

SB 600

FILED

2009 MAY -4 PM 3:19

WEST VIRGINIA LEGISLATURE
SEVENTY-NINTH LEGISLATURE
REGULAR SESSION, 2009

OFFICE OF THE WEST VIRGINIA
SECRETARY OF STATE

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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 600

(SENATORS GREEN, DEEM, McCABE, FOSTER,
KESSLER AND PLYMALE, *original sponsors*)

[Passed April 10, 2009; to take effect July 1, 2009.]

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AN ACT to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating to continuing and reimposing a special reclamation tax on clean coal mined; and providing for legislative review of the tax every two years.

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 has
3 been issued, each operator shall furnish a penal bond, on
4 a form to be prescribed and furnished by the secretary,
5 payable to the State of West Virginia and conditioned
6 upon the operator faithfully performing all of the require-
7 ments of this article and of the permit. The penal amount
8 of the bond shall be not less than \$1,000 nor more than
9 \$5,000 for each acre or fraction of an acre: *Provided*, That
10 the minimum amount of bond furnished for any type of
11 reclamation bonding shall be \$10,000. The bond shall
12 cover: (1) The entire permit area; or (2) that increment of
13 land within the permit area upon which the operator will
14 initiate and conduct surface mining and reclamation
15 operations within the initial term of the permit. If the
16 operator chooses to use incremental bonding, as succeed-
17 ing increments of surface mining and reclamation opera-
18 tions are to be initiated and conducted within the permit
19 area, the operator shall file with the secretary an addi-
20 tional bond or bonds to cover the increments in accor-
21 dance with this section: *Provided, however*, That once the
22 operator has chosen to proceed with bonding either the
23 entire permit area or with incremental bonding, the
24 operator shall continue bonding in that manner for the
25 term of the permit.

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

31 (c)(1) The form of the bond shall be approved by the
32 secretary and may include, at the option of the operator,
33 surety bonding, collateral bonding (including cash and
34 securities), establishment of an escrow account,
35 self-bonding or a combination of these methods. If
36 collateral bonding is used, the operator may elect to

37 deposit cash or collateral securities or certificates as
38 follows: Bonds of the United States or its possessions of
39 the Federal Land Bank or of the Homeowners' Loan
40 Corporation; full faith and credit general obligation bonds
41 of the State of West Virginia or other states and of any
42 county, district or municipality of the State of West
43 Virginia or other states; or certificates of deposit in a bank
44 in this state, which certificates shall be in favor of the
45 department. The cash deposit or market value of the
46 securities or certificates shall be equal to or greater than
47 the penal sum of the bond. The secretary shall, upon
48 receipt of any deposit of cash, securities or certificates,
49 promptly place the same with the Treasurer of the State of
50 West Virginia whose duty it is to receive and hold the
51 deposit in the name of the state in trust for the purpose for
52 which the deposit is made when the permit is issued. The
53 operator making the deposit is entitled, from time to time,
54 to receive from the State Treasurer, upon the written
55 approval of the secretary, the whole or any portion of any
56 cash, securities or certificates so deposited, upon deposit-
57 ing with him or her in lieu thereof cash or other securities
58 or certificates of the classes specified in this subsection
59 having value equal to or greater than the sum of the bond.

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

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

73 (e) It is unlawful for the owner of surface or mineral
74 rights to interfere with the present operator in the dis-
75 charge of the operator's obligations to the state for the
76 reclamation of lands disturbed by the operator.

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

79 (g) The Special Reclamation Fund previously created is
80 continued. The Special Reclamation Water Trust Fund is
81 created within the State Treasury into and from which
82 moneys shall be paid for the purpose of assuring a reliable
83 source of capital to reclaim and restore water treatment
84 systems on forfeited sites. The moneys accrued in both
85 funds, any interest earned thereon and yield from invest-
86 ments by the State Treasurer or West Virginia Investment
87 Management Board are reserved solely and exclusively for
88 the purposes set forth in this section and section seven-
89 teen, article one of this chapter. The funds shall be
90 administered by the secretary who is authorized to expend
91 the moneys in both funds for the reclamation and rehabili-
92 tation of lands which were subjected to permitted surface
93 mining operations and abandoned after August 3, 1977,
94 where the amount of the bond posted and forfeited on the
95 land is less than the actual cost of reclamation, and where
96 the land is not eligible for abandoned mine land reclama-
97 tion funds under article two of this chapter. The secretary
98 shall develop a long-range planning process for selection
99 and prioritization of sites to be reclaimed so as to avoid
100 inordinate short-term obligations of the assets in both
101 funds of such magnitude that the solvency of either is
102 jeopardized. The secretary may use both funds for the
103 purpose of designing, constructing and maintaining water
104 treatment systems when they are required for a complete
105 reclamation of the affected lands described in this subsec-
106 tion. The secretary may also expend an amount not to
107 exceed ten percent of the total annual assets in both funds
108 to implement and administer the provisions of this article

109 and, as they apply to the Surface Mine Board, articles one
110 and four, chapter twenty-two-b of this code.

