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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992

ENROLLED

Committee Substitute for
SENATE BILL NO. 362

(By Senator Wagner, et al)

PASSED March 6, 1992

In Effect 90 days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 362

(SENATORS WAGNER, CHAFIN, SPEARS, WOOTON,
FELTON, WITHERS, BAILEY, SHARPE, PRITT AND
J. MANCHIN, *original* sponsors)

[Passed March 6, 1992; in effect ninety days from passage.]

AN ACT to amend and reenact article three, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to abandoned mine land reclamation; setting forth a short title; providing legislative findings and intent and purpose of the article; specifying the jurisdiction and authority of the director; defining terms; objectives of abandoned land reclamation fund; specifying lands eligible for reclamation; creating certain special funds; powers and duties of the director regarding program, plans and reclamation projects; allowing the director to acquire and reclaim land adversely affected by past coal surface-mining practices; liens against reclaimed land; landowners petitions and appeals; priority of liens; filling voids and sealing tunnels; cooperative agreements; injunctive relief; water treatment plants; transfer of funds; interagency cooperation; and increasing from fifteen percent to thirty percent the maximum amount of state abandoned mine reclamation funds that may be used for water projects in the state.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. ABANDONED MINE LANDS AND RECLAMATION ACT.

§22-3-1. Short title.

1 This article shall be known and cited as the “Aban-
2 doned Mine Lands and Reclamation Act”.

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

1 The Legislature finds that there are a substantial
2 number of acres of land throughout the state that
3 were disturbed by surface-mining operations prior to
4 the time of present day effective control and regula-
5 tion. There was little or no reclamation conducted and
6 the impacts from these unreclaimed lands impose
7 social and economic costs on residents in nearby and
8 adjoining areas as well as continue to impair environ-
9 mental quality, prevent or damage the beneficial use
10 of land or water resources, or endanger the health and
11 safety of the public.

12 Further, the Legislature finds and declares that, due
13 to the passage of Public Law 95-87, certain areas
14 within the boundaries of this state do not meet present
15 day 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 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
30 plan in accordance with Sections 405 and 503 of Public
31 Law 95-87.

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

§22-3-3. Definitions.

1 (a) All definitions set forth in article three of chapter
2 twenty-two-a of this code apply to those defined terms
3 which also appear in this article, if applicable.

4 (b) For the purposes of this article the following
5 words have the meanings ascribed to them in this
6 subsection:

7 (1) "Director" means the director of the division of
8 environmental protection;

9 (2) "Division" means the division of environmental
10 protection; and

11 (3) "Secretary" means the secretary of the United
12 States Department of Interior.

**§22-3-4. Abandoned land reclamation fund and objectives 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,
4 or 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 director
11 for the following:

12 (1) Reclamation and restoration of land and water

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

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

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

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

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

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

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

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

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

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

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

88 (B) A special account in the state treasury desig-
89 nated the "Acid Mine Drainage Abatement and Treat-
90 ment Fund" which is hereby created. Moneys in the
91 fund may be expended by the director for administra-

92 tive and personnel expenses and to implement, in
93 consultation with the United States soil conservation
94 service, acid mine drainage abatement and treatment
95 plans approved by the secretary of the United States
96 department of interior. The plans shall provide for the
97 comprehensive abatement of the causes and treatment
98 of the effects of acid mine drainage within qualified
99 hydrologic units affected by coal surface-mining
100 practices.

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

134 sources are not sufficient to provide for adequate
135 reclamation of the site: *Provided, however*, That the
136 director, with the concurrence of the secretary, makes
137 either of the above-stated findings, and that the site is
138 eligible, or more urgent than the reclamation priori-
139 ties set forth in paragraphs (A) and (B), subdivision
140 (1), subsection ~~(a)~~ ^b of this section.

141 (d) One purpose of this article is to provide addi-
142 tional and cumulative remedies to abate the pollution
143 of the waters of the state and nothing contained in this
144 article abridges or alters rights of action or remedies
145 now or hereafter existing, nor shall any provisions in
146 this article or any act done by virtue of this article be
147 construed as estopping the state, municipalities, public
148 health officers or persons as riparian owners or
149 otherwise in the exercise of their rights to suppress
150 nuisances or to abate any pollution now or hereafter
151 existing or to recover damages.

152 (e) Where the governor certifies that the above
153 objectives of the fund have been achieved and there is
154 a need for construction of specific public facilities in
155 communities impacted by coal development, and other
156 sources of federal funds are inadequate and the
157 secretary concurs, then the director may expend
158 money from the fund for the construction.

