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WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

— ● —

ENROLLED

Com. Sub. for
HOUSE BILL No. *2492*

(By ~~Mr.~~ *Del. J. Martin and Kiss*)

— ● —

Passed *March 9,* 1991

In Effect *From* Passage

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COMMITTEE SUBSTITUTE
FOR
H. B. 2492
(By DELEGATES J. MARTIN AND KISS)

[Passed March 9, 1991; in effect from passage.]

AN ACT to amend and reenact sections two and four, article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the abandoned mine land reclamation program generally; establishing two new accounts in the state treasury; granting the commissioner of energy authority to expend funds; requirements for expenditures.

Be it enacted by the Legislature of West Virginia:

That sections two and four, article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3. ABANDONED MINE LANDS AND RECLAMATION ACT.

§22-3-2. Legislative findings; intent and purpose of article; jurisdiction and authority of commissioner.

- 1 The Legislature finds that there are a substantial
- 2 number of acres of land throughout the state that were
- 3 disturbed by surface-mining operations prior to the time

4 of present day effective control and regulation. There
5 was little or no reclamation conducted and the impacts
6 from these unreclaimed lands impose social and eco-
7 nomic costs on residents in nearby and adjoining areas
8 as well as continue to impair environmental quality,
9 prevent or damage the beneficial use of land or water
10 resources, or endanger the health and safety of the
11 public.

12 Further the Legislature finds and declares that, due
13 to the passage of Public Law 95-87, certain areas within
14 the boundaries of this state do not meet present day
15 standards for reclamation.

16 Further, the Legislature finds that Title IV of the
17 Surface Mining Control and Reclamation Act of 1977
18 "Public Law 95-87" provides for the collection of thirty-
19 five cents per ton of coal produced from surface-mine
20 operations and fifteen cents per ton of coal produced
21 from underground mine operations in West Virginia to
22 be collected by the secretary of the United States
23 department of the interior until the thirtieth day of
24 September, one thousand nine hundred ninety-five. At
25 least fifty percent of the funds so collected are to be
26 allocated directly to the state of West Virginia to
27 accomplish reclamation of abandoned coal mining
28 operations, as of the date the state of West Virginia
29 obtained an approved abandoned mine reclamation plan
30 in accordance with sections 405 and 503 of Public Law
31 95-87.

32 Therefore, it is the intent of the Legislature by this
33 article to vest jurisdiction and authority in the commis-
34 sioner of the department of energy to maintain program
35 approval by, and receipt of funds from, the United
36 States department of the interior to accomplish the
37 desired restoration and reclamation of our land and
38 water resources.

**§22-3-4. Abandoned land reclamation fund and objec-
tives of fund; lands eligible for reclamation.**

- 1 (a) All abandoned land reclamation funds available
- 2 under Title IV of Public Law 95-87, private donations
- 3 received, any state appropriated or transferred funds, or

4 funds received from the sale of land by the director,
5 under this article shall be deposited with the treasurer
6 of the state of West Virginia to the credit of the
7 abandoned land reclamation fund heretofore created,
8 and expended pursuant to the requirements of this
9 article.

10 (b) Moneys in the fund may be used by the commis-
11 sioner for the following:

12 (1) Reclamation and restoration of land and water
13 resources adversely affected by past coal surface-mining
14 operations, including, but not limited to, reclamation
15 and restoration of abandoned surface mine areas,
16 abandoned coal processing areas and abandoned coal
17 processing waste areas; sealing and filling abandoned
18 deep mine entries and voids; planting of land adversely
19 affected by past coal surface-mining operations to
20 prevent erosion and sedimentation; prevention, abate-
21 ment, treatment and control of water pollution created
22 by coal mine drainage, including restoration of stream
23 beds and construction and operation of water treatment
24 plants; prevention, abatement and control of burning
25 coal processing waste areas and burning coal in situ;
26 prevention, abatement and control of coal mine subsi-
27 dence; and payment of administrative expenses and all
28 other necessary expenses incurred to accomplish the
29 purpose of this article: *Provided*, That all expenditures
30 from this fund shall reflect the following priorities in
31 the order stated:

32 (A) The protection of public health, safety, general
33 welfare and property from extreme danger of adverse
34 effects of past surface-mining practices;

35 (B) The protection of public health, safety and general
36 welfare from adverse effects of past coal surface-mining
37 practices;

38 (C) The restoration of land and water resources and
39 environment previously degraded by adverse effects of
40 past coal surface-mining practices, including measures
41 for the conservation and development of soil, water
42 (excluding channelization), woodland, fish and wildlife,
43 recreation resources and agricultural productivity;

44 (D) Research and demonstration projects relating to
45 the development of surface-mining reclamation and
46 water quality control program methods and techniques;

47 (E) The protection, repair, replacement, construction
48 or enhancement of public facilities such as utilities,
49 roads, recreation and conservation facilities adversely
50 affected by past coal surface-mining practices;

51 (F) The development of publicly owned land adversely
52 affected by past coal surface-mining practices, including
53 land acquired as provided in this article for recreation
54 and historic purposes, conservation and reclamation
55 purposes and open space benefits.

