Committee Substitute
for
House Bill 4003

BY DELEGATES KEATON, BARRETT, HANSHAW (MR. SPEAKER), SUMMERS, ESPINOSA, RILEY, HOWELL, BURKHAMMER, CLARK, PACK, AND MAYNOR

[Passed March 10, 2022; in effect ninety days from passage.]
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By Delegates Keaton, Barrett, Hanshaw (Mr. Speaker), Summers, Espinosa, Riley, Howell, Burkhammer, Clark, Pack, and Maynor

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AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22-2-10, relating generally to the ownership and commercial benefit of substances removed from waters of the state by the treatment of mine drainage; restating public policies concerning the maintenance of reasonable standards of purity and quality of the waters of the state consistent with public health and the protection of all forms of life; providing for legislative findings, intent, and purpose, including that treatment of mine drainage reduces environmental harm by reducing toxic substances and pollution in the waters of the state, that such treatment may produce valuable concentrations of materials which may be utilized for commercial gain, and that said materials are part of the water; stating the legislative intent of fulfilling the state's obligations to maintain reasonable standards of purity and quality of the waters of the state by encouraging investments into the treatment of mine drainage; providing that all chemical compounds, elements, and other potentially toxic materials found within the waters of this state and derived from the treatment of mine drainage which have economic value may be used, sold, or transferred by the Department of Environmental Protection or its designee for commercial gain and benefit; providing that all funds received by said department shall be deposited and used at the discretion of the secretary into already established environmental funds; providing that all chemical compounds, elements, and other potentially toxic materials found within the waters of this state and derived from the treatment of mine drainage which have economic value may be used, sold, or transferred by any party who successfully removes the same from the waters of this state for commercial gain and benefit; providing for the protection of existing and future contracts; and providing a severability clause.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. ABANDONED MINE LANDS AND RECLAMATION ACT.
§22-2-10. Benefits derived from substances separated by treatment of pollution from mine drainage in the waters of the state; public policy; legislative findings, intent, and purpose; severability.

(a) Public Policy. It is the long-standing public policy of the State of West Virginia, pursuant to § 22-11-1 et seq. of this code, the Water Pollution Control Act, that the state is compelled to maintain reasonable standards of purity and quality of the waters of the state which are consistent with public health and the protection of all forms of life. It is also the long-standing public policy of this state, pursuant to § 20-2-1 et seq. of this code, that wildlife resources in this state shall be held as a public trust by the state and protected for the use and enjoyment of its citizens.

(b) Legislative Findings, Intent, and Purpose. The Legislature finds that treatment of mine drainage reduces environmental harm by reducing toxic substances and pollution in the waters of the state. The Legislature finds that the necessary and expensive treatment of mine drainage to remove pollution from the waters of the state, and disposal of the same, may produce materials that contain valuable concentrations of rare earth elements, critical materials, and other substances which may be utilized for commercial gain. The Legislature finds that these materials found within the waters of the state are part of the water and can only be separated from the water with expensive and continuing investments of resources which may last for decades. The Legislature enacts this section with the intent of fulfilling the state’s obligations to maintain reasonable standards of purity and quality of the waters of the state, consistent with public health and the protection of all forms of life, by encouraging investments into the treatment of mine drainage.

(c) Notwithstanding any provision of this code or common law to the contrary, all chemical compounds, elements, and other potentially toxic materials which are found within the waters of this state, which are derived from the treatment of mine drainage, and which have economic value, may be used, sold, or transferred by the Department of Environmental Protection, or its designee, for commercial gain and benefit. All funds received by the department shall be
deposited at the discretion of the secretary into the Special Reclamation Water Trust Fund or the
Acid Mine Drainage Set-Aside Fund, and used by the department to fulfill its obligations under
this code: Provided, That nothing in this subsection shall be construed to interfere with any
existing contract or the ability of the department to enter into an agreement with private parties
with respect to the removal, sale, or transfer of said chemical compounds, elements, and other
potentially toxic materials.

(d) Notwithstanding any provision of this code or common law to the contrary, all chemical
compounds, elements, and other potentially toxic materials which are found within the waters of
this state which are derived from the treatment of mine drainage, and which have economic value,
may be used, sold, or transferred by any party, other than the department, who successfully
removes said chemical compounds, elements, and other potentially toxic materials from the
waters of this state for commercial gain and benefit: Provided, That nothing in this subsection
shall be construed to interfere with any existing contract or the ability of parties to enter into an
agreement with respect to the removal, sale, or transfer of said chemical compounds, elements,
and other potentially toxic materials.

(e) The provisions of this section are severable, and if any part of this section is adjudged
to be unconstitutional, unenforceable, or invalid, that determination does not affect the continuing
validity of the remaining provisions of this section.
Enr CS for HB 4003

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

Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within ........................................... this the ...........................................

day of .................................................., 2022.

Governor