**§22-3-5. Powers and duties of director; program plans and
reclamation projects.**

1 (a) The director shall submit to the secretary of the
2 interior a state reclamation plan and annual projects
3 to carry out the purposes of this article.

4 (b) That reclamation plan shall generally identify
5 the areas to be reclaimed, the purposes for which the
6 reclamation is proposed, the relationship of the lands
7 to be reclaimed and the proposed reclamation to
8 surrounding areas, the specific criteria for ranking and
9 identifying projects to be funded and the legal author-
10 ity and programatic capability to perform the work in
11 conformance with the provisions of this article.

12 (c) On an annual basis, the director shall submit to

13 the secretary of the interior an application for the
14 support of the state program and implementation of
15 specific reclamation projects. The annual requests
16 shall include information as may be requested by the
17 secretary of the interior including:

18 (1) A general description of each proposed project;

19 (2) A priority evaluation of each proposed project;

20 (3) A statement of the estimated benefits in such
21 terms as number of acres restored, miles of stream
22 improved, acres of surface lands protected from
23 subsidence, population protected from subsidence, air
24 pollution and hazards of mine and coal refuse disposal
25 area fires;

26 (4) An estimate of the cost for each proposed project;

27 (5) In the case of proposed research and demonstra-
28 tion projects, a description of the specific techniques to
29 be evaluated or objective to be attained;

30 (6) An identification of lands or interest therein to
31 be acquired and the estimated cost; and

32 (7) In each year after the first in which a plan is
33 filed under this article, an inventory of each project
34 funded under the previous year's grant, which inven-
35 tory shall include details of financial expenditures on
36 the project together with a brief description of the
37 project, including the project's location, the land-
38 owner's name, acreage and the type of reclamation
39 performed.

40 (d) The costs for each proposed project under this
41 section shall include actual construction costs, actual
42 operation and maintenance costs of permanent facili-
43 ties, planning and engineering costs, construction
44 inspection costs and other necessary administrative
45 expenses.

§22-3-6. Acquisition and reclamation of land adversely affected by past coal surface-mining practices.

1 (a) If the director makes a finding of fact that:

2 (1) Land or water resources have been adversely
3 affected by past coal surface-mining practices;

4 (2) The adverse effects are at a stage where, in the
5 public interest, action to restore, reclaim, abate,
6 control or prevent should be taken;

7 (3) The owners of the land or water resources where
8 entry must be made to restore, reclaim, abate, control
9 or prevent the adverse effects of past coal surface-
10 mining practices are not known or readily available; or

11 (4) The owners will not give permission for the
12 director, his or her agents, employees or contractors to
13 enter upon the property to restore, reclaim, abate,
14 control or prevent the adverse effects of past coal
15 surface-mining practices, then, upon giving notice by
16 mail to the owners, if known, or if not known by
17 posting notice upon the premises and advertising once
18 in a newspaper of general circulation in the county in
19 which the land lies, the director, his or her agents,
20 employees or contractors have the right to enter upon
21 the property adversely affected by past coal surface-
22 mining practices and any other property to have
23 access to the property to do all things necessary or
24 expedient to restore, reclaim, abate, control or prevent
25 the adverse effects. The entry shall be construed as an
26 exercise of the police power of the state for the
27 protection of public health, safety and general welfare
28 and shall not be construed as an act of condemnation
29 of property nor of trespass thereon. The moneys
30 expended for the work and the benefits accruing to
31 any premises so entered upon is chargeable against the
32 land and mitigates or offsets any claim in or any action
33 brought by any owner of any interest in the premises
34 for any alleged damages by virtue of the entry:
35 *Provided*, That this provision is not intended to create
36 new rights of action or eliminate existing immunities.

37 (b) The director, his or her agents, employees or

38 contractors have the right to enter upon any property
39 for the purpose of conducting studies or exploratory
40 work to determine the existence of adverse effects of
41 past coal mining practices and to determine the
42 feasibility of restoration, reclamation, abatement,
43 control or prevention of the adverse effects. The entry
44 shall be construed as an exercise of the police power
45 of the state for the protection of public health, safety
46 and general welfare and shall not be construed as an
47 act of condemnation of property nor trespass thereon.

