) All bond releases shall be accomplished in accordance with the provisions of section twenty-three of this article.

(g) All special reclamation taxes deposited by the commissioner with the treasurer or the state of West Virginia to the credit of the special reclamation fund prior to the effective date of this article shall be transferred to the special reclamation fund created by this section and shall be expended pursuant to the provisions of this subsection: Provided, That no taxes transferred into the special reclamation fund created by this section shall be subject to refund. The moneys accrued in the fund, including interest, are reserved solely and exclusively for the purposes set forth in this subsection. The fund shall be administered by the commissioner, and he is authorized to expend the moneys in the fund for the reclamation and rehabilitation of lands which were subjected to permitted surface-mining operations and abandoned after the third day of August, one thousand nine hundred seventy-seven,
where the amount of the bond posted and forfeited on
such land is less than the actual cost of reclamation. The
commissioner shall develop a long-range planning
process for selection and prioritization of sites to be
reclaimed so as to avoid inordinate short-term obliga-
tions of the assets in the fund of such magnitude that
the solvency of the fund is jeopardized. The commis-
sioner may use an amount, not to exceed twenty-five
percent of the annual amount of the fees collected, for
the purpose of designing, constructing and maintaining
water treatment systems when they are required for a
complete reclamation of the affected lands described in
this subsection. The commissioner may also expend an
amount not to exceed ten percent of the total annual
assets in the fund to implement and administer the
provisions of this chapter and chapters twenty-two and
twenty-two-b of this code.

After the effective date of this subsection, every
person then conducting coal surface-mining operations
shall contribute into the fund a sum equal to three cents
per ton of clean coal mined thereafter. This fee shall be
collected by the state tax commissioner in the same
manner as the West Virginia business and occupation
tax in accordance with the provisions of chapter eleven
of this code. Such tax shall be collected whenever the
liabilities of the state established in this subsection
exceed the accrued amount in the fund. The tax
commissioner shall deposit the fees collected with the
treasurer of the state of West Virginia to the credit of
the special reclamation fund. The moneys in the fund
shall be placed by the treasurer in interest bearing
account with the interest being returned to the fund on
an annual basis. At the beginning of each quarter, the
commissioner shall advise the state tax commissioner
and the governor of the assets, excluding payments,
expenditures and liabilities, in the fund.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.
Takes effect from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the 30th day of _______ , 1990.

[Signature]
Governor