WEST VIRGINIA LEGISLATURE
Regular Session, 2001

ENROLLED
Committee Substitute for
SENATE BILL NO. 1203

(By Senator Tomblin, Mr. President)

PASSED April 14, 2001
In Effect 90 days from Passage
ENROLLED
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
offic[ 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.


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

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

3 (2) To establish a procedure for developing and implementing coalfield community development statements as provided in section seven of this article and to administer the procedure so established;

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

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

6 (5) To establish a procedure to develop action reports and annual updates as provided in section ten of this article and to administer the procedure so established;
(6) To determine the need for meetings to be held among
the various interested parties in the communities impacted
by surface mining operations and, when appropriate, to
facilitate the meetings;

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

(8) In conjunction with the division, to maintain and
operate a system to receive and address questions, concerns and complaints relating to surface mining; and

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


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

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

(c) To assist the office in the development of the coalfield community development statement, the operator shall be required to prepare and submit to the office the information set forth in this subsection as follows:
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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
may secure developable land and infrastructure for a
development office or county through the preparation of
a master land use plan for inclusion into a reclamation
plan prepared pursuant to the provisions of section ten,
article three, chapter twenty-two of this code. No provi-
sion of this section may be construed to modify require-
ments of article three, chapter twenty-two of this code.
Participation in a master land use plan is voluntary.

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

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

(3) The required infrastructure component standards
needed to accomplish the designated post-mining land
uses identified in subdivision one of this subsection shall
be developed by the relevant state, local, county or re-
gional development or redevelopment authority. These
standards must be in place before the respective state,
local, county or regional development or redevelopment
authority can accept ownership of property donated
pursuant to a master land use plan. Acceptance of owner-
ship of such property by a state, local, county or regional
development or redevelopment authority may not occur
unless it is determined that: (a) The property use is com-
patible with adjacent land uses; (b) the use satisfies the
relevant development or redevelopment authority's
anticipated need and market use; (c) the property has in
place necessary infrastructure components needed to
achieve the anticipated use; (d) the use is supported by all other appropriate public agencies; (e) the property is eligible for bond release in accordance with section twenty-three, article three, chapter twenty-two of this code; and (f) the use is feasible. Required infrastructure component standards require approval of the relevant county commission or commissions before such standards are accepted. County commission approval may be rendered only after a reasonable public comment period.

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

§5B-2A-12. Rulemaking.

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

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

(2) A process for the development of a coalfield community development statement when multiple permit applications are applied for by one or more operators in any single county or contiguous area of an adjacent county; and

(3) Criteria for the development of a master plan by local, county, regional or redevelopment authorities which coordinates the permitting and reclamation requirements of the division of environmental protection with these authorities.
CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-10. Reclamation plan requirements.

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

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

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

(3) The use which is proposed to be made of the land following reclamation, including a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of the use to existing land use policies and plans and the comments of any owner of the surface, other state agencies and local governments which would have to initiate, implement, approve or authorize the proposed use of the land follow-
(4) A detailed description of how the proposed post-mining land use is to be achieved and the necessary support activities which may be needed to achieve the proposed land use;

(5) The engineering techniques proposed to be used in mining and reclamation and a description of the major equipment; a plan for the control of surface water drainage and of water accumulation; a plan where appropriate, for backfilling, soil stabilization and compacting, grading, revegetation and a plan for soil reconstruction, replacement and stabilization pursuant to the performance standards in subdivision (7), subsection (b), section thirteen of this article for those food, forage and forest lands identified therein; and a statement as to how the operator plans to comply with each of the applicable requirements set out in section thirteen or fourteen of this article;

(6) A detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(7) The consideration which has been given to conducting surface mining operations in a manner consistent with surface owner plans and applicable state and local land use plans and programs;

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

(9) The consideration which has been given to developing the reclamation plan in a manner consistent with local physical environmental and climatological conditions;
(10) All lands, interests in lands or options on the interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

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

(12) The results of tests borings which the applicant has made at the area to be covered by the permit or other equivalent information and data in a form satisfactory to the director, including the location of subsurface water and an analysis of the chemical properties, including acid forming properties of the mineral and overburden: Provided, That information which pertains only to the analysis of the chemical and physical properties of the coal, except information regarding the mineral or elemental contents which are potentially toxic in the environment, shall be kept confidential and not made a matter of public record;

(13) The consideration which has been given to maximize the utilization and conservation of the solid fuel resource being recovered so that reaffecting the land in the future can be minimized; and

(14) Any other requirements as the director may prescribe by rule.

(b) Any surface mining permit application filed after the effective date of this subsection may contain, in addition to the requirements of subsection (a) of this section, a
master land use plan, prepared in accordance with article two-a, chapter five-b of this code, as to the post-mining land use. A reclamation plan approved but not implemented or pending approval as of the effective date of this section may be amended to provide for a revised reclamation plan consistent with the provisions of this subsection.

(c) The reclamation plan shall be available to the public for review except for those portions thereof specifically exempted in subsection (a) of this section.
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 ninety days 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 2nd Day of May, 2001.

Governor