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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1813 Session of  
2011

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INTRODUCED BY TOBASH, GOODMAN, KNOWLES, PYLE, EVERETT, GEIST,  
HEFFLEY, HELM, HENNESSEY, HESS, HUTCHINSON, QUINN, STERN,  
SWANGER AND TOOHIL, AUGUST 22, 2011

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REFERRED TO COMMITTEE ON ENVIRONMENTAL RESOURCES AND ENERGY,  
AUGUST 22, 2011

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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  
19 department, payable to the Commonwealth and conditioned that the  
20 permittee shall faithfully perform all of the requirements of

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

1 topography, geology of the site, hydrology, the proposed land  
2 use and the additional cost to the Commonwealth which may be  
3 entailed by being required to bring personnel and equipment to  
4 the site after abandonment by the permittee, in excess of the  
5 cost to the permittee of performing the necessary work during  
6 the course of his surface mining operations. When the plan  
7 involves the reconstruction or relocation of any public road or  
8 highway, the amount of the bond shall include an amount  
9 sufficient to fully build or restore the road or highway to a  
10 condition approved by the Department of Transportation. No bond  
11 shall be filed for less than ten thousand dollars (\$10,000.00)  
12 for the entire permit area. Liability under such bond shall be  
13 for the duration of the surface mining at each operation, and  
14 for a period of five full years after the last year of augmented  
15 seeding and fertilizing and any other work to complete  
16 reclamation to meet the requirements of law and protect the  
17 environment, unless released in part prior thereto as  
18 hereinafter provided. The bond or collateral required herein  
19 must be in an amount and on a form containing such terms and  
20 conditions as approved by the department and may be a surety  
21 bond executed by the operator and a corporate surety licensed to  
22 do business in this Commonwealth and approved by the secretary;  
23 it may be cash; it may be automatically renewable irrevocable  
24 letters of credit which may be terminated by the bank at the end  
25 of the term only upon the bank giving ninety (90) days' prior  
26 written notice to the permittee and the department; it may be  
27 negotiable bonds of the United States Government or the  
28 Commonwealth of Pennsylvania, the Pennsylvania Turnpike  
29 Commission, The General State Authority, the State Public School  
30 Building Authority or any municipality within this Commonwealth;

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

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

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

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

29 (3) fiscal years prepared by a certified public accountant in  
30 accordance with generally accepted accounting principles. Upon

1 request of the permittee, the department shall maintain the  
2 confidentiality of such financial statements if the same are not  
3 otherwise disclosed to other government agencies or the public.

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

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

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

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

25 (7) A corporate officer of the permittee shall certify to  
26 the department that forfeiture of the aggregate amounts of self-  
27 bonds furnished for all operations hereunder would not  
28 materially affect the permittee's ability to remain in business  
29 or endanger its cash flow to the extent it could not meet its  
30 current obligations.

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

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

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

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

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

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

23 \* \* \*

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

25 Section 19.2. Land Reclamation Financial Guarantees.--(a)  
26 The department shall establish a program to provide land  
27 reclamation financial guarantees to qualified operators to  
28 insure reclamation of suitable surface mining activities  
29 permitted under this act. A land reclamation financial guarantee  
30 may be used by an operator to satisfy the bonding obligation

1 required by section 4(d).

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

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

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

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

28 (4) The department may transfer up to five hundred thousand  
29 dollars (\$500,000) of the funds appropriated for the sum-certain  
30 financial guarantees authorized pursuant to section 213 of the



1 "General Appropriation Act of 2001," into the Remining Financial  
2 Assurance Fund for use in supporting remining financial  
3 guarantees issued by the department pursuant to section 4.12.

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

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

18 (7) For a 25-year period beginning in 2011, up to two  
19 million dollars (\$2,000,000) annually collected from the Gross  
20 Receipts Tax on sales of electric energy in Pennsylvania  
21 authorized by Article XI of the act of March 4, 1971 (P.L.6,  
22 No.2), known as the "Tax Reform Code of 1971," may be  
23 transferred by the department to the Reclamation Fee O&M Trust  
24 Account established pursuant to 25 Pa. Code §§ 86.17 and 86.187  
25 to be used to supplement the funding of the Reclamation Fee O&M  
26 Trust Account.

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

30 (1) The environmental and safety hazards of the site for

1 which a guarantee is proposed.

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

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

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

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

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

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

17 (2) The department shall establish, by regulation,  
18 underwriting methods adequate to insure the account against the  
19 risk of forfeiture of the guarantees.

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

26 (2) The Land Reclamation Financial Guarantee Account shall  
27 be the sole source of funds underwriting the land reclamation  
28 financial guarantees program and the Commonwealth shall not be  
29 obligated to expend any funds beyond the amount in the Land  
30 Reclamation Financial Guarantee Account.

1       (f) The Environmental Quality Board shall promulgate  
2 regulations to implement the land reclamation financial  
3 guarantee program and the provisions and requirements of this  
4 section.

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