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ENROLLED

Senate Bill No. 579
(By Senators Kessler (Mr. President), Beach, D. Facemire, Palumbo, Helmick, Hall, Foster and Browning)

[Passed March 9, 2012; to take effect July 1, 2012.]
Senate Bill No. 579

(BY SENATORS KESSLER (MR. PRESIDENT), BEACH, D. FACEMIRE, PALUMBO, HELMICK, HALL, FOSTER AND BROWNING)

[Passed March 9, 2012; to take effect July 1, 2012.]

AN ACT to amend and reenact §22-3-11 of the Code of West Virginia, 1931, as amended, relating to the special reclamation tax and funds of the Surface Coal Mining and Reclamation Act; continuing and reimposing the special reclamation tax on clean coal mined at an increased rate; and dedicating portion of special reclamation tax to Special Reclamation Water Trust Fund.

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 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 $1000 nor more than $5000 for each
acre or fraction of an acre: Provided, That the minimum
amount of bond furnished for any type of reclamation
bonding shall be $10,000. 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 incre-
ments 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 securi-
ties 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,
yany interest earned thereon and yield from investments by
the State Treasurer or West Virginia Investment Manage-
ment 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 August 3, 1977, 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) Rate, deposits and review.

(A) For tax periods commencing on and after July 1,
2009, every person conducting coal surface mining shall
remit a special reclamation tax of fourteen 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) For tax periods commencing on and after July 1,
2012, the rate of tax specified in paragraph (A) of this
subdivision is discontinued and is replaced by the rate of tax
specified in this paragraph (B). For tax periods commencing
on and after July 1, 2012, every person conducting coal
surface mining shall remit a special reclamation tax of
twenty-seven and nine-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. Of that amount,
fifteen cents per ton of clean coal mined shall be deposited
into the Special Reclamation Water Trust Fund.

(C) 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.

(D) Beginning with the tax period commencing on July
1, 2009, and every two years thereafter, the special reclama-
tion tax shall be reviewed by the Legislature to determine
whether the tax should be continued: 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 December 31, 2008, the secretary shall:

(A) Determine the feasibility of creating an alternate
program, on a voluntary basis, for financially sound opera-
tors 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.

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.

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.

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.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2012.

[Signature]
Clerk of the Senate

The within is approved this the 30th Day of March, 2012.

[Signature]
Governor
PRESENTED TO THE GOVERNOR

MAR 29 2012

Time 8:40 am