WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 1991

ENROLLED
Com. Sue. for
HOUSE BILL No. 2492

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

Passed March 9, 1991

In Effect From Passage
ENROLLED
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
of present day effective control and regulation. There was little or no reclamation conducted and the impacts from these unreclaimed lands impose social and economic costs on residents in nearby and adjoining areas as well as continue to impair environmental quality, prevent or damage the beneficial use of land or water resources, or endanger the health and safety of the public.

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

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

Therefore, it is the intent of the Legislature by this article to vest jurisdiction and authority in the commissioner of the department of energy to maintain program approval by, and receipt of funds from, the United States department of the interior to accomplish the desired restoration and reclamation of our land and water resources.

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

(a) All abandoned land reclamation funds available under Title IV of Public Law 95-87, private donations received, any state appropriated or transferred funds, or
funds received from the sale of land by the director, under this article shall be deposited with the treasurer of the state of West Virginia to the credit of the abandoned land reclamation fund heretofore created, and expended pursuant to the requirements of this article.

(b) Moneys in the fund may be used by the commissioner for the following:

(1) Reclamation and restoration of land and water resources adversely affected by past coal surface-mining operations, including, but not limited to, reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas and abandoned coal processing waste areas; sealing and filling abandoned deep mine entries and voids; planting of land adversely affected by past coal surface-mining operations to prevent erosion and sedimentation; prevention, abatement, treatment and control of water pollution created by coal mine drainage, including restoration of stream beds and construction and operation of water treatment plants; prevention, abatement and control of burning coal processing waste areas and burning coal in situ; prevention, abatement and control of coal mine subsidence; and payment of administrative expenses and all other necessary expenses incurred to accomplish the purpose of this article: Provided, That all expenditures from this fund shall reflect the following priorities in the order stated:

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

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

(C) The restoration of land and water resources and environment previously degraded by adverse effects of past coal surface-mining practices, including measures for the conservation and development of soil, water (excluding channelization), woodland, fish and wildlife, recreation resources and agricultural productivity;
(D) Research and demonstration projects relating to the development of surface-mining reclamation and water quality control program methods and techniques;

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

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

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

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

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

(A) A special account in the state treasury designated the "Reclamation and Restoration Fund" which is hereby created. Moneys in the fund may be expended by the commissioner for administrative and personnel
expenses and to achieve the priorities stated in subdivision (1) of this subsection after the thirtieth day of
September, one thousand nine hundred ninety-five; or

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

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

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

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

(e) Where the governor certifies that the above objectives of the fund have been achieved and there is a need for construction of specific public facilities in communities impacted by coal development, and other sources of federal funds are inadequate and the secretary concurs, then the commissioner may expend money 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 ............... this the ....... day of ......... 1991.

Governor