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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001

ENROLLED

Committee Substitute for

SENATE BILL NO. *603*

(By Senator *Tomblin, Mr. President* **)**

PASSED *April 14, 2001*

In Effect *90 days from* **Passage**

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OFFICE WEST VIRGINIA
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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 603

(SENATOR TOMBLIN, MR. PRESIDENT, *original sponsor*)

[Passed April 14, 2001; in effect ninety days from passage.]

AN ACT to amend and reenact sections five, nine and twelve, article two-a, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section ten, article three, chapter twenty-two of said code, all relating to economic development and reclamation of surface mining sites; allowing office of coalfield community development and other economic development agencies to develop master plans; expanding the authority of the office of coalfield community development relating to post-mining sites; including recommendations by local economic redevelopment authorities as part of reclamation plans; establishing criteria to consider in development of these sites; providing for certain land uses as post-mining land uses; providing that master plans must comport to environmental reclamation requirements; establishing additional rule-making requirements for the

office of coalfield community development; and allowing existing and future surface mining permits to include master plan criteria and reclamation standards.

Be it enacted by the Legislature of West Virginia:

That sections five, nine and twelve, article two-a, chapter five-b of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section ten, article three, chapter twenty-two of said code be amended and reenacted, all to read as follows:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

§5B-2A-5. Powers and duties.

1 The office has and may exercise the following duties,
2 powers and responsibilities:

3 (1) To establish a procedure for developing a community
4 impact statement as provided in section six of this article
5 and to administer the procedure so established;

6 (2) To establish a procedure for developing and imple-
7 menting coalfield community development statements as
8 provided in section seven of this article and to administer
9 the procedure so established;

10 (3) To establish a procedure for determining the assets
11 that could be developed in and maintained by the commu-
12 nity to foster its long-term viability as provided in section
13 eight of this article and to administer the procedure so
14 established;

15 (4) To establish a procedure for determining the land
16 and infrastructure needs in the general area of the surface
17 mining operations as provided in section nine of this
18 article and to administer the procedure so established;

19 (5) To establish a procedure to develop action reports
20 and annual updates as provided in section ten of this
21 article and to administer the procedure so established;

22 (6) To determine the need for meetings to be held among
23 the various interested parties in the communities impacted
24 by surface mining operations and, when appropriate, to
25 facilitate the meetings;

26 (7) To establish a procedure to assist property owners in
27 the sale of their property as provided in section eleven of
28 this article and to administer the procedure so established;

29 (8) In conjunction with the division, to maintain and
30 operate a system to receive and address questions, con-
31 cerns and complaints relating to surface mining; and

32 (9) On its own initiative or at the request of a commu-
33 nity in close proximity to a mining operation, or a mining
34 operation, offer assistance to facilitate the development of
35 economic or community assets. Such assistance may
36 include the preparation of a master land use plan pursuant
37 to the provisions of section nine of this article.

§5B-2A-9. Securing developable land and infrastructure.

1 (a) As a part of the coalfield community development
2 statement required by section seven of this article, the
3 office, in a collaborative effort with those persons and
4 entities identified in subdivision (1), subsection (b), section
5 seven of this article, shall determine the land and infra-
6 structure needs in the general area of the surface mining
7 operations.

8 (b) For the purposes of this section, the term “general
9 area” shall mean the county or counties in which the
10 mining operations are being conducted or any adjacent
11 county.

12 (c) To assist the office in the development of the coal-
13 field community development statement, the operator
14 shall be required to prepare and submit to the office the
15 information set forth in this subsection as follows:

16 (1) A map of the area for which a permit under article
17 three, chapter twenty-two of this code is being sought or
18 has been obtained;

19 (2) The names of the surface and mineral owners of the
20 property to be mined pursuant to the permit; and

21 (3) A statement of the post-mining land use for all land
22 which may be affected by the mining operations.

23 (d) In making a determination of the land and infra-
24 structure needs in the general area of the mining opera-
25 tions, the office shall consider at least the following:

26 (1) The availability of developable land in the general
27 area;

28 (2) The needs of the general area for developable land;

29 (3) The availability of infrastructure, including, but not
30 limited to, access roads, water service, wastewater service
31 and other utilities;

32 (4) The amount of land to be mined and the amount of
33 valley to be filled;

34 (5) The amount, nature and cost to develop and maintain
35 the community assets identified in section eight of this
36 article; and

37 (6) The availability of federal, state and local grants and
38 low-interest loans to finance all or a portion of the acqui-
39 sition and construction of the identified land and infra-
40 structure needs of the general area.

