WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
FIRST EXTRAORDINARY SESSION, 2009

ENROLLED

Senate Bill No. 1011

(By Senators Tomblin (Mr. President) and Caruth, by Request of the Executive)

[Passed June 2, 2009; in effect from passage.]
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(BY SENATORS TOMBLIN (MR. PRESIDENT) AND CARUTH, BY REQUEST OF THE EXECUTIVE)

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AN ACT to amend and reenact §5B-2A-3, §5B-2A-5, §5B-2A-6 and §5B-2A-9 of the Code of West Virginia, 1931, as amended; and to amend and reenact §22-3-10 of said code, all relating to ensuring the post-mine development of reclaimed surface mine property; defining certain terms; requiring certain counties to develop master land use plans for post-mine development; clarifying procedures relating to master land use plans and community impact statements; enhancing certain powers and responsibilities of the Office of Coalfield Community Development and the Department of Environmental Protection with respect to master land use plans; requiring surface mine reclamation plans to comport with approved master land use plans; and authorizing surface mine reclamation plans to contain alternative, noncomporting post-mining land uses under certain circumstances.
Be it enacted by the Legislature of West Virginia:

That §5B-2A-3, §5B-2A-5, §5B-2A-6 and §5B-2A-9 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §22-3-10 of said code be amended and reenacted, all to read as follows:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.

§5B-2A-3. Definitions.

1 (a) For the purpose of this article, the following terms have the meanings ascribed to them:

2 (1) “Department” means the Department of Environmental Protection established in article one, chapter twenty-two of this code;

3 (2) “Office” means the Office of Coalfield Community Development;

4 (3) “Operator” means the definition in section three, article three, chapter twenty-two of this code; and

5 (4) “Renewable and alternative energy” means energy produced or generated from natural or replenishable resources other than traditional fossil fuels or nuclear resources and includes, without limitation, solar energy, wind power, hydropower, geothermal energy, biomass energy, biologically derived fuels, energy produced with advanced coal technologies, coalbed methane, fuel produced by a coal gasification or liquefaction facility, synthetic gas, waste coal, tire-derived fuel, pumped storage hydroelectric power or similar energy sources.

6 (b) Unless used in a context that clearly requires a different meaning or as otherwise defined herein, terms used in this article shall have the definitions set forth in this section.

1 The office has and may exercise the following duties, powers and responsibilities:

2 (1) To establish a procedure for developing a community impact statement as provided in section six of this article and to administer the procedure so established;

3 (2) To establish a procedure for determining the assets that could be developed in and maintained by the community to foster its long-term viability as provided in section eight of this article and to administer the procedure so established;

4 (3) To establish a procedure for determining the land and infrastructure needs in the general area of the surface mining operations as provided in section nine of this article and to administer the procedure so established;

5 (4) To establish a procedure to develop action reports and annual updates as provided in section ten of this article and to administer the procedure so established;

6 (5) To determine the need for meetings to be held among the various interested parties in the communities impacted by surface mining operations and, when appropriate, to facilitate the meetings;

7 (6) To establish a procedure to assist property owners in the sale of their property as provided in section eleven of this article and to administer the procedure so established;

8 (7) In conjunction with the department, to maintain and operate a system to receive and address questions, concerns and complaints relating to surface mining; and

9 (8) On its own initiative or at the request of a community in close proximity to a mining operation, or a mining operation, offer assistance to facilitate the development of economic or community assets. Such assistance shall
include the preparation of a master land use plan pursuant to the provisions of section nine of this article.


(a)(1) The operator shall develop a community impact statement, as described in this section, which shall be submitted to the office within sixty days of the filing of a surface mining application pursuant to the provisions of article three, chapter twenty-two of this code. Failure to submit a community impact statement to the office shall be considered a violation under the provisions of section seventeen of said article; and

(2) The operator shall provide copies of the community impact statement to the department's Office of Mining Reclamation and Office of Explosives and Blasting and to the county commissions, county clerks' offices and local, county or regional development or redevelopment authorities of the areas to be affected by the surface mining operations.

