

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1813 Session of
2011

INTRODUCED BY TOBASH, GOODMAN, KNOWLES, PYLE, EVERETT, GEIST,
HEFFLEY, HELM, HENNESSEY, HESS, HUTCHINSON, QUINN, STERN,
SWANGER, TOOHIL, MURPHY, MOUL, REED, VEREB, MAJOR, BLOOM,
MUSTIO, MALONEY, M. K. KELLER, FARRY, BOBACK, REICHLEY,
GILLEN, BENNINGHOFF, MASSER, KORTZ, PASHINSKI AND
S. H. SMITH, AUGUST 22, 2011

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
DECEMBER 14, 2011

AN ACT

1 Amending the act of May 31, 1945 (P.L.1198, No.418), entitled,
2 as amended, "An act providing for the conservation and
3 improvement of land affected in connection with surface
4 mining; regulating such mining; providing for the
5 establishment of an Emergency Bond Fund for anthracite deep
6 mine operators; and providing penalties," further providing
7 for mining permit, reclamation plan and bond; and providing
8 for land reclamation financial guarantees.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 4(d) of the act of May 31, 1945
12 (P.L.1198, No.418), known as the Surface Mining Conservation and
13 Reclamation Act, amended December 18, 1992 (P.L.1384, No.173),
14 is amended to read:

15 Section 4. Mining Permit; Reclamation Plan; Bond.--* * *

16 (d) Prior to commencing surface mining, the permittee shall
17 file with the department a bond for the land affected by each
18 operation on a form to be prescribed and furnished by the

1 department, payable to the Commonwealth and conditioned that the
2 permittee shall faithfully perform all of the requirements of
3 this act and of the act of June 22, 1937 (P.L.1987, No.394),
4 known as "The Clean Streams Law," the act of January 8, 1960
5 (1959 P.L.2119, No.787), known as the "Air Pollution Control
6 Act," the act of September 24, 1968 (P.L.1040, No.318), known as
7 the "Coal Refuse Disposal Control Act," and, where applicable,
8 of the act of July 31, 1968 (P.L.788, No.241), known as the
9 "Pennsylvania Solid Waste Management Act," the act of July 7,
10 1980 (P.L.380, No.97), known as the "Solid Waste Management
11 Act," or the act of November 26, 1978 (P.L.1375, No.325), known
12 as the "Dam Safety and Encroachments Act": Provided, however,
13 That an operator posting a bond sufficient to comply with this
14 section of the act shall not be required to post a separate bond
15 for the permitted area under each of the acts hereinabove
16 enumerated: And provided further, That the foregoing proviso
17 shall not prohibit the department from requiring additional bond
18 amounts for the permitted area should such an increase be
19 determined by the department to be necessary to meet the
20 requirements of this act. The amount of the bond required shall
21 be in an amount determined by the department based upon the
22 total estimated cost to the Commonwealth of completing the
23 approved reclamation plan, or in such other amount and form as
24 may be established by the department pursuant to regulations for
25 an alternate coal bonding program which shall achieve the
26 objectives and purposes of the bonding program. Said estimate
27 shall be based upon the permittee's statement of his estimated
28 cost of fulfilling the plan during the course of his operation,
29 inspection of the application and other documents submitted,
30 inspection of the land area, and such other criteria as may be