41 (e) In making a determination of the land and infra-
42 structure needs in the general area of the surface mining
43 operations, the office shall give significant weight to
44 developable land on or near existing or planned multilane
45 highways.

46 (f) In addition to the coal field community development
47 statement cited in subsection (a) of this section, the office

48 may secure developable land and infrastructure for a
49 development office or county through the preparation of
50 a master land use plan for inclusion into a reclamation
51 plan prepared pursuant to the provisions of section ten,
52 article three, chapter twenty-two of this code. No provi-
53 sion of this section may be construed to modify require-
54 ments of article three, chapter twenty-two of this code.
55 Participation in a master land use plan is voluntary.

56 (1) State, local, county or regional development or
57 redevelopment authorities may determine land and
58 infrastructure needs within their jurisdictions through the
59 development of a master land use plan which incorporates
60 post-mining land use needs that include industrial uses,
61 commercial uses, agricultural uses, public facility uses or
62 recreational facility uses.

63 (2) A master land use plan must be reviewed by the
64 office of coalfield community development and approved
65 by the division of environmental protection pursuant to
66 section ten, article three, chapter twenty-two of the code
67 before the master land use plan can be implemented.

68 (3) The required infrastructure component standards
69 needed to accomplish the designated post-mining land
70 uses identified in subdivision one of this subsection shall
71 be developed by the relevant state, local, county or re-
72 gional development or redevelopment authority. These
73 standards must be in place before the respective state,
74 local, county or regional development or redevelopment
75 authority can accept ownership of property donated
76 pursuant to a master land use plan. Acceptance of owner-
77 ship of such property by a state, local, county or regional
78 development or redevelopment authority may not occur
79 unless it is determined that: (a) The property use is com-
80 patible with adjacent land uses; (b) the use satisfies the
81 relevant development or redevelopment authority's
82 anticipated need and market use; (c) the property has in
83 place necessary infrastructure components needed to

84 achieve the anticipated use; (d) the use is supported by all
85 other appropriate public agencies; (e) the property is
86 eligible for bond release in accordance with section
87 twenty-three, article three, chapter twenty-two of this
88 code; and (f) the use is feasible. Required infrastructure
89 component standards require approval of the relevant
90 county commission or commissions before such standards
91 are accepted. County commission approval may be ren-
92 dered only after a reasonable public comment period.

93 (4) The provisions of this subsection shall not take effect
94 until legislative rules are promulgated pursuant to subdi-
95 vision (C), subsection (c), section twenty-three, chapter
96 twenty-two of this code governing bond releases which
97 assure sound future maintenance by the local or regional
98 economic development, redevelopment or planning
99 agencies.

§5B-2A-12. Rulemaking.

1 The office shall propose rules for legislative approval in
2 accordance with article three, chapter twenty-nine-a of
3 this code to establish, implement and enforce the provi-
4 sions of this article, which rules shall include, but not be
5 limited to:

6 (1) The development of standards for establishing the
7 value of property by the office;

8 (2) A process for the development of a coalfield commu-
9 nity development statement when multiple permit applica-
10 tions are applied for by one or more operators in any single
11 county or contiguous area of an adjacent county; and

12 (3) Criteria for the development of a master plan by
13 local, county, regional or redevelopment authorities which
14 coordinates the permitting and reclamation requirements
15 of the division of environmental protection with these
16 authorities.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-10. Reclamation plan requirements.

1 (a) Each reclamation plan submitted as part of a
2 surface mining permit application shall include, in the
3 degree of detail necessary to demonstrate that reclamation
4 required by this article can be accomplished, a statement
5 of:

6 (1) The identification of the lands subject to surface
7 mining over the estimated life of these operations and the
8 size, sequence and timing of the operations for which it is
9 anticipated that individual permits for mining will be
10 sought;

11 (2) The condition of the land to be covered by the permit
12 prior to any mining, including: (A) The uses existing at the
13 time of the application and, if the land has a history of
14 previous mining, the uses which preceded any mining; (B)
15 the capability of the land prior to any mining to support a
16 variety of uses, giving consideration to soil and foundation
17 characteristics, topography and vegetation cover and, if
18 applicable, a soil survey prepared pursuant to subdivision
19 (15), subsection (a), section nine of this article; and (C) the
20 best information available on the productivity of the land
21 prior to mining, including appropriate classification as
22 prime farmlands and the average yield of food, fiber,
23 forage or wood products from the lands obtained under
24 high levels of management;

