WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1992

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ENROLLED

Committee Substitute for

SENATE BILL NO. 362

(By Senator Wagner, et al)

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PASSED March 6, 1992

In Effect 90 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.

This article shall be known and cited as the "Abandoned Mine Lands and Reclamation Act".

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

The Legislature finds that there are a substantial number of acres of land throughout the state that were 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 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 director of the division of environmental protection 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.

§22-3-3. Definitions.

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

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

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

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

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

§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 director 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; and
(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 director may expend up to thirty 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 surface-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 director determines that the adverse effects occurred predominately prior to the third day of August, one thousand nine hundred seventy-seven.

(3) The director may receive and retain up to ten percent of the total of the grants made annually to the state under paragraphs (1) and (5), subsection (g) of Section 404 of Public Law 95-87 if the 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 director 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 director for administra-
tive and personnel expenses and to implement, in consultation with the United States soil conservation service, acid mine drainage abatement and treatment plans approved by the secretary of the United States department of interior. The 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 surface-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 the 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, funds immediately available from proceeding relating to the insolvency or from any financial guarantees or other
sources are not sufficient to provide for adequate reclamation of the site: Provided, however, That the director, 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 contained in this article abridges or alters 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 director may expend money from the fund for the construction.

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

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

(b) That reclamation plan shall generally identify the areas to be reclaimed, the purposes for which the reclamation is proposed, the relationship of the lands to be reclaimed and the proposed reclamation to surrounding areas, the specific criteria for ranking and identifying projects to be funded and the legal authority and programmatic capability to perform the work in conformance with the provisions of this article.

(c) On an annual basis, the director shall submit to
the secretary of the interior an application for the support of the state program and implementation of specific reclamation projects. The annual requests shall include information as may be requested by the secretary of the interior including:

(1) A general description of each proposed project;

(2) A priority evaluation of each proposed project;

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

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

(5) In the case of proposed research and demonstration projects, a description of the specific techniques to be evaluated or objective to be attained;

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

(7) In each year after the first in which a plan is filed under this article, an inventory of each project funded under the previous year's grant, which inventory shall include details of financial expenditures on the project together with a brief description of the project, including the project's location, the landowner's name, acreage and the type of reclamation performed.

(d) The costs for each proposed project under this section shall include actual construction costs, actual operation and maintenance costs of permanent facilities, planning and engineering costs, construction inspection costs and other necessary administrative expenses.
§22-3-6. Acquisition and reclamation of land adversely affected by past coal surface-mining practices.

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

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

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

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

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

(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
49 (c) The director may acquire any land by purchase,
50 donation or condemnation, which is adversely affected
51 by past coal surface-mining practices, if the director
52 determines that acquisition of the land is necessary to
53 successful reclamation and that:
54
55 (1) The acquired land, after restoration, reclamation,
56 abatement, control or prevention of the adverse effects
57 of past coal surface-mining practices will serve recre-
58 ation, historic, conservation or reclamation purposes or
59 provide open space benefits;
60
61 (2) Permanent facilities such as a treatment plant or
62 a relocated stream channel will be constructed on the
63 land for the restoration, reclamation, abatement,
64 control or prevention of the adverse effects of past coal
65 surface-mining practices; or
66
67 (3) Acquisition of coal refuse disposal sites and all
68 coal refuse thereon will serve the purposes of this
69 article or that public ownership is desirable to meet
70 emergency situations and prevent recurrences of the
71 adverse effects of past coal surface-mining practices.
72
73 (d) Title to all lands acquired pursuant to this section
74 shall be in the name of the state of West Virginia, by
75 the West Virginia division of environmental protec-
76 tion. The price paid for land acquired under this
77 section shall reflect the fair market value of the land
78 as adversely affected by past coal surface-mining
79 practices.
80
81 (e) The director is hereby authorized to transfer
82 land obtained under subsection (c) of this section to
the secretary. The director may purchase the land from the secretary after reclamation at the fair market value less the state’s original acquisition price.

