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.]
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
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.

(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 of an acre: 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 combination 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
municipality of the State of West Virginia or other
states; or certificates of deposit in a bank in this state,
which certificates shall be in favor of the department.
The cash deposit or market value of the 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 deposit
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 specified in this subsection 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 Special Reclamation Water Trust Fund is created within the State Treasury into and from
which moneys shall be paid for the purpose of assuring
a reliable source of capital to reclaim and restore water
treatment systems on forfeited sites. The moneys
accrued in both funds, any interest earned thereon and
yield from investments by the State Treasurer or West
Virginia Investment Management Board are reserved
solely and exclusively for the purposes set forth in this
section and section seventeen, article one of this
chapter. The funds shall be administered by the
secretary who is authorized to expend the moneys in
both funds 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 both funds of such
magnitude that the solvency of either is jeopardized.
The secretary may use both funds for the purpose of
designing, constructing and maintaining 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 both funds 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) For tax periods commencing on and after the
first day of July, two thousand eight, every person conducting coal surface mining shall remit a special reclamation tax as follows: (A) For the initial period of twelve months, ending the thirtieth day of June, two thousand nine, seven and four-tenths cents per ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the Special Reclamation Fund and the Special Reclamation Water Trust Fund; (B) an additional seven cents per ton of clean coal mined, the proceeds of which shall be deposited in the Special Reclamation Fund. 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. 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 and Special Reclamation Water Trust Fund have 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 and Special Reclamation Water Trust Fund.

(3) Prior to the thirty-first day of December, two thousand eight, the secretary shall:
(A) Determine the feasibility of creating an alternate program, on a voluntary basis, for financially sound operators by which those operators pay an increased tax into the Special Reclamation Fund in exchange for a maximum per-acre bond that is less than the maximum established in subsection (a) of this section;

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

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

(4) If the secretary determines that the alternative program, the incremental bonding program or the water reclamation account or bonding programs 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 an alternate program, a water reclamation account or bonding program or other funding mechanisms or a combination 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 moneys  
collected with the Treasurer of the State of West  
Virginia to the credit of the Special Reclamation Fund  
and Special Reclamation Water Trust Fund.

(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 both funds.

(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.

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.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor
PRESENTED TO THE GOVERNOR

MAR 1 9 2008

Time 3:15 pm