1 relevant, including, but not limited to, the probable difficulty
2 of reclamation giving consideration to such factors as
3 topography, geology of the site, hydrology, the proposed land
4 use and the additional cost to the Commonwealth which may be
5 entailed by being required to bring personnel and equipment to
6 the site after abandonment by the permittee, in excess of the
7 cost to the permittee of performing the necessary work during
8 the course of his surface mining operations. When the plan
9 involves the reconstruction or relocation of any public road or
10 highway, the amount of the bond shall include an amount
11 sufficient to fully build or restore the road or highway to a
12 condition approved by the Department of Transportation. No bond
13 shall be filed for less than ten thousand dollars (\$10,000.00)
14 for the entire permit area. Liability under such bond shall be
15 for the duration of the surface mining at each operation, and
16 for a period of five full years after the last year of augmented
17 seeding and fertilizing and any other work to complete
18 reclamation to meet the requirements of law and protect the
19 environment, unless released in part prior thereto as
20 hereinafter provided. The bond or collateral required herein
21 must be in an amount and on a form containing such terms and
22 conditions as approved by the department and may be a surety
23 bond executed by the operator and a corporate surety licensed to
24 do business in this Commonwealth and approved by the secretary;
25 it may be cash; it may be automatically renewable irrevocable
26 letters of credit which may be terminated by the bank at the end
27 of the term only upon the bank giving ninety (90) days' prior
28 written notice to the permittee and the department; it may be
29 negotiable bonds of the United States Government or the
30 Commonwealth of Pennsylvania, the Pennsylvania Turnpike

1 Commission, The General State Authority, the State Public School
2 Building Authority or any municipality within this Commonwealth;
3 it may be a life insurance policy which is and states on its
4 face that it is fully paid and noncancelable with a cash
5 surrender value irrevocably assigned to the department at least
6 equal to the amount of the required bonds and which shall not be
7 borrowed against and shall not be utilized for any other purpose
8 than financial assurance assuring reclamation; it may be an
9 annuity or trust fund of which the department is the irrevocably
10 named beneficiary; it may be a land reclamation financial
11 guarantee consistent with section 19.2 of this act and the
12 department's regulations implementing the land reclamation
13 financial guarantee program; or it may be other instruments
14 which the Environmental Quality Board may authorize through
15 regulation. The stated amount of irrevocable letters of credit
16 and the market value of negotiable securities shall be equal at
17 least to the amount of the required bond. Combinations of
18 bonding instruments may be allowed pursuant to regulations
19 adopted by the Environmental Quality Board. The secretary shall,
20 upon receipt of any such deposit of cash, letters of credit or
21 negotiable bonds immediately place the same with the State
22 Treasurer, whose duty it shall be to receive and hold the same
23 in the name of the Commonwealth, in trust, for the purposes for
24 which such deposit is made. The State Treasurer shall at all
25 times be responsible for the custody and safekeeping of such
26 deposits. The permittee making the deposit shall be entitled
27 from time to time to demand and receive from the State
28 Treasurer, on the written order of the secretary, the whole or
29 any portion of any collateral so deposited, upon depositing with
30 him, in lieu thereof, other collateral of the classes herein

1 specified having a market value at least equal to the sum of the
2 bond, and also to demand, receive and recover the interest and
3 income from said negotiable bonds as the same becomes due and
4 payable: Provided, however, That where negotiable bonds,
5 deposited as aforesaid, mature or are called, the State
6 Treasurer, at the request of the permittee, shall convert such
7 negotiable bonds into such other negotiable bonds of the classes
8 herein specified as may be designated by the permittee: And,
9 provided further, That where notice of intent to terminate a
10 letter of credit is given, the department shall give the
11 permittee thirty (30) days' written notice to replace the letter
12 of credit with other acceptable bond guarantees as provided
13 herein, and if the permittee fails to replace the letter of
14 credit within the thirty (30) day notification period, the
15 department shall draw upon and convert such letter of credit
16 into cash and hold it as a collateral bond guarantee; or the
17 department, in its discretion, may accept a self-bond from the
18 permittee, without separate surety, if the permittee
19 demonstrates to the satisfaction of the department a history of
20 financial solvency, continuous business operation and continuous
21 efforts to achieve compliance with all United States of America
22 and Pennsylvania environmental laws, and, meets all of the
23 following requirements:

24 (1) The permittee shall be incorporated or authorized to do
25 business in Pennsylvania and shall designate an agent in
26 Pennsylvania to receive service of suits, claims, demands or
27 other legal process.

28 (2) The permittee or if the permittee does not issue
29 separate audited financial statements, its parent, shall provide
30 audited financial statements for at least its most recent three

1 (3) fiscal years prepared by a certified public accountant in
2 accordance with generally accepted accounting principles. Upon
3 request of the permittee, the department shall maintain the
4 confidentiality of such financial statements if the same are not
5 otherwise disclosed to other government agencies or the public.

