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WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

COMMITTEE SUBSTITUTE
FOR

ENROLLED

Senate Bill No. 751

(SENATOR McCABE, *original sponsor*)

[Passed March 6, 2008; to take effect July 1, 2008.]

SB 751

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WEST VIRGINIA
SECRETARY OF STATE

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Senate Bill No. 751

(SENATOR MCCABE, *original sponsor*)

[Passed March 6, 2008; to take effect July 1, 2008.]

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; continuing the Special Reclamation Fund; establishing the Special Reclamation Water Trust Fund; continuing and reimposing a tax on clean coal mined for deposit into both funds; providing for the investment of moneys thereby deposited; requiring the secretary to look at alternative programs; and authorizing secretary to promulgate legislative rules implementing the alternative

programs.

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 funds; prohibited acts; period of bond liability.

1 (a) After a surface mining permit application has been
2 approved pursuant to this article, but before a permit
3 has been issued, each operator shall furnish a penal
4 bond, on a form to be prescribed and furnished by the
5 secretary, payable to the State of West Virginia and
6 conditioned upon the operator faithfully performing all
7 of the requirements of this article and of the permit.
8 The penal amount of the bond shall be not less than one
9 thousand dollars nor more than five thousand dollars
10 for each acre or fraction of an acre: *Provided*, That the
11 minimum amount of bond furnished for any type of
12 reclamation bonding shall be ten thousand dollars. The
13 bond shall cover: (1) The entire permit area; or (2) that
14 increment of land within the permit area upon which
15 the operator will initiate and conduct surface mining
16 and reclamation operations within the initial term of
17 the permit. If the operator chooses to use incremental
18 bonding, as succeeding increments of surface mining
19 and reclamation operations are to be initiated and
20 conducted within the permit area, the operator shall file
21 with the secretary an additional bond or bonds to cover
22 the increments in accordance with this section:
23 *Provided, however*, That once the operator has chosen

24 to proceed with bonding either the entire permit area or
25 with incremental bonding, the operator shall continue
26 bonding in that manner for the term of the permit.

27 (b) The period of liability for bond coverage begins
28 with issuance of a permit and continues for the full
29 term of the permit plus any additional period necessary
30 to achieve compliance with the requirements in the
31 reclamation plan of the permit.

32 (c)(1) The form of the bond shall be approved by the
33 secretary and may include, at the option of the
34 operator, surety bonding, collateral bonding (including
35 cash and securities), establishment of an escrow
36 account, self-bonding or a combination of these
37 methods. If collateral bonding is used, the operator
38 may elect to deposit cash or collateral securities or
39 certificates as follows: Bonds of the United States or its
40 possessions of the Federal Land Bank or of the
41 Homeowners' Loan Corporation; full faith and credit
42 general obligation bonds of the State of West Virginia
43 or other states and of any county, district or
44 municipality of the State of West Virginia or other
45 states; or certificates of deposit in a bank in this state,
46 which certificates shall be in favor of the department.
47 The cash deposit or market value of the securities or
48 certificates shall be equal to or greater than the penal
49 sum of the bond. The secretary shall, upon receipt of
50 any deposit of cash, securities or certificates, promptly
51 place the same with the Treasurer of the State of West
52 Virginia whose duty it is to receive and hold the deposit
53 in the name of the state in trust for the purpose for
54 which the deposit is made when the permit is issued.
55 The operator making the deposit is entitled, from time
56 to time, to receive from the State Treasurer, upon the

57 written approval of the secretary, the whole or any
58 portion of any cash, securities or certificates so
59 deposited, upon depositing with him or her in lieu
60 thereof cash or other securities or certificates of the
61 classes specified in this subsection having value equal
62 to or greater than the sum of the bond.

63 (2) The secretary may approve an alternative bonding
64 system if it will: (A) Reasonably assure that sufficient
65 funds will be available to complete the reclamation,
66 restoration and abatement provisions for all permit
67 areas which may be in default at any time; and (B)
68 provide a substantial economic incentive for the
69 permittee to comply with all reclamation provisions.

70 (d) The secretary may accept the bond of the
71 applicant itself without separate surety when the
72 applicant demonstrates to the satisfaction of the
73 secretary the existence of a suitable agent to receive
74 service of process and a history of financial solvency
75 and continuous operation sufficient for authorization to
76 self-insure.

77 (e) It is unlawful for the owner of surface or mineral
78 rights to interfere with the present operator in the
79 discharge of the operator's obligations to the state for
80 the reclamation of lands disturbed by the operator.

81 (f) All bond releases shall be accomplished in
82 accordance with the provisions of section twenty-three
83 of this article.

84 (g) The Special Reclamation Fund previously created
85 is continued. The Special Reclamation Water Trust
86 Fund is created within the State Treasury into and from

87 which moneys shall be paid for the purpose of assuring
88 a reliable source of capital to reclaim and restore water
89 treatment systems on forfeited sites. The moneys
90 accrued in both funds, any interest earned thereon and
91 yield from investments by the State Treasurer or West
92 Virginia Investment Management Board are reserved
93 solely and exclusively for the purposes set forth in this
94 section and section seventeen, article one of this
95 chapter. The funds shall be administered by the
96 secretary who is authorized to expend the moneys in
97 both funds for the reclamation and rehabilitation of
98 lands which were subjected to permitted surface mining
99 operations and abandoned after the third day of
100 August, one thousand nine hundred seventy-seven,
101 where the amount of the bond posted and forfeited on
102 the land is less than the actual cost of reclamation, and
103 where the land is not eligible for abandoned mine land
104 reclamation funds under article two of this chapter.
105 The secretary shall develop a long-range planning
106 process for selection and prioritization of sites to be
107 reclaimed so as to avoid inordinate short-term
108 obligations of the assets in both funds of such
109 magnitude that the solvency of either is jeopardized.
110 The secretary may use both funds for the purpose of
111 designing, constructing and maintaining water
112 treatment systems when they are required for a
113 complete reclamation of the affected lands described in
114 this subsection. The secretary may also expend an
115 amount not to exceed ten percent of the total annual
116 assets in both funds to implement and administer the
117 provisions of this article and, as they apply to the
118 Surface Mine Board, articles one and four, chapter
119 twenty-two-b of this code.