(b) The community impact statement, where practicable, shall not be a highly technical or legalistic document, but shall be written in a clear and concise manner understandable to all citizens. The community impact statement shall include the following:

(1) The amount and location of land to be mined or used in the actual mining operations;

(2) The expected duration of the mining operations in each area of the community;

(3) The extent of anticipated mining-related property acquisitions, to the extent that such acquisitions are known or knowable;
(4) The intentions of the surface and mineral owners relative to the acquired property, to the extent that such intentions are known or knowable;

(5) A statement of the post-mining land use for all land within the permit boundary;

(6) The intended blasting plan and the expected time and duration it will affect each community;

(7) Information concerning the extent and nature of valley fills and the watersheds to be affected;

(8) Economic information, such as the number of jobs created and annual coal production resulting from the surface mining operation, the anticipated life of the mining operation and such other information as may be deemed appropriate; and

(9) An acknowledgment of the recommendations of any approved master land use plan that pertains to the land proposed to be mined, including an acknowledgment of the infrastructure components needed to accomplish the designated post-mine land use required by the plan.

(c) Where the operator makes any significant revision to the permit application under section eighteen, article three, chapter twenty-two of this code, which revision substantially affects any of the information provided in subsection (b) of this section, the operator shall revise the affected provisions of its community impact statement and shall submit such revisions as set forth in subsection (a) of this section.

(d) Within thirty days of receipt of a community impact statement pursuant to subdivision (2), subsection (a) of this section or a revised community impact statement pursuant to subsection (c) of this section, the local, county or regional development or redevelopment authorities of the areas to be affected by the surface mining operations
61 shall provide a written acknowledgment of the receipt of
62 this community impact statement or revised community
63 impact statement to the department's Division of Mining
64 Reclamation, to the county commission or county commis-
65 sions and to the office.
66 (e) The provisions of this section shall apply as follows:
67 (1) To all surface mining permits granted after June 11,
68 1999; and
69 (2) At the first renewal date of all previously issued
70 permits: Provided, That the permittee shall be afforded
71 ninety days from said date to comply with the provisions
72 of this section.


1 (a) The office shall determine the land and infrastructure
2 needs in the general area of the surface mining operations.
3 (b) For the purposes of this section, the term "general
4 area" shall mean the county or counties in which the
5 mining operations are being conducted or any adjacent
6 county.
7 (c) To assist the office the operator shall be required to
8 prepare and submit to the office the information set forth
9 in this subsection as follows:
10 (1) A map of the area for which a permit under article
11 three, chapter twenty-two of this code is being sought or
12 has been obtained;
13 (2) The names of the surface and mineral owners of the
14 property to be mined pursuant to the permit; and
15 (3) A statement of the post-mining land use for all land
16 which may be affected by the mining operations.
(d) In making a determination of the land and infrastructure needs in the general area of the mining operations, the office shall consider at least the following:

(1) The availability of developable land in the general area;

(2) The needs of the general area for developable land;

(3) The availability of infrastructure, including, but not limited to, access roads, water service, wastewater service and other utilities;

(4) The amount of land to be mined and the amount of valley to be filled;

(5) The amount, nature and cost to develop and maintain the community assets identified in section eight of this article; and

(6) The availability of federal, state and local grants and low-interest loans to finance all or a portion of the acquisition and construction of the identified land and infrastructure needs of the general area.

(e) In making a determination of the land and infrastructure needs in the general area of the surface mining operations, the office shall give significant weight to developable land on or near existing or planned multilane highways.

(f) The office may secure developable land and infrastructure for a development office or county through the preparation of a master land use plan for inclusion into a reclamation plan prepared pursuant to the provisions of section ten, article three, chapter twenty-two of this code. No provision of this section may be construed to modify requirements of article three of said chapter.

(1) The county commission or other governing body for each county in which there are surface mining operations
that are subject to this article shall determine land and infrastructure needs within their jurisdictions through the development of a master land use plan which incorporates post-mining land use needs, including, but not limited to, renewable and alternative energy uses, residential uses, highway uses, industrial uses, commercial uses, agricultural uses, public facility uses or recreational facility uses.

