SENATE BILL NO. 5003

(Passed, by request of the Executive)

PASSED September 15, 2001

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 seventeen; and to amend and reenact sections eleven and twelve, article three of said chapter, all relating to surface coal mining and reclamation; creating a special reclamation fund advisory council; providing for eight members of the council; authorizing the governor to appoint five members with the advice and consent of the Senate; providing for six-year terms for the appointed members; providing that the secretary of the department of environmental protection will serve as an ex officio, nonvoting member; establishing the requirements of appointed members; authorizing payment of compensation and expenses of members; requiring the council to meet a minimum of twice a year; establishing the study requirements and responsibilities of the council; requiring the council to report to the governor and the Legislature annually; establishing issues the reports must
address; correcting nomenclature; removing the twenty-five percent limitation on funds available for water treatment; clarifying applicable minimum and maximum bond requirements; clarifying that abandoned mining sites that qualify for federal reclamation funds do not qualify for certain state funds; increasing the per ton of coal mined special reclamation tax from three cents per ton to fourteen cents per ton beginning the first day of January, two thousand two; providing that the fourteen cents per ton will be reduced to seven cents per ton after thirty-nine months; providing that the tax may be adjusted by the Legislature based on recommendation of the council; prohibiting reduction of tax if the special reclamation fund does not have sufficient capital to meet the reclamation needs; removing requirement that reclamation-related liabilities must exceed accrued amount in reclamation fund before reclamation fund tax is collected; recognizing the need for federal approval of certain modifications to the reclamation program; and removing rule-making and reporting provisions which are no longer applicable.

_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 seventeen; and that sections eleven and twelve, article three of said chapter be amended and reenacted, all to read as follows:

**ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.**

§22-1-17. Special reclamation fund advisory council.

(a) There is hereby created within the department of environmental protection a special reclamation fund advisory council. The council's purpose is to ensure the effective, efficient and financially stable operation of the special reclamation fund. The special reclamation advisory council shall consist of eight members, including the secretary of the department of environmental protection or his or her designee, the treasurer of the state of West
Virginia or his or her designee, the director of the national mine land reclamation center at West Virginia university and five members to be appointed by the governor with the advice and consent of the Senate.

(b) Each appointed member of the council shall be selected based on his or her ability to serve on the council and effectuate its purposes. The governor shall appoint, from a list of three names submitted by the major trade association representing the coal industry regulated under article three of this chapter, a member to represent the interests of the industry. The governor shall appoint, from a list of three names submitted by organizations advocating environmental protection, one member to represent the interest of environmental protection organizations. The governor shall appoint, from a list of four names submitted by the coal mining industry and the organizations advocating environmental protection, one member who, by training and profession, is an actuary or an economist. The governor shall appoint, from a list of three names submitted by the united mine workers of America, one member to represent the interests of coal miners. The governor shall appoint a member to represent the interests of the general public.

(c) The terms of all members shall begin on the first day of July, two thousand two. The secretary shall be an ex officio, nonvoting member and serve as chairperson of the council. The terms of the governor's appointees shall be for six years. Appointees may be reappointed to serve on the council. The terms of the appointed members first taking office are to be expired as designated by the governor at the time of the nomination, two at the end of the second year, two at the end of the fourth year and one at the end of the sixth year. As the original appointments expire, each subsequent appointment will be for a full six-year term. Any appointed member whose term has expired shall serve until a successor has been duly appointed and
qualified. Any person appointed to fill a vacancy is to serve only for the unexpired term.

(d) Appointed members of the council shall be paid the same compensation and expense reimbursement as is provided for members of the Legislature pursuant to sections six and eight, article two-a, chapter four of this code. Council members who are state employees or officials shall be reimbursed for expenses in accordance with the applicable agency's policy.

(e) The council shall meet at the call of the chairperson or his or her designee, but not less than once every six months. The secretary shall provide funds for necessary administrative and technical services for the council from the special reclamation fund.

