SENATE BILL NO. 461

(By Senator Kessler, et al.)

PASSED March 11, 2006

In Effect 90 days from Passage
Senate Bill No. 461

(By Senators Kessler, Dempsey, Fanning, Foster, Hunter, Jenkins, Minard, Oliverio, White, Barnes, Caruth, Deem, Lanham, McKenzie and Weeks)

[Passed March 11, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §22-3-24 of the Code of West Virginia, 1931, as amended, relating to underground water supply replacement; altering requirements for mine operators for replacement of water supply; and requiring prior department approval before discontinuing water supply replacement.

Be it enacted by the Legislature of West Virginia:

That §22-3-24 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.

§22-3-24. Water rights and replacement; waiver of replacement.

1 (a) Nothing in this article affects in any way the rights of
2 any person to enforce or protect, under applicable law, the
person's interest in water resources affected by a surface mining operation.

(b) Any operator shall replace the water supply of an owner of interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial or other legitimate use from an underground or surface source where the supply has been affected by contamination, diminution or interruption proximately caused by the surface mining operation, unless waived by the owner.

(c) There is a rebuttable presumption that a mining operation caused damage to an owner's underground water supply if the inspector determines the following: (1) contamination, diminution or damage to an owner's underground water supply exists; and (2) a preblast survey was performed, consistent with the provisions of section thirteen-a of this article, on the owner's property, including the underground water supply, that indicated that contamination, diminution or damage to the underground water supply did not exist prior to the mining conducted at the mining operation.

(d) The operator conducting the mining operation shall:
(1) Provide an emergency drinking water supply within twenty-four hours; (2) provide temporary water supply within seventy-two hours; (3) within thirty days begin activities to establish a permanent water supply or submit a proposal to the secretary outlining the measures and timetables to be utilized in establishing a permanent supply. The total time for providing a permanent water supply may not exceed two years. If the operator demonstrates that providing a permanent replacement water supply can not be completed within two years, the secretary may extend the time frame on case-by-case basis; and
(4) pay all reasonable costs incurred by the owner in securing a water supply.
(e) An owner aggrieved under the provisions of subsections (b), (c) or (d) of this section may seek relief in court or pursuant to the provisions of section five, article three-a of this chapter.

(f) The director shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code to implement the requirements of this section.

(g) The provisions of subsection (c) of this section shall not apply to the following: (1) Underground coal mining operations; (2) the surface operations and surface impacts incident to an underground coal mine; and (3) the extraction of minerals by underground mining methods or the surface impacts of the underground mining methods.

(h) Notwithstanding the denial of the operator of responsibility for the damage of the owner's water supply or the status of any appeal on determination of liability for the damage to the owner's water supply, the operator may not discontinue providing the required water service until authorized by the division.

Notwithstanding the provisions of subsection (g) of this section, on and after the effective date of the amendment and reenactment of this section during the regular legislative session of two thousand six, the provisions of this section shall apply to all mining operations for water replacement claims resulting from mining operations regardless of when the claim arose.
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 24th Day of April, 2006.

Governor