25 (3) The use which is proposed to be made of the land
26 following reclamation, including a discussion of the utility
27 and capacity of the reclaimed land to support a variety of
28 alternative uses and the relationship of the use to existing
29 land use policies and plans and the comments of any
30 owner of the surface, other state agencies and local
31 governments which would have to initiate, implement,
32 approve or authorize the proposed use of the land follow-

33 ing reclamation. The plan may include a master plan as
34 provided in section nine, article two-a, chapter five-b of
35 this code which includes a post-mining land use consistent
36 with the reclamation and post-mining land use require-
37 ments of this article;

38 (4) A detailed description of how the proposed post-
39 mining land use is to be achieved and the necessary
40 support activities which may be needed to achieve the
41 proposed land use;

42 (5) The engineering techniques proposed to be used in
43 mining and reclamation and a description of the major
44 equipment; a plan for the control of surface water drain-
45 age and of water accumulation; a plan where appropriate,
46 for backfilling, soil stabilization and compacting, grading,
47 revegetation and a plan for soil reconstruction, replace-
48 ment and stabilization pursuant to the performance
49 standards in subdivision (7), subsection (b), section
50 thirteen of this article for those food, forage and forest
51 lands identified therein; and a statement as to how the
52 operator plans to comply with each of the applicable
53 requirements set out in section thirteen or fourteen of this
54 article;

55 (6) A detailed estimated timetable for the accomplish-
56 ment of each major step in the reclamation plan;

57 (7) The consideration which has been given to conduct-
58 ing surface mining operations in a manner consistent with
59 surface owner plans and applicable state and local land
60 use plans and programs;

61 (8) The steps to be taken to comply with applicable air
62 and water quality laws and rules and any applicable
63 health and safety standards;

64 (9) The consideration which has been given to develop-
65 ing the reclamation plan in a manner consistent with local
66 physical environmental and climatological conditions;

67 (10) All lands, interests in lands or options on the
68 interests held by the applicant or pending bids on interests
69 in lands by the applicant, which lands are contiguous to
70 the area to be covered by the permit;

71 (11) A detailed description of the measures to be taken
72 during the surface mining and reclamation process to
73 assure the protection of: (A) The quality of surface and
74 groundwater systems, both on- and off-site, from adverse
75 effects of the surface mining operation; (B) the rights of
76 present users to the water; and (C) the quantity of surface
77 and groundwater systems, both on- and off-site, from
78 adverse effects of the surface mining operation or to
79 provide alternative sources of water where the protection
80 of quantity cannot be assured;

81 (12) The results of tests borings which the applicant has
82 made at the area to be covered by the permit or other
83 equivalent information and data in a form satisfactory to
84 the director, including the location of subsurface water
85 and an analysis of the chemical properties, including acid
86 forming properties of the mineral and overburden:
87 *Provided*, That information which pertains only to the
88 analysis of the chemical and physical properties of the
89 coal, except information regarding the mineral or elemental
90 contents which are potentially toxic in the environ-
91 ment, shall be kept confidential and not made a matter of
92 public record;

93 (13) The consideration which has been given to maxi-
94 mize the utilization and conservation of the solid fuel
95 resource being recovered so that re-affecting the land in the
96 future can be minimized; and

97 (14) Any other requirements as the director may pre-
98 scribe by rule.

99 (b) Any surface mining permit application filed after the
100 effective date of this subsection may contain, in addition
101 to the requirements of subsection (a) of this section, a

102 master land use plan, prepared in accordance with article
103 two-a, chapter five-b of this code, as to the post-mining
104 land use. A reclamation plan approved but not imple-
105 mented or pending approval as of the effective date of this
106 section may be amended to provide for a revised reclama-
107 tion plan consistent with the provisions of this subsection.

108 (c) The reclamation plan shall be available to the public
109 for review except for those portions thereof specifically
110 exempted in subsection (a) of this section.

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

Erny White
.....
Chairman Senate Committee

James Smith
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Carroll Phelps
.....
Clerk of the Senate

Bugan Jr. Bug
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

The within is approved this the 2nd
Day of May, 2001.

Bob Hesse
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 5/1/01

Time [Signature]