(f) The council shall, at a minimum:

(1) Study the effectiveness, efficiency and financial stability of the special reclamation fund with an emphasis on development of a financial process that ensures long-term stability of the special reclamation program;

(2) Identify and define problems associated with the special reclamation fund, including, but not limited to, the enforcement of federal and state law, regulation and rules pertaining to contemporaneous reclamation;

(3) Evaluate bond forfeiture collection, reclamation efforts at bond forfeiture sites and compliance with approved reclamation plans as well as any modifications;

(4) Provide a forum for a full and fair discussion of issues relating to the special reclamation fund;

(5) Contract with a qualified actuary who shall make a determination as to the special reclamation fund's fiscal soundness. This determination shall be completed on the thirty-first day of December, two thousand four, and every four years thereafter. The review is to include an evalua-
tion of the present and prospective assets and liabilities of
the special reclamation fund; and

(6) Study and recommend to the Legislature alternative
approaches to the current funding scheme of the special
reclamation fund, considering revisions which will assure
future proper reclamation of all mine sites and continued
financial viability of the state's coal industry.

(g) On or before the first day of January, two thousand
three, and every year thereafter, the council shall submit
to the Legislature and the governor a report on the ade-
quacy of the special reclamation tax and the fiscal condi-
tion of the special reclamation fund. The report shall, at
a minimum, contain:

(1) A recommendation as to whether or not any adjust-
ments to the special reclamation tax should be made
considering the cost, timeliness and adequacy of bond
forfeiture reclamation, including water treatment;

(2) A discussion of the council's required study issues as
set forth in subsection (f) of this section; and

(3) The availability of federal abandoned mine lands
funds for West Virginia reclamation projects.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

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

(a) After a surface mining permit application has been
approved pursuant to this article but before a permit has
been issued, each operator shall furnish a penal bond, on
a form to be prescribed and furnished by the secretary,
payable to the state of West Virginia and conditioned upon
the operator faithfully performing all of the requirements
of this article and of the permit. The penal amount of the
bond shall be not less than one thousand dollars nor more
than five thousand dollars for each acre or fraction
thereof: *Provided, That* the minimum amount of bond furnished for any type of reclamation bonding shall be ten thousand dollars. The bond shall cover: (1) The entire permit area; or (2) that increment of land within the permit area upon which the operator will initiate and conduct surface mining and reclamation operations within the initial term of the permit. If the operator chooses to use incremental bonding, as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the secretary an additional bond or bonds to cover the increments in accordance with this section: *Provided, however, That* once the operator has chosen to proceed with bonding either the entire permit area or with incremental bonding, the operator shall continue bonding in that manner for the term of the permit.

(b) The period of liability for bond coverage begins with issuance of a permit and continues 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 bond shall be approved by the secretary 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 homeowners’ 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 penal sum of the bond. The secretary shall, upon receipt of any deposit of cash, securities or certificates, promptly place the same with the treasurer of the state of West Virginia whose duty it is 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 is entitled, from time to time, to receive from the state treasurer, upon the written approval of the secretary, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her 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 secretary may approve an alternative bonding system if it will: (1) 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 (2) provide a substantial economic incentive for the permittee to comply with all reclamation provisions.

(d) The secretary may accept the bond of the applicant itself without separate surety when the applicant demonstrates to the satisfaction of the secretary 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 is unlawful for the owner of surface or mineral rights to interfere with the present operator in the discharge of the operator's obligations to the state for the reclamation of lands disturbed by the operator.

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

(g) The special reclamation fund previously created is continued. The moneys accrued in the fund, including
interest, are reserved solely and exclusively for the purposes set forth in this section and section seventeen, article one of this chapter. The fund shall be administered by the secretary who 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 the land is less than the actual cost of reclamation, and where the land is not eligible for abandoned mine land reclamation funds under article two of this chapter. The secretary shall develop a long-range planning process for selection and prioritization of sites to be reclaimed so as to avoid inordinate short-term obligations of the assets in the fund of such magnitude that the solvency of the fund is jeopardized. The secretary may use the special reclamation fund 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 secretary 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 article and, as they apply to the surface mine board, articles one and four, chapter twenty-two-b of this code.

(h) Prior to the first day of January, two thousand two, every person conducting coal surface mining operations shall contribute into the fund a sum equal to three cents per ton of clean coal mined. For tax periods commencing on and after the first day of January, two thousand two, every person conducting coal surface mining shall contribute into the fund as follows: (1) For a period not to exceed thirty-nine months, seven cents per ton of clean coal mined; and (2) an additional seven cents per ton of clean coal mined. The tax shall be levied upon each ton of clean coal severed or clean coal obtained from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a combination of coal and waste
material as part of a fuel supply on or after the first day of
January, two thousand two. The additional seven-cent tax
shall be reviewed and, if necessary, adjusted annually by
the Legislature upon recommendation of the council
pursuant to the provisions of section seventeen, article one
of this chapter: Provided, That the tax may not be reduced
until the special reclamation fund has sufficient moneys to
meet the reclamation responsibilities of the state estab-
lished in this section.