6 (3) During the last thirty-six (36) calendar months, the
7 applicant has not defaulted in the payment of any dividend or
8 sinking fund installment or preferred stock or installment on
9 any indebtedness for borrowed money or payment of rentals under
10 long-term leases or any reclamation fee payment currently due
11 under the Federal Surface Mining Control and Reclamation Act of
12 1977, 30 U.S.C. § 1232, for each ton of coal produced in the
13 Commonwealth of Pennsylvania.

14 (4) The permittee shall have been in business and operating
15 no less than ten (10) years prior to filing of application
16 unless the permittee's existence results from a reorganization,
17 consolidation or merger involving a company with such longevity.
18 However, the permittee shall be deemed to have met this
19 requirement if it is a majority-owned subsidiary of a
20 corporation which has such a ten (10) year business history.

21 (5) The permittee shall have a net worth of at least six
22 times the aggregate amount of all bonds applied for by the
23 operator under this section.

24 (6) The permittee shall give immediate notice to the
25 department of any significant change in managing control of the
26 company.

27 (7) A corporate officer of the permittee shall certify to
28 the department that forfeiture of the aggregate amounts of self-
29 bonds furnished for all operations hereunder would not
30 materially affect the permittee's ability to remain in business

1 or endanger its cash flow to the extent it could not meet its
2 current obligations.

3 (8) The permittee may be required by the department to
4 pledge real and personal property to guarantee the permittee's
5 self-bond. The department is authorized to acquire and dispose
6 of such property in the event of a default to the bond
7 obligation and may use the moneys in the Surface Mining
8 Conservation and Reclamation Fund to administer this provision.

9 (9) The permittee may be required to provide third party
10 guarantees or indemnifications of its self-bond obligations.

11 (10) The permittee shall provide such other information
12 regarding its financial solvency, continuous business operation
13 and compliance with environmental laws as the department shall
14 require.

15 (11) An applicant shall certify to the department its
16 present intention to maintain its present corporate status for a
17 period in excess of five (5) years.

18 (12) A permittee shall annually update the certifications
19 required hereunder and provide audited financial statements for
20 each fiscal year during which it furnishes self-bonds.

21 (13) The permittee shall pay an annual fee in the amount
22 determined by the department of the cost to review and verify
23 the permittee's application for self-bonding and annual
24 submissions thereafter.

25 * * *

26 Section 2. The act is amended by adding a section to read:

27 Section 19.2. Land Reclamation Financial Guarantees.--(a)
28 The department shall establish a program to provide land
29 reclamation financial guarantees to qualified operators to
30 insure reclamation of suitable surface mining activities

1 permitted under this act. A land reclamation financial guarantee
2 may be used by an operator to satisfy the bonding obligation
3 required by section 4(d).

4 (b) (1) The department shall assess and collect premiums
5 for land reclamation financial guarantees from qualified
6 operators who choose to obtain such guarantees. The amount of
7 the premium, to be determined by the department and established
8 by regulation, shall be sufficient to assure the financial
9 stability of the land reclamation financial guarantee program
10 and to cover the department's costs to administer the program.

11 (2) A special account is established in the Surface Mining
12 Conservation and Reclamation Fund to be known as the Land
13 Reclamation Financial Guarantee Account. The account shall be
14 used to support land reclamation financial guarantees. Premium
15 payments shall be deposited into the account and to pay the cost
16 of reclamation in the event of operator forfeiture.

17 (3) (i) Except as noted in this section, the department
18 shall use all the funds previously appropriated and collected
19 for the sum-certain financial guarantees authorized pursuant to
20 section 213 of the act of June 22, 2001 (P.L.979, No.6A), known
21 as the "General Appropriation Act of 2001," as principal funds
22 for the land reclamation financial guarantee program established
23 by this section.