A county commission or other governing body of a county may designate a local, county or regional development or redevelopment authority to assist in the preparation of a master land use plan. A county commission or other governing body of a county may adopt a master land use plan developed after July 1, 2009, only after a reasonable public comment period;

(2) Upon the request of a county or designated development or redevelopment authority, the office shall assist the county or development or redevelopment authority with the development of a master land use plan;

(3)(A) The Department of Environmental Protection and the Office of Coalfield Community Development shall review master land use plans existing as of July 1, 2009. If the office determines that a master land use plan complies with the requirements of this article and the rules promulgated pursuant to this article, the office shall approve the plan on or before July 1, 2010;

(B) Master land use plans developed after July 1, 2009, shall be submitted to the department and the office for review. The office shall determine whether to approve a master land use plan submitted pursuant to this subdivision within three months of submission. The office shall approve the plan if it complies with the requirements of this article and the rules promulgated pursuant to this article;

(C) The office shall review a master land use plan approved under this section every three years. No later
than six months before the review of a master land use plan, the county or designated development or redevelopment authority shall submit an updated master land use plan to the department and the office for review. The county may submit its updated master land use plan only after a reasonable public comment period. The office shall approve the master land use plan if the updated plan complies with the requirements of this article and the rules promulgated pursuant to this article;

(D) If the office does not approve a master land use plan, the county or designated development or redevelopment authority shall submit a supplemental master land use plan to the office for approval;

(4) The required infrastructure component standards needed to accomplish the designated post-mining land uses identified in a master land use plan shall be developed by the county or its designated development or redevelopment authority. These standards must be in place before the respective county or development or redevelopment authority can accept ownership of property donated pursuant to a master land use plan. Acceptance of ownership of such property by a county or development or redevelopment authority may not occur unless it is determined that: (i) The property use is compatible with adjacent land uses; (ii) the use satisfies the relevant county or development or redevelopment authority's anticipated need and market use; (iii) the property has in place necessary infrastructure components needed to achieve the anticipated use; (iv) the use is supported by all other appropriate public agencies; (v) the property is eligible for bond release in accordance with section twenty-three, article three, chapter twenty-two of this code; and (vi) the use is feasible. Required infrastructure component standards require approval of the relevant county commission, commissions or other county governing body before such standards are accepted. County commission or other
county governing body approval may be rendered only after a reasonable public comment period;

(5) The provisions of this subsection shall not take effect until legislative rules are promulgated pursuant to paragraph (C), subdivision (1), subsection (c), section twenty-three, article three, chapter twenty-two of this code governing bond releases which assure sound future maintenance by the local or regional economic development, redevelopment or planning agencies.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-10. Reclamation plan requirements.

(a) Each reclamation plan submitted as part of a surface mining permit application shall include, in the degree of detail necessary to demonstrate that reclamation required by this article can be accomplished, a statement of:

(1) The identification of the lands subject to surface mining over the estimated life of these operations and the size, sequence and timing of the operations for which it is anticipated that individual permits for mining will be sought;

(2) The condition of the land to be covered by the permit prior to any mining, including: (A) The uses existing at the time of the application and, if the land has a history of previous mining, the uses which preceded any mining; (B) the capability of the land prior to any mining to support a variety of uses, giving consideration to soil and foundation characteristics, topography and vegetation cover and, if applicable, a soil survey prepared pursuant to subdivision (15), subsection (a), section nine of this article; and (C) the best information available on the productivity of the land prior to mining, including appropriate classification as
prime farmlands and the average yield of food, fiber,
forage or wood products from the lands obtained under
high levels of management;

(3) The use which is proposed to be made of the land
following reclamation, including a discussion of the utility
and capacity of the reclaimed land to support a variety of
alternative uses, including, but not limited to, renewable
and alternative energy uses, residential uses, highway
uses, industrial uses, commercial uses, agricultural uses,
public facility uses or recreational facility uses, and the
relationship of the use to existing land use policies and
plans and the comments of any owner of the surface, other
state agencies and local governments which would have to
initiate, implement, approve or authorize the proposed use
of the land following reclamation;

(A) The post-mining land use proposed in any reclama-
tion plan for lands proposed to be mined by surface
mining methods shall comport with the land use that is
specified in the approved master land use plan for the area
as provided in section nine, article two-a, chapter five-b of
this code: Provided, That the secretary may approve an
alternative post-mining land use where the applicant
demonstrates that:

(i) The proposed post-mining land use is a higher and
better use than the land use specified in the approved
master land use plan;

(ii) Site-specific conditions make attainment of a post-
mining land use which comports with the land use that is
specified in the approved master land use plan for the area
impractical; or

(iii) The post-mining land use specified in the approved
master land use plan would substantially interfere with
the future extraction of a mineable coal bed, as that term
is defined in rules promulgated by the Tax Commissioner
relating to the valuation of active or reserve coal property
for ad valorem property tax purposes, 110 C. S. R. 11-3 or
a successor rule, from the land to be mined.