(f) The director may accept and local political subdivisions may transfer to the director land belonging to them to carry out the purposes set out in this article and in that event they shall have a preferential right to purchase the land after reclamation at the fair market value less the political subdivision’s cost of acquisition, but at no time shall the director sell the land to a political subdivision at a price less than the cost of the acquisition and reclamation of the land: Provided, That if any land sold to a political subdivision under this subsection is not used for a valid public purpose as specified by the director in the terms and conditions of the sales agreement, then all rights, title and interest in the land shall revert to the West Virginia division of environmental protection. Any moneys received from the sale shall be deposited in the abandoned land reclamation fund.

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

(h) The director, if requested and after appropriate public notice, shall hold a public hearing in the county in which land acquired pursuant to this section is located. The hearing shall be held at a time which shall afford local citizens and government the maximum opportunity to participate in the decision concerning the use and disposition of the land after restoration, reclamation, abatement, control or prevention of the adverse effects of past coal surface-mining practices.

(i) In addition to the authority to acquire land under other provisions of this section, the director is autho-
rized to use money in the fund to acquire land from any federal, state or local government or from a political subdivision thereof, or from any person, firm, association or corporation, if he or she determines that such is an integral and necessary element of an economically feasible plan for the project to construct or rehabilitate housing for persons disabled as the result of employment in the mines or work incidental thereto, persons displaced by acquisition of land pursuant to this section, or persons dislocated as the result of adverse effects of coal surface-mining practices which constitute an emergency as provided in Section 410 of Public Law 95-87, or persons dislocated as the result of natural disasters or catastrophic failures from any cause. The activities shall be accomplished under such terms and conditions as the director shall require, which may include transfers of land with or without monetary consideration: Provided, That to the extent that the consideration is below the fair market value of the land transferred, no portion of the difference between the fair market value and the consideration shall accrue as a profit to such persons, firm, association or corporation. No part of the funds provided under this article may be used to pay the actual construction costs of housing. The director may carry out the purposes of this subsection directly or he or she may make grants and commitments for grants, and may advance money under such terms and conditions as he or she may require to any department, agency or political subdivision of this state, or any public body or nonprofit organization designated by the director.

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

(a) Within six months after the completion of a project to restore, reclaim, abate, control or prevent adverse effects of past coal surface-mining practices on a privately owned land, the director shall itemize the moneys so expended and may file a statement thereof in the office of the clerk of the county commission in the county in which the land lies, together with a
notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control or prevention of adverse effects of past surface-mining practices, if the moneys so expended result in a significant increase in property value. The statement constitutes a lien upon the land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control or prevention of the adverse effects of past surface-mining practices. No lien may be filed against the property of any person in accordance with this subsection, who owned the surface prior to the second day of May, one thousand nine hundred seventy-seven, and who neither consented to, nor participated in, nor exercised control over the mining operation which necessitated the reclamation performed hereunder.

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

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

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

(a) The Legislature declares that voids, open and abandoned tunnels, shafts and entryways and subsidence resulting from any previous coal surface-mining operation constitute a hazard to the public welfare and safety and that surface impacts of any underground or
surface-mining operation may degrade the environment. The director is authorized to fill the voids, seal the abandoned tunnels, shafts and entryways, and reclaim surface impacts of underground or surface mines and remove water and other matter from mines which the director determines could endanger life and property, constitute a hazard to the public welfare and safety or degrade the environment.

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

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

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

(b) The director is authorized to engage in cooperative projects under this article with any other agency of the United States of America, any state, county or municipal agency or subdivision thereof.

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

(d) The director has the authority to construct and
operate a plant or any facilities for the control and
treatment of water pollution resulting from mine
drainage. The extent of this control and treatment
may be dependent upon the ultimate use of the water:

Provided, That this subsection shall not repeal or
supersede any portion of the applicable federal or state
water pollution control laws and no control or treat-
ment under this section may be less than that
required under any applicable federal or state water
pollution control law. The construction of any facilities
may include major interceptors and other facilities
appurtenant to the plant.

(e) All departments, boards, commissions and agen-
cies of the state shall cooperate with the director by
providing technical expertise, personnel, equipment,
materials and supplies to implement and administer
the provisions of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Homerickle
Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Donald S. Kopp
Clerk of the House of Delegates

Kent Fantate
President of the Senate

Speaker House of Delegates

The within is approved this the ..................

day of ........................., 1992.

Winston Capwen
Governor