ENROLLED

SENATE BILL NO. 748

(By Senator Kessler, et al.)

PASSED April 9, 2005

In Effect 90 days from Passage
AN ACT to amend and reenact §22-11-7a of the Code of West Virginia, 1931, as amended, relating to mitigation; deleting the mitigation requirement for isolated waters; and requiring the Director to provide credit for mitigation required as a component of the permit issuable by the U. S. Army Corps of Engineers pursuant to 33 U. S. C. §1344 to the extent that it satisfies state requirements.

Be it enacted by the Legislature of West Virginia:

That §22-11-7a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7a. Certification agreements; required provisions; effective date.

1 (a) Any applicant for the water quality certification that seeks certification of activities covered by the United
States army corps of engineers permits issued in accordance with 33 U. S. C. §1344 and 33 C. F. R. Parts 323 or 330 for use at or in conjunction with a surface coal mining operation as defined in section three, article three of this chapter, certification may be issued subject to the following conditions:

(1) If the applicant's surface coal mining operation will not impact waters of the state designated as national resource waters and streams where trout naturally reproduce and will not impact wetlands of the state in a manner inconsistent with all applicable state or federal standards as the case may be, as required by the federal Clean Water Act, and if the watershed above the toe of the farthest downstream permanent structure authorized pursuant to the United States army corps of engineers permits issued in accordance with 33 U. S. C. §1344 and 33 C. F. R. Parts 323 or 330 is less than two hundred fifty acres, then the director may issue a water quality certification pursuant to the requirements of this section. If the watershed above the toe of the farthest downstream permanent structure impacted is equal to or greater than two hundred fifty acres, the director shall require that mitigation be undertaken. Additionally, the director may require mitigation for temporary impacts to waters of the state as specified in subdivision (2) of this subsection.

(2) If the watershed above the toe of the farthest downstream permanent structure authorized pursuant to the United States army corps of engineers permits issued in accordance with 33 U. S. C. §1344 and 33 C. F. R. Parts 323 or 330 is greater than or equal to two hundred fifty acres and all other necessary requirements are met consistent with this section, the director shall further condition a water quality certification on a requirement that the applicant mitigate the expected water quality impacts under the following conditions:

(A) The water quality certification may require mitigation at a ratio appropriate to the type of waters impacted,
consistent with state or federal standards as required by the federal Clean Water Act, for the types and locations of waters impacted;

(B) The Director may accept mitigation on the permitted area, mitigation off the permitted area, mitigation banking of waters of the state, or any combination thereof, or any other mitigation measure acceptable to the Director; and

(C) The Director shall provide credit for any mitigation that is a required component of the permit issued by the United States Army Corps of Engineers pursuant to 33 U. S. C. §1344 to the extent that it satisfies required mitigation pursuant to this section.

(D) Upon completion of the work required by an agreement to conduct operations authorized by this subsection the surface coal mining operation shall obtain a certification from a registered professional engineer that all mitigation work specified in the agreement has been completed in accordance with the conditions of the water quality certification. The director shall promptly review the certification and provide to the surface coal mining operation with notice that all mitigation work has been successfully completed, or that further mitigation work is necessary to meet the conditions imposed by the water quality certification. The mitigation amount may not exceed two hundred thousand dollars per acre of stream disturbed above the toe of the farthest downstream permanent structure. Those moneys shall be deposited in the stream restoration fund under the jurisdiction of the Division of Environmental Protection and any expenditures from this fund after the thirtieth day of June, one thousand nine hundred ninety-eight, shall not be authorized from collections but shall only be authorized by appropriation by the Legislature. Additionally, the expenditures are only authorized in those counties where the activity leading to the mitigation occurred or in those counties adjacent to the counties where the activity leading to the mitigation occurred. The Director shall by
the thirty-first day of December of each year provide a report to the Joint Committee on Government and Finance on receipts and expenditures from the stream restoration fund, the number of acreage reclaimed by the Division through the use of these funds and the effectiveness of achieving stream restoration through the payment of the mitigation amounts into the fund in lieu of reclamation by the certificate holder.

(3) The Director shall confer with representatives of the surface coal mining industry and representatives of environmental organizations with an interest in water quality in developing a manual of approval options for mitigation on permitted areas, mitigation off permitted areas and mitigation involving banking of waters of the state.

(4) The proposed surface coal mining operation shall comply with all applicable state and federal laws, rules and regulations.

(5) The Director shall propose rules for legislative approval in accordance with article three, chapter twenty-nine-a of this code, for the purpose of implementing the provisions of this section which rules shall include, but not be limited to, the following:

(A) Establishing all necessary operational and performance requirements for an operator undertaking activities covered by this section;

(B) Modifying the provisions of this section, when necessary and appropriate to bring the provisions of this section into compliance with state or federal law or regulation; and

(C) Establishing the specific operational requirements for mining operations consistent with this section appropriate to protect the waters of this state during and following mining operations.
(b) The Joint Committee on Government and Finance may undertake or facilitate a study of the impact of mountaintop mining and valley fills upon the state of West Virginia.

(1) To facilitate the study, the Joint Committee on Government and Finance is further authorized to coordinate with and seek funding from appropriate federal agencies to facilitate the study including, but not limited to: The Environmental Protection Agency, Army Corps of Engineers, Office of Surface Mining and the Fish and Wildlife Service.

(2) In order to facilitate the research, the Joint Committee on Government and Finance shall appoint a council to coordinate and direct the research. The composition of the council shall be determined by the Joint Committee, but shall include representatives from the various interested parties as determined solely by the Joint Committee.
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...................... this the................ Day of...................... 2005.

Governor