56 (2) (A) The commissioner may expend up to fifteen
57 percent of the funds allocated to the state in any year
58 through the grants made available under paragraphs (1)
59 and (5), subsection (g) of section 402 of Public Law 95-
60 87 for the purpose of protecting, repairing, replacing,
61 constructing, or enhancing facilities relating to water
62 supply, including water distribution facilities and
63 treatment plants, to replace water supplies adversely
64 affected by coal mining practices.

65 (B) If the adverse effects on water supplies referred
66 to in this subdivision occurred both prior to and after
67 the third day of August, one thousand nine hundred
68 seventy-seven, subdivision (3) of this subsection shall not
69 be construed to prohibit the state from using funds for
70 the purposes of this subdivision if the commissioner
71 determines that such adverse effects occurred predom-
72 inantly prior to the third day of August, one thousand
73 nine hundred seventy-seven.

74 (3) The commissioner may receive and retain up to ten
75 percent of the total of the grants made annually to such
76 state under paragraphs (1) and (5), subsection (g) of
77 section 404 of Public Law 95-87 if such amounts are
78 deposited to the credit of either:

79 (A) A special account in the state treasury designated
80 the "Reclamation and Restoration Fund" which is
81 hereby created. Moneys in the fund may be expended
82 by the commissioner for administrative and personnel

83 expenses and to achieve the priorities stated in subdi-
84 vision (1) of this subsection after the thirtieth day of
85 September, one thousand nine hundred ninety-five; or

86 (B) A special account in the state treasury designated
87 the "Acid Mine Drainage Abatement and Treatment
88 Fund" which is hereby created. Moneys in the fund may
89 be expended by the commissioner for administrative
90 and personnel expenses and to implement, in consulta-
91 tion with the United States Soil Conservation Service,
92 acid mine drainage abatement and treatment plans
93 approved by the secretary of the United States depart-
94 ment of interior. Such plans shall provide for the
95 comprehensive abatement of the causes and treatment
96 of the effects of acid mine drainage within qualified
97 hydrologic units affected by coal mining practices.

98 (c) Except as provided for in this subsection, lands and
99 water eligible for reclamation or drainage abatement
100 expenditures under this article are those which were
101 mined for coal or which were affected by such mining,
102 wastebanks, coal processing or other coal mining
103 processes, and abandoned or left in an inadequate
104 reclamation status prior to the third day of August, one
105 thousand nine hundred seventy-seven, and for which
106 there is no continuing reclamation responsibility:
107 *Provided*, That moneys from the funds made available
108 by the secretary of the United States department of
109 interior pursuant to paragraphs (1) and (5), subsection
110 (g), section 402 of Public Law 95-87 may be expended
111 for the reclamation or drainage abatement of a site that:
112 (1) The surface-mining operation occurred during the
113 period beginning on the fourth day of August, one
114 thousand nine hundred seventy-seven, and ending on or
115 before the twenty-first day of January, one thousand
116 nine hundred eighty-one, and that any funds for
117 reclamation or abatement which are available pursuant
118 to a bond or other financial guarantee or from any other
119 source, and not sufficient to provide for adequate
120 reclamation or abatement of the site; or (2) the surface-
121 mining operation occurred during the period beginning
122 on the fourth day of August, one thousand nine hundred
123 seventy-seven, and ending on or before the first day of

124 October, one thousand nine hundred ninety-one, and that
125 the surety of such surface-mining operation became
126 insolvent during such period, and as of the first day of
127 October, one thousand nine hundred ninety-one, funds
128 immediately available from proceedings relating to such
129 insolvency or from any financial guarantees or other
130 sources are not sufficient to provide for adequate
131 reclamation of the site: *Provided, however,* That the
132 commissioner, with the concurrence of the secretary,
133 makes either of the above-stated findings, and that the
134 site is eligible, or more urgent than the reclamation
135 priorities set forth in paragraphs (A) and (B), subdivi-
136 sion (1), subsection (a) of this section.

137 (d) One purpose of this article is to provide additional
138 and cumulative remedies to abate the pollution of the
139 waters of the state and nothing herein contained shall
140 abridge or alter rights of action or remedies now or
141 hereafter existing, nor shall any provisions in this
142 article or any act done by virtue of this article be
143 construed as estopping the state, municipalities, public
144 health officers or persons as riparian owners or
145 otherwise in the exercise of their rights to suppress
146 nuisances or to abate any pollution now or hereafter
147 existing or to recover damages.

148 (e) Where the governor certifies that the above
149 objectives of the fund have been achieved and there is
150 a need for construction of specific public facilities in
151 communities impacted by coal development, and other
152 sources of federal funds are inadequate and the secre-
153 tary concurs, then the commissioner may expend money
154 from the fund for such construction.

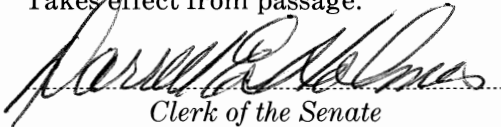
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee



Chairman House Committee

Originating in the House.

Takes effect from passage.



Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 2nd
day of April 1991.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/91

Time 4:40 pm