(B) Existing permits with approved reclamation plans
may be modified by the operator through an appropriate
permit revision to include a post-mining land use which
comports with the land use that is specified in the ap-
proved master land use plan for the area as provided in
section nine, article two-a, chapter five-b of this code;

(C) By complying with a master land use plan that has
been approved in accordance with article two-a, chapter
five-b of this code, a post-mining land use satisfies the
requirements for an alternative post-mining land use and
satisfies the variance requirements set forth in subsection
(c), section thirteen, article three, chapter twenty-two of
this code if applicable to the proposed use;

(4) A detailed description of how the proposed post-
mining land use is to be achieved and the necessary
support activities which may be needed to achieve the
proposed land use;

(5) The engineering techniques proposed to be used in
mining and reclamation and a description of the major
equipment; a plan for the control of surface water drain-
age and of water accumulation; a plan, where appropriate,
for backfilling, soil stabilization and compacting, grading,
revegetation and a plan for soil reconstruction, replace-
ment and stabilization pursuant to the performance
standards in subdivision (7), subsection (b), section
thirteen of this article for those food, forage and forest
lands identified therein; and a statement as to how the
operator plans to comply with each of the applicable
requirements set out in section thirteen or fourteen of this
article;
(6) A detailed estimated timetable for the accomplishment of each major step in the reclamation plan;

(7) The consideration which has been given to conducting surface mining operations in a manner consistent with surface owner plans and applicable state and local land use plans and programs;

(8) The steps to be taken to comply with applicable air and water quality laws and rules and any applicable health and safety standards;

(9) The consideration which has been given to developing the reclamation plan in a manner consistent with local physical environmental and climatological conditions;

(10) All lands, interests in lands or options on the interests held by the applicant or pending bids on interests in lands by the applicant, which lands are contiguous to the area to be covered by the permit;

(11) A detailed description of the measures to be taken during the surface mining and reclamation process to assure the protection of:

(A) The quality of surface and groundwater systems, both on and off site, from adverse effects of the surface mining operation;

(B) The rights of present users to the water; and

(C) The quantity of surface and groundwater systems, both on and off site, from adverse effects of the surface mining operation or to provide alternative sources of water where the protection of quantity cannot be assured;

(12) The results of tests borings which the applicant has made at the area to be covered by the permit or other equivalent information and data in a form satisfactory to the director, including the location of subsurface water and an analysis of the chemical properties, including acid-
120 forming properties of the mineral and overburden: Pro-
121 vided, That information which pertains only to the
122 analysis of the chemical and physical properties of the
123 coal, except information regarding the mineral or elemen-
124 tal contents which are potentially toxic in the environ-
125 ment, shall be kept confidential and not made a matter of
126 public record;
127 (13) The consideration which has been given to maximize
128 the utilization and conservation of the solid fuel resource
129 being recovered so that reaffecting the land in the future
130 can be minimized; and
131 (14) Any other requirements as the director may pre-
132 scribe by rule.
133 (b) A reclamation plan pending approval as of the
134 effective date of this section may be amended by the
135 operator to provide for a post-mining land use that
136 comports with a master land use plan that has been
137 approved in accordance with article two-a, chapter five-b
138 of this code.
139 (c) The reclamation plan shall be available to the public
140 for review except for those portions thereof specifically
141 exempted in subsection (a) of this section.
142 (d) The amendments to this section by the first extraor-
143 dinary session of the Legislature in 2009 are effective upon
144 the approval of the corresponding amendments to West
145 Virginia's state program, as that term is defined in the
146 federal Surface Mining Control and Reclamation Act of
147 1977, 30 U. S. C. §1291, by the federal Office of Surface
148 Mining Reclamation and Enforcement.
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 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 17th Day of June, 2009.

Governor
PRESENTED TO THE
GOVERNOR

JUN 16 2009

Time 9:00 am