48 (c) The director may acquire any land by purchase,
49 donation or condemnation, which is adversely affected
50 by past coal surface-mining practices, if the director
51 determines that acquisition of the land is necessary to
52 successful reclamation and that:

53 (1) The acquired land, after restoration, reclamation,
54 abatement, control or prevention of the adverse effects
55 of past coal surface-mining practices will serve recre-
56 ation, historic, conservation or reclamation purposes or
57 provide open space benefits;

58 (2) Permanent facilities such as a treatment plant or
59 a relocated stream channel will be constructed on the
60 land for the restoration, reclamation, abatement,
61 control or prevention of the adverse effects of past coal
62 surface-mining practices; or

63 (3) Acquisition of coal refuse disposal sites and all
64 coal refuse thereon will serve the purposes of this
65 article or that public ownership is desirable to meet
66 emergency situations and prevent recurrences of the
67 adverse effects of past coal surface-mining practices.

68 (d) Title to all lands acquired pursuant to this section
69 shall be in the name of the state of West Virginia, by
70 the West Virginia division of environmental protec-
71 tion. The price paid for land acquired under this
72 section shall reflect the fair market value of the land
73 as adversely affected by past coal surface-mining
74 practices.

75 (e) The director is hereby authorized to transfer
76 land obtained under subsection (c) of this section to

77 the secretary. The director may purchase the land
78 from the secretary after reclamation at the fair
79 market value less the state's original acquisition price.

80 (f) The director may accept and local political
81 subdivisions may transfer to the director land belong-
82 ing to them to carry out the purposes set out in this
83 article and in that event they shall have a preferential
84 right to purchase the land after reclamation at the fair
85 market value less the political subdivision's cost of
86 acquisition, but at no time shall the director sell the
87 land to a political subdivision at a price less than the
88 cost of the acquisition and reclamation of the land:
89 *Provided*, That if any land sold to a political subdivi-
90 sion under this subsection is not used for a valid public
91 purpose as specified by the director in the terms and
92 conditions of the sales agreement, then all rights, title
93 and interest in the land shall revert to the West
94 Virginia division of environmental protection. Any
95 moneys received from the sale shall be deposited in
96 the abandoned land reclamation fund.

97 (g) Where land acquired pursuant to this section is
98 considered to be suitable for industrial, commercial,
99 residential or recreational development, the director
100 may sell the land by public sale under a system of
101 competitive bidding at not less than fair market value
102 and pursuant to regulations promulgated to ensure
103 that the lands are put to proper use consistent with
104 state and local land use plans.

105 (h) The director, if requested and after appropriate
106 public notice, shall hold a public hearing in the county
107 in which land acquired pursuant to this section is
108 located. The hearing shall be held at a time which
109 shall afford local citizens and government the maxi-
110 mum opportunity to participate in the decision con-
111 cerning the use and disposition of the land after
112 restoration, reclamation, abatement, control or pre-
113 vention of the adverse effects of past coal surface-
114 mining practices.

115 (i) In addition to the authority to acquire land under
116 other provisions of this section, the director is autho-

117 rized to use money in the fund to acquire land from
 118 any federal, state or local government or from a
 119 political subdivision thereof, or from any person, firm,
 120 association or corporation, if he or she determines that
 121 such is an integral and necessary element of an
 122 economically feasible plan for the project to construct
 123 or rehabilitate housing for persons disabled as the
 124 result of employment in the mines or work incidental
 125 thereto, persons displaced by acquisition of land
 126 pursuant to this section, or persons dislocated as the
 127 result of adverse effects of coal surface-mining practi-
 128 ces which constitute an emergency as provided in
 129 Section 410 of Public Law 95-87, or persons dislocated
 130 as the result of natural disasters or catastrophic
 131 failures from any cause. The activities shall be accom-
 132 plished under such terms and conditions as the
 133 director shall require, which may include transfers of
 134 land with or without monetary consideration: *Pro-*
 135 *vided*, That to the extent that the consideration is
 136 below the fair market value of the land transferred, no
 137 portion of the difference between the fair market
 138 value and the consideration shall accrue as a profit to
 139 such persons, firm, association or corporation. No part
 140 of the funds provided under this article may be used
 141 to pay the actual construction costs of housing. The
 142 director may carry out the purposes of this subsection
 143 directly or he or she may make grants and commit-
 144 ments for grants, and may advance money under such
 145 terms and conditions as he or she may require to any
 146 department, agency or political subdivision of this
 147 state, or any public body or nonprofit organization
 148 designated by the director.

§22-3-7. Liens against reclaimed land; petition by land-owner; appeal; priority of liens.