(i) This special reclamation tax shall be collected by the
state tax commissioner in the same manner, at the same
time and upon the same tonnage as the minimum sever-
ance tax imposed by article twelve-b, chapter eleven of
this code is collected: Provided, That under no circum-
stance shall the special reclamation tax be construed to be
an increase in either the minimum severance tax imposed
by said article or the severance tax imposed by article
thirteen of said chapter.

(j) Every person liable for payment of the special
reclamation tax shall pay the amount due without notice
or demand for payment.

(k) The tax commissioner shall provide to the secretary
a quarterly listing of all persons known to be delinquent in
payment of the special reclamation tax. The secretary may
take the delinquencies into account in making determina-
tions on the issuance, renewal or revision of any permit.

(l) 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 an interest-bearing
account with the interest being returned to the fund on an
annual basis.

(m) At the beginning of each quarter, the secretary shall
advise the state tax commissioner and the governor of the
assets, excluding payments, expenditures and liabilities, in the fund.

(n) To the extent that this section modifies any powers, duties, functions and responsibilities of the department that may require approval of one or more federal agencies or officials in order to avoid disruption of the federal-state relationship involved in the implementation of the federal Surface Mining Control and Reclamation Act, 30 U. S. C. §1270 by the state, the modifications will become effective upon the approval of the modifications by the appropriate federal agency or official.

§22-3-12. Site-specific bonding; legislative rule; contents of legislative rule; legislative intent.

(a) Notwithstanding the provisions of section eleven of this article, the secretary may establish and implement a site-specific bonding system in accordance with the provisions of this section.

(b) A legislative rule proposed or promulgated pursuant to this section must provide, at a minimum, for the following:

(1) The penal amount of a bond shall be not less than one thousand dollars nor more than five thousand dollars per acre or fraction thereof.

(2) Every bond, subject to the limitations of subdivision (1) of this subsection, shall reflect the relative potential cost of reclamation associated with the activities proposed to be permitted, which would not otherwise be reflected by bonds calculated by merely applying a specific dollar amount per acre for the permit.

(3) Every bond, subject to the provisions of subdivision (1) of this subsection, shall also reflect an analysis under the legislative rule of various factors, as applicable, which affect the cost of reclamation, including, but not limited to: (A) The general category of mining, whether surface or
underground; (B) mining techniques and methods proposed to be utilized; (C) support facilities, fixtures, improvements and equipment; (D) topography and geology; and (E) the potential for degrading or improving water quality.

(c) A legislative rule proposed or promulgated pursuant to the provisions of this section may, in addition to the requirements of subsection (b) of this section, provide for a consideration of other factors determined to be relevant by the secretary. For example, the rule may provide for the following:

(1) A consideration as to whether the bond relates to a new permit application, a renewal of an existing permit, an application for an incidental boundary revision or the reactivation of an inactive permit;

(2) A consideration of factors which may result in environmental enhancement, as in a case where remining may improve water quality or reduce or eliminate existing highwalls, or a permitted operation may create or improve wetlands; or

(3) An analysis of various factors related to the specific permit applicant, including, but not limited to: (A) The prior mining experience of the applicant with the activities sought to be permitted; and (B) the history of the applicant as it relates to prior compliance with statutory and regulatory requirements designed to protect, maintain or enhance the environment in this or any other state.

(d) It is the intent of the Legislature that a legislative rule proposed or promulgated pursuant to the provisions of this section shall be constructed so that when the findings of fact by the division of environmental protection with respect to the proposed mining activity and the particular permit applicant coincide with the particular factors or criteria to be considered and analyzed under the rule, the rule will direct a conclusion as to the amount of the bond to be required, subject to rebuttal and refutation.
of the findings by the applicant. To the extent practicable, the rule shall limit subjectivity and discretion by the secretary and the division in fixing the amount of the bond.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 26th Day of December, 2001.

Governor