24 (ii) Any existing sum-certain financial guarantee previously
25 issued by the department shall be converted into a land
26 reclamation financial guarantee established by this section and
27 the funds in the Land Reclamation Financial Guarantee Account
28 shall be used to cover obligations for all existing sum-certain
29 financial guarantees previously issued by the department.

30 (4) The department may transfer up to five hundred thousand

1 dollars (\$500,000) of the funds appropriated for the sum-certain
2 financial guarantees authorized pursuant to section 213 of the
3 "General Appropriation Act of 2001," into the Remining Financial
4 Assurance Fund for use in supporting remining financial
5 guarantees issued by the department pursuant to section 4.12.

6 (5) The department may transfer interest earned on the funds
7 in the Land Reclamation Financial Guarantee Account into the
8 Reclamation Fee O&M Trust Account established pursuant to 25 Pa.
9 Code §§ 86.17 (relating to permit and reclamation fees) and
10 86.187 (relating to use of money) to be used to supplement the
11 funding of the Reclamation Fee O&M Trust Account.

12 (6) Consistent with the requirement in this section to
13 assure the financial stability of the land reclamation financial
14 guarantee program, premiums collected and deposited in the Land
15 Reclamation Financial Guarantee Account may be transferred by
16 the department into the Reclamation Fee O&M Trust Account
17 established pursuant to 25 Pa. Code §§ 86.17 and 86.18 to be
18 used to supplement the funding of the Reclamation Fee O&M Trust
19 Account.

20 (7) ~~For a 25 year period beginning in 2011~~ BEGINNING IN ←
21 FISCAL YEAR 2012-2013 AND UPON APPROVAL OF THE GOVERNOR, up to
22 two million dollars (\$2,000,000) annually collected from the
23 Gross Receipts Tax on sales of electric energy in Pennsylvania
24 authorized by Article XI of the act of March 4, 1971 (P.L.6,
25 No.2), known as the "Tax Reform Code of 1971," may be
26 transferred ANNUALLY by the department to the Reclamation Fee ←
27 O&M Trust Account established pursuant to 25 Pa. Code §§ 86.17
28 and 86.187 to be used to supplement the funding of the
29 Reclamation Fee O&M Trust Account. THE AUTHORITY TO TRANSFER ←
30 FUNDS UNDER THIS CLAUSE EXPIRES JUNE 30, 2038.

1 (c) When determining eligibility for a land reclamation
2 financial guarantee, the department shall consider both site and
3 operator eligibility, including factors such as:

4 (1) The environmental and safety hazards of the site for
5 which a guarantee is proposed.

6 (2) The availability of coal reserves at the site.

7 (3) The operator's long-term financial stability.

8 (4) The operator's prior denial of coverage, if any, by
9 surety bond companies.

10 (5) The operator's length of time in business and compliance
11 history.

12 (6) Any other factor the department considers indicative of
13 an operator's ability to complete reclamation and pay required
14 premiums under the program.

15 (d) (1) The department shall determine the total amount of
16 financial guarantees that can be supported by the Land
17 Reclamation Financial Guarantee Account based on loss reserves
18 established by the application of the historical rate of mine
19 operator bond forfeitures, plus a reasonable margin of safety to
20 protect the account from the risk of forfeiture.

21 (2) The department shall establish, by regulation,
22 underwriting methods adequate to insure the account against the
23 risk of forfeiture of the guarantees.

24 (e) (1) The land reclamation financial guarantee program
25 established by this section may be discontinued immediately upon
26 publication of notice in the Pennsylvania Bulletin if twenty-
27 five per cent or greater of the outstanding bond obligation for
28 the land reclamation financial guarantees program is subject to
29 forfeiture.

30 (2) The Land Reclamation Financial Guarantee Account shall

1 be the sole source of funds underwriting the land reclamation
2 financial guarantees program and the Commonwealth shall not be
3 obligated to expend any funds beyond the amount in the Land
4 Reclamation Financial Guarantee Account.

5 (f) The Environmental Quality Board shall promulgate
6 regulations to implement the land reclamation financial
7 guarantee program and the provisions and requirements of this
8 section.

9 Section 3. This act shall take effect in 60 days.