1 (a) Within six months after the completion of a
 2 project to restore, reclaim, abate, control or prevent
 3 adverse effects of past coal surface-mining practices on
 4 a privately owned land, the director shall itemize the
 5 moneys so expended and may file a statement thereof
 6 in the office of the clerk of the county commission in
 7 the county in which the land lies, together with a

8 notarized appraisal by an independent appraiser of the
9 value of the land before the restoration, reclamation,
10 abatement, control or prevention of adverse effects of
11 past surface-mining practices, if the moneys so
12 expended result in a significant increase in property
13 value. The statement constitutes a lien upon the land.
14 The lien shall not exceed the amount determined by
15 the appraisal to be the increase in the market value of
16 the land as a result of the restoration, reclamation,
17 abatement, control or prevention of the adverse effects
18 of past surface-mining practices. No lien may be filed
19 against the property of any person in accordance with
20 this subsection, who owned the surface prior to the
21 second day of May, one thousand nine hundred
22 seventy-seven, and who neither consented to, nor
23 participated in, nor exercised control over the mining
24 operation which necessitated the reclamation per-
25 formed hereunder.

26 (b) The landowner may petition the director within
27 sixty days of the filing of the lien to determine the
28 increase in the market value of the land as a result of
29 the restoration, reclamation, abatement, control or
30 prevention of the adverse effects of past coal surface-
31 mining practices. The amount reported to be the
32 increase in value of the premises constitutes the
33 amount of lien and shall be recorded with the state-
34 ment herein provided. Any party aggrieved by the
35 decision may appeal to the circuit court of the county
36 in which the land is located.

37 (c) The statement filed pursuant to subsection (a) of
38 this section, constitutes a lien upon the land as of the
39 date of the expenditure of the moneys and has priority
40 as a lien second only to the lien of real estate taxes
41 imposed upon the land.

§22-3-8. Filling voids and sealing tunnels.

1 (a) The Legislature declares that voids, open and
2 abandoned tunnels, shafts and entryways and subsi-
3 dence resulting from any previous coal surface-mining
4 operation constitute a hazard to the public welfare and
5 safety and that surface impacts of any underground or

6 surface-mining operation may degrade the environ-
7 ment. The director is authorized to fill the voids, seal
8 the abandoned tunnels, shafts and entryways, and
9 reclaim surface impacts of underground or surface
10 mines and remove water and other matter from mines
11 which the director determines could endanger life and
12 property, constitute a hazard to the public welfare and
13 safety or degrade the environment.

14 (b) In those instances where coal mine waste piles
15 are being reworked for conservation purposes, the
16 incremental costs of disposing of the wastes from such
17 operations by filling voids and sealing tunnels may be
18 eligible for funding, if the disposal of those wastes
19 meets the purposes of this article.

20 (c) The director may acquire by purchase, donation,
21 easement or otherwise such interest in land as he or
22 she determines necessary to carry out the provisions
23 of this section.

**§22-3-9. General and miscellaneous powers and duties of
director; cooperative agreements; injunctive
relief; water treatment plants and facilities;
transfer of funds and interagency
cooperation.**

1 (a) The director is authorized to engage in any work
2 and to do all things necessary and proper, including
3 promulgation of rules and regulations, to implement
4 and administer the provisions of this article.

5 (b) The director is authorized to engage in coopera-
6 tive projects under this article with any other agency
7 of the United States of America, any state, county or
8 municipal agency or subdivision thereof.

9 (c) The director may request the attorney general,
10 who is hereby authorized to initiate, in addition to any
11 other remedies provided for in this article, in any
12 court of competent jurisdiction, an action in equity for
13 an injunction to restrain any interference with the
14 exercise of the right to enter or to conduct any work
15 provided in this article.

16 (d) The director has the authority to construct and

17 operate a plant or any facilities for the control and
18 treatment of water pollution resulting from mine
19 drainage. The extent of this control and treatment
20 may be dependent upon the ultimate use of the water:
21 *Provided*, That this subsection shall not repeal or
22 supersede any portion of the applicable federal or state
23 water pollution control laws and no control or treat-
24 ment under this section may be less than that
25 required under any applicable federal or state water
26 pollution control law. The construction of any facilities
27 may include major interceptors and other facilities
28 appurtenant to the plant.

29 (e) All departments, boards, commissions and agen-
30 cies of the state shall cooperate with the director by
31 providing technical expertise, personnel, equipment,
32 materials and supplies to implement and administer
33 the provisions of this article.

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

Homer Seck
.....
Chairman Senate Committee

Ernest C. Moore
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Paul E. Adams
.....
Clerk of the Senate

Donald D. Kopp
.....
Clerk of the House of Delegates

Keith Baudette
.....
President of the Senate

Robert C. Bell
.....
Speaker House of Delegates

The within *is appended* this the *1st* day of *April*, 1992.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/92

Time 4:50 pm