WEST VIRGINIA LEGISLATURE  
FIRST REGULAR SESSION, 2005  

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ENROLLED  

COMMITTEE SUBSTITUTE  
FOR  
House Bill No. 3033  

(By Mr. Speaker, Mr. Kiss, and Delegates Staton, Michael and Mahan)  

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March 31  
Passed April 4, 2005  

In Effect from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 3033

(By Mr. Speaker, Mr. Kiss, and Delegates Staton, Michael and Mahan)

March 31

[Passed April 5, 2005; in effect from passage.]

AN ACT to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating generally to the special reclamation tax; extending the imposition of a temporary tax on clean coal mined for deposit into the special reclamation fund for an additional period; and providing duties for the Secretary of the Department of Environmental Protection in managing the special reclamation program.

Be it enacted by the Legislature of West Virginia:

That §22-3-11 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

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 combina-
tion 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 munici-
pality of the State of West Virginia or other states; or certifi-
cates 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: (A) 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 (B) 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 autho-
rized 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 maintain-
ing 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) (1) 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:

(A) For a period not to exceed fifty-seven months, seven cents per ton of clean coal mined; and (B) 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 established in this section.

(2) In managing the Special Reclamation Program, the Secretary shall:

(A) Pursue cost effective alternative water treatment strategies; and

(B) Conduct formal actuarial studies every two years and conduct informal reviews annually on the Special Reclamation Fund.

(3) Prior to the thirty-first day of December, two thousand five, the Secretary shall:
(A) Determine the feasibility of allowing full cost bonding in lieu of a portion of the per ton coal tax. In making this determination, the Secretary shall consider the availability and affordability of full cost bonding to operators and the overall fiscal stability of the Special Reclamation Program;

(B) Determine the feasibility of creating a water quality trust fund to provide long-term funding for water treatment from forfeited sites and to reduce a portion of the per ton coal tax. In making this determination, the Secretary shall consider the availability and fiscal stability of any funding for a water quality trust fund and any impact it may have on the overall fiscal stability of the Special Reclamation Program; and

(C) Determine the feasibility of establishing a bonding requirement for water treatment activities in lieu of a portion of the per ton coal tax. In making this determination, the Secretary shall consider the availability and affordability of bonding to operators and the overall fiscal stability of the Special Reclamation Program.

(4) If the Secretary determines that full cost bonding, water treatment bonding, the establishment of a water quality trust fund, or the use of other funding mechanisms, or a combination of any or all of these financial assurance mechanisms, reasonably assure that sufficient funds will be available to complete the reclamation of a forfeited site and that the Special Reclamation Fund will remain fiscally stable, the Secretary is authorized to propose legislative rules in accordance with article three, chapter twenty-nine-a of this code to implement a full cost bonding program, a water reclamation bonding program, a water quality trust fund program, or other funding mechanisms, or a combination thereof, in lieu of the per ton coal tax or a portion thereof.

(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 severance tax imposed by article twelve-b, chapter eleven of this code is collected: Provided, That under no circumstance 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 determinations 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

\[\text{Signature}\]
Chairman Senate Committee

\[\text{Signature}\]
Chairman House Committee

Originating in the House.

In effect from passage.

\[\text{Signature}\]
Clerk of the Senate

\[\text{Signature}\]
Clerk of the House of Delegates

\[\text{Signature}\]
President of the Senate

\[\text{Signature}\]
Speaker of the House of Delegates

The within is approved this the 18th day of April, 2004.

\[\text{Signature}\]
Governor