120 (h)(1) For tax periods commencing on and after the

121 first day of July, two thousand eight, every person
122 conducting coal surface mining shall remit a special
123 reclamation tax as follows: (A) For the initial period of
124 twelve months, ending the thirtieth day of June, two
125 thousand nine, seven and four-tenths cents per ton of
126 clean coal mined, the proceeds of which shall be
127 allocated by the secretary for deposit in the Special
128 Reclamation Fund and the Special Reclamation Water
129 Trust Fund; (B) an additional seven cents per ton of
130 clean coal mined, the proceeds of which shall be
131 deposited in the Special Reclamation Fund. The tax
132 shall be levied upon each ton of clean coal severed or
133 clean coal obtained from refuse pile and slurry pond
134 recovery or clean coal from other mining methods
135 extracting a combination of coal and waste material as
136 part of a fuel supply. The additional seven-cent tax
137 shall be reviewed and, if necessary, adjusted annually
138 by the Legislature upon recommendation of the council
139 pursuant to the provisions of section seventeen, article
140 one of this chapter: *Provided*, That the tax may not be
141 reduced until the Special Reclamation Fund and
142 Special Reclamation Water Trust Fund have sufficient
143 moneys to meet the reclamation responsibilities of the
144 state established in this section.

145 (2) In managing the Special Reclamation Program, the
146 secretary shall: (A) Pursue cost-effective alternative
147 water treatment strategies; and (B) conduct formal
148 actuarial studies every two years and conduct informal
149 reviews annually on the Special Reclamation Fund and
150 Special Reclamation Water Trust Fund.

151 (3) Prior to the thirty-first day of December, two
152 thousand eight, the secretary shall:

153 (A) Determine the feasibility of creating an alternate
154 program, on a voluntary basis, for financially sound
155 operators by which those operators pay an increased
156 tax into the Special Reclamation Fund in exchange for
157 a maximum per-acre bond that is less than the
158 maximum established in subsection (a) of this section;

159 (B) Determine the feasibility of creating an
160 incremental bonding program by which operators can
161 post a reclamation bond for those areas actually
162 disturbed within a permit area, but for less than all of
163 the proposed disturbance and obtain incremental
164 release of portions of that bond as reclamation
165 advances so that the released bond can be applied to
166 approved future disturbance; and

167 (C) Determine the feasibility for sites requiring water
168 reclamation by creating a separate water reclamation
169 security account or bond for the costs so that the
170 existing reclamation bond in place may be released to
171 the extent it exceeds the costs of water reclamation.

172 (4) If the secretary determines that the alternative
173 program, the incremental bonding program or the
174 water reclamation account or bonding programs
175 reasonably assure that sufficient funds will be available
176 to complete the reclamation of a forfeited site and that
177 the Special Reclamation Fund will remain fiscally
178 stable, the secretary is authorized to propose legislative
179 rules in accordance with article three, chapter twenty-
180 nine-a of this code to implement an alternate program,
181 a water reclamation account or bonding program or
182 other funding mechanisms or a combination thereof.

183 (i) This special reclamation tax shall be collected by

184 the State Tax Commissioner in the same manner, at the
185 same time and upon the same tonnage as the minimum
186 severance tax imposed by article twelve-b, chapter
187 eleven of this code is collected: *Provided*, That under no
188 circumstance shall the special reclamation tax be
189 construed to be an increase in either the minimum
190 severance tax imposed by said article or the severance
191 tax imposed by article thirteen of said chapter.

192 (j) Every person liable for payment of the special
193 reclamation tax shall pay the amount due without
194 notice or demand for payment.

195 (k) The Tax Commissioner shall provide to the
196 secretary a quarterly listing of all persons known to be
197 delinquent in payment of the special reclamation tax.
198 The secretary may take the delinquencies into account
199 in making determinations on the issuance, renewal or
200 revision of any permit.

201 (l) The Tax Commissioner shall deposit the moneys
202 collected with the Treasurer of the State of West
203 Virginia to the credit of the Special Reclamation Fund
204 and Special Reclamation Water Trust Fund.

205 (m) At the beginning of each quarter, the secretary
206 shall advise the State Tax Commissioner and the
207 Governor of the assets, excluding payments,
208 expenditures and liabilities, in both funds.

209 (n) To the extent that this section modifies any
210 powers, duties, functions and responsibilities of the
211 department that may require approval of one or more
212 federal agencies or officials in order to avoid disruption
213 of the federal-state relationship involved in the

214 implementation of the Federal Surface Mining Control
215 and Reclamation Act, 30 U. S. C. §1270 by the state, the
216 modifications will become effective upon the approval
217 of the modifications by the appropriate federal agency
218 or official.

Enr. Com. Sub. for S. B. No. 751] 10

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.

To take effect July 1, 2008.


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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this
the 27th Day of March, 2008.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAR 18 2008

Time 3:15pm