111 (h)(1) For tax periods commencing on and after July 1,
112 2009, every person conducting coal surface mining shall
113 remit a special reclamation tax of fourteen and
114 four-tenths cents per ton of clean coal mined, the proceeds
115 of which shall be allocated by the secretary for deposit in
116 the Special Reclamation Fund and the Special Reclama-
117 tion Water Trust Fund. The tax shall be levied upon each
118 ton of clean coal severed or clean coal obtained from
119 refuse pile and slurry pond recovery or clean coal from
120 other mining methods extracting a combination of coal
121 and waste material as part of a fuel supply. Beginning
122 with the tax period commencing on July 1, 2009, and every
123 two years thereafter, the special reclamation tax shall be
124 reviewed by the Legislature to determine whether the tax
125 should be continued: *Provided*, That the tax may not be
126 reduced until the Special Reclamation Fund and Special
127 Reclamation Water Trust Fund have sufficient moneys to
128 meet the reclamation responsibilities of the state estab-
129 lished in this section.

130 (2) In managing the Special Reclamation Program, the
131 secretary shall: (A) Pursue cost-effective alternative water
132 treatment strategies; and (B) conduct formal actuarial
133 studies every two years and conduct informal reviews
134 annually on the Special Reclamation Fund and Special
135 Reclamation Water Trust Fund.

136 (3) Prior to December 31, 2008, the secretary shall:

137 (A) Determine the feasibility of creating an alternate
138 program, on a voluntary basis, for financially sound
139 operators by which those operators pay an increased tax
140 into the Special Reclamation Fund in exchange for a
141 maximum per-acre bond that is less than the maximum
142 established in subsection (a) of this section;

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

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

155 (4) If the secretary determines that the alternative
156 program, the incremental bonding program or the water
157 reclamation account or bonding programs reasonably
158 assure that sufficient funds will be available to complete
159 the reclamation of a forfeited site and that the Special
160 Reclamation Fund will remain fiscally stable, the secre-
161 tary is authorized to propose legislative rules in accor-
162 dance with article three, chapter twenty-nine-a of this
163 code to implement an alternate program, a water reclama-
164 tion account or bonding program or other funding mecha-
165 nisms or a combination thereof.

166 (i) This special reclamation tax shall be collected by the
167 State Tax Commissioner in the same manner, at the same
168 time and upon the same tonnage as the minimum sever-
169 ance tax imposed by article twelve-b, chapter eleven of
170 this code is collected: *Provided*, That under no circum-
171 stance shall the special reclamation tax be construed to be
172 an increase in either the minimum severance tax imposed
173 by said article or the severance tax imposed by article
174 thirteen of said chapter.

175 (j) Every person liable for payment of the special recla-
176 mation tax shall pay the amount due without notice or
177 demand for payment.

178 (k) The Tax Commissioner shall provide to the secretary
179 a quarterly listing of all persons known to be delinquent
180 in payment of the special reclamation tax. The secretary
181 may take the delinquencies into account in making
182 determinations on the issuance, renewal or revision of any
183 permit.

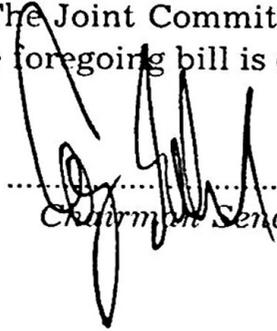
184 (l) The Tax Commissioner shall deposit the moneys
185 collected with the Treasurer of the State of West Virginia
186 to the credit of the Special Reclamation Fund and Special
187 Reclamation Water Trust Fund.

188 (m) At the beginning of each quarter, the secretary shall
189 advise the State Tax Commissioner and the Governor of
190 the assets, excluding payments, expenditures and liabili-
191 ties, in both funds.

192 (n) To the extent that this section modifies any powers,
193 duties, functions and responsibilities of the department
194 that may require approval of one or more federal agencies
195 or officials in order to avoid disruption of the federal-state
196 relationship involved in the implementation of the federal
197 Surface Mining Control and Reclamation Act, 30 U. S. C.
198 §1270 by the state, the modifications will become effective
199 upon the approval of the modifications by the appropriate
200 federal agency or official.

Enr. Com. Sub. for S. B. No. 600] 8

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

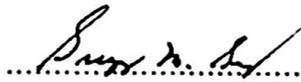

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Chairman Senate Committee

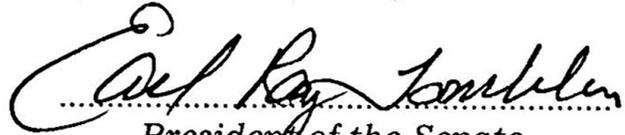

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Chairman House Committee

Originated in the Senate.

Takes effect July 1, 2009.


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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 as appended this the 4th
Day of May, 2009.


.....
Governor

PRESENTED TO THE
GOVERNOR

MAY 1 2009

Time 2:50 pm