

1 State of Arkansas
2 88th General Assembly
3 Regular Session, 2011
4

As Engrossed: S2/28/11

A Bill

HOUSE BILL 1280

5 By: Representative Leding
6

For An Act To Be Entitled

8 AN ACT TO AMEND VARIOUS PROVISIONS OF THE
9 ARKANSAS SURFACE COAL MINING AND
10 RECLAMATION ACT OF 1979; AND FOR OTHER
11 PURPOSES.
12
13

Subtitle

14 TO AMEND VARIOUS PROVISIONS OF THE
15 ARKANSAS SURFACE COAL MINING AND
16 RECLAMATION ACT OF 1979.
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20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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22 SECTION 1. Arkansas Code § 15-58-102 is amended to read as follows:
23 15-58-102. Legislative findings.

24 The General Assembly of the State of Arkansas finds, and it is declared
25 that:

26 (1)(A) The extraction of coal from the earth by surface mining
27 in this state is a significant economic activity, is an integral part of the
28 growth and development of this state, and is important to supply energy to
29 the people of this state.

30 (B) It is, therefore, essential to the people of this
31 state to ensure the existence of an expanding and economically healthy
32 surface and underground coal mining industry;

33 (2) The process of surface coal mining must be accomplished in a
34 manner to reduce so far as practicable the adverse social, economic, and
35 environmental effects of surface mining and to protect the general welfare,
36 health, safety, and property rights of the people of this state;



1 (3) Because surface coal mining in this state takes place in
2 areas where the terrain, climate, biological, chemical, and other physical
3 conditions are peculiar to this state and because the Arkansas Department of
4 Environmental Quality is familiar with these conditions, the department has
5 the primary responsibility to develop, issue, and enforce regulations for
6 surface mining and reclamation operations in this state pursuant to this
7 chapter and in compliance with applicable federal laws and regulations;

8 (4)(A) The Congress of the United States has enacted the Surface
9 Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, which provides
10 for the establishment of a nationwide program to regulate surface coal mining
11 and reclamation and which vests exclusive authority in the Department of the
12 Interior over the regulation of surface coal mining and reclamation within
13 the United States. Section 503 of the Surface Mining Control and Reclamation
14 Act of 1977, Pub. L. No. 95-87, provides that each state may assume and
15 retain exclusive jurisdiction over the regulation of surface coal mining and
16 reclamation operations within the state by obtaining approval of a state
17 program of regulation ~~which~~ that demonstrates that the state has the
18 capability of carrying out the provisions and meeting the purposes of the
19 Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87.

20 (B) Section 503 of the Surface Mining Control and
21 Reclamation Act of 1977, Pub. L. No. 95-87, further provides that a state
22 wishing to assume exclusive jurisdiction over the regulation of surface coal
23 mining and reclamation operations within the state must have a state law
24 which provides for the regulation of surface coal mining and reclamation
25 operations in accordance with the requirements of the Surface Mining Control
26 and Reclamation Act of 1977, Pub. L. No. 95-87; and

27 (5)(A) The Congress of the United States has enacted the Surface
28 Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87, which provides
29 for the establishment of a nationwide program to promote reclamation of mined
30 areas in the country left without adequate reclamation to be funded by a
31 reclamation fee paid by all surface coal mining operators. Section 402 of the
32 Surface Mining Control and Reclamation Act of 1977, Pub. L. No. 95-87,
33 provides that each state may develop a state abandoned mine reclamation
34 program to enable the state to develop and carry out projects for the
35 reclamation of abandoned mines within the state. ~~Upon approval of the state
36 abandoned mine reclamation program by the Secretary of the Interior, fifty~~

1 percent (50%) of the reclamation fee collected by the Secretary of the
2 Interior from surface coal mining operations in this state will be allocated
3 to this state to fund the state abandoned mine reclamation program.

4 (B) The Secretary of the Interior will allocate funds to
5 this state under the Surface Mining Control and Reclamation Act of 1977, Pub.
6 L. No. 95-87, for the purpose of operating the state abandoned mine
7 reclamation program.

8 (C) Section 405 of the Surface Mining Control and
9 Reclamation Act of 1977, Pub. L. No. 95-87, provides that, prior to approval
10 of the state abandoned mine reclamation plan, the state must have adopted
11 state legislation necessary to carry out the purposes of the Surface Mining
12 Control and Reclamation Act of 1977, Pub. L. No. 95-87.

13
14 SECTION 2. Arkansas Code § 15-58-106 is amended to read as follows:

15 15-58-106. Exempt activities.

16 ~~The provisions of this chapter shall~~ This chapter does not apply to any
17 of the following activities:

18 (1) (A) The mining, surface or otherwise, of any minerals or
19 materials other than coal.

20 (B) All minerals and materials other than coal shall, when
21 applicable, be regulated according to the Arkansas Open-Cut Land Reclamation
22 Act of 1977 (repealed) or the Arkansas Quarry Operation, Reclamation, and
23 Safe Closure Act, § 15-57-401 et seq.;

24 (2) The extraction of coal by a landowner for his or her own
25 noncommercial use from land owned or leased by him or her;

26 (3) The extraction of coal as an incidental part of federal,
27 state, or local government-financed highway or other construction under
28 regulations established by the Arkansas Pollution Control and Ecology
29 Commission; or

30 (4) The extraction of coal incidental to the extraction of other
31 minerals where coal does not exceed sixteen and two-thirds percent ~~(16 2/3%)~~
32 (16 2/3%) of the tonnage of minerals removed for purposes of commercial use
33 or sale or for coal exploration.

34
35 SECTION 3. Arkansas Code § 15-58-204 is amended to read as follows:

36 15-58-204. Adoption of rules and regulations.

1 (a) ~~Prior to~~ Before the adoption, amendment, or repeal of any rule or
2 regulation, the Arkansas Pollution Control and Ecology Commission shall give
3 public notice and the opportunity for a ~~legislative~~ public hearing ~~pursuant~~
4 ~~to under~~ §§ 15-58-207 and 15-58-208.

5 (b)(1) If the commission finds that imminent peril to the public
6 health, safety, or welfare requires adoption of a rule upon fewer than twenty
7 (20) days' notice and states in writing its reasons for that finding, it may
8 proceed without prior notice or hearing, or upon any abbreviated notice and
9 hearing that it may choose, to adopt an emergency rule or regulation.

10 (2) The rule or regulation may be effective for no longer than
11 ~~one hundred twenty (120) days~~ one hundred eighty (180) days.

12 (c)(1) ~~Any A~~ person shall ~~have~~ has the right to petition for the
13 issuance, amendment, or repeal of any rule or regulation.

14 (2) Within ninety (90) days after submission of a petition, the
15 ~~agency~~ Arkansas Pollution Control and Ecology Commission shall either deny
16 the petition, stating in writing its reasons for the denial, or shall
17 initiate rulemaking proceedings in accordance with subsection (a) of this
18 section.

19 (d)(1) The commission shall file with ~~the Governor and~~ the Secretary
20 of State a certified copy of each rule or regulation adopted by it.

21 (2) The Secretary of State shall keep a permanent register of
22 the rule or regulation open to public inspection.

23 (3)(A) Each rule or regulation shall be effective twenty (20)
24 days after filing, unless a later date is specified by law or in the rule or
25 regulation itself.

26 (B) However, an emergency rule or regulation may become
27 effective immediately upon filing or at a stated time less than twenty (20)
28 days ~~thereafter~~ after filing if the ~~agency~~ commission finds that this
29 effective date is necessary because of imminent peril to the public health,
30 safety, or welfare.

31 (C) The ~~agency's~~ commission's finding and a brief
32 statement of the reasons ~~therefor~~ shall be filed with the rule or regulation.

33 (D) The ~~agency~~ commission shall take appropriate measures
34 to make emergency rules or regulations known to the persons who may be
35 affected by them.

36 (e) No rule or regulation shall be valid unless adopted and filed in

1 substantial compliance with this chapter.

2

3 SECTION 4. Arkansas Code § 15-58-207 is amended to read as follows:
4 15-58-207. ~~Legislative~~ Public hearing – Procedures.

5 (a) The Director of the Arkansas Department of Environmental Quality
6 or the Arkansas Pollution Control and Ecology Commission shall give public
7 notice of each of the following pending, proposed, or requested actions:

8 (1) The director, upon receipt of any completed application for
9 an initial or revised permit or renewal thereof ~~pursuant to~~ under §§ 15-58-
10 502 – 15-58-508;

11 (2) The director, upon receipt of any request by an operator for
12 a variance or amendment to an issued permit ~~pursuant to~~ under §§ 15-58-502 –
13 15-58-508;

14 (3) The commission, upon receipt of any proposal for the
15 designation of lands as unsuitable for surface mining ~~pursuant to~~ under §
16 15-58-501;

17 (4) The commission, upon receipt of any proposal for the use of
18 land acquired pursuant to the state abandoned mine reclamation program; or

19 (5) The commission, in any rulemaking proceeding ~~pursuant to~~
20 under § 15-58-204.

21 (b) Notice shall be circulated in accordance with the regulations
22 issued by the commission to inform interested and potentially interested
23 persons of the pending action.

24 (c)(1) Interested persons shall be afforded a period of not less than
25 thirty (30) days after the last publication of the above notice to submit
26 written objections or comments.

27 (2) Comments and objections shall be immediately transmitted to
28 the applicant or permittee and shall be made available to the public.

29 (3) If a ~~legislative~~ public hearing is requested by an
30 interested person on or before ten (10) days of receipt of the objections and
31 in accordance with the regulations issued by the commission, public notice
32 shall be given in accordance with the regulations issued by the commission.

33 (4) A ~~legislative~~ public hearing shall be held for the purpose
34 of receiving relevant evidence.

35 (d) Any person shall be permitted to submit oral or written statements
36 concerning the subject matter of the public hearing, to call witnesses who

1 may present oral statements, and to present recommendations as to an
2 appropriate decision.

3 (e)(1) An electronic or stenographic record shall be made of the
4 hearing, unless waived by all parties.

5 (2) All written statements and similar data offered in evidence
6 shall be, subject to exclusion by the examiner for reasons of redundancy,
7 received in evidence and shall constitute part of the record.

8 (f) If a ~~legislative~~ public hearing is held ~~pursuant to~~ under this
9 section, the director or the commission shall grant or deny, in whole or in
10 part, the requested or proposed action and shall give public notice of its
11 decision within sixty (60) days of the ~~conference~~ hearing.

12 (g)(1) If there has been no ~~legislative~~ public hearing held pursuant
13 to this section, the director or the commission shall grant or deny, in whole
14 or in part, the requested or proposed action within a reasonable time and in
15 accordance with regulations issued by the commission.

16 (2) Parties shall be notified by mail with a copy of the
17 decision.

18 (3) Public notice shall be given of the decision in accordance
19 with the regulations issued by the commission.

20 (h) Within thirty (30) days of the public notice of the final decision
21 of the director or the commission, any person with an interest which is or
22 may be adversely affected may request review of the reasons for the final
23 determination of the director or the commission in accordance with this
24 chapter.

25

26 SECTION 5. Arkansas Code § 15-58-208 is amended to read as follows:

27 15-58-208. ~~Legislative~~ Public hearing – Examiners.

28 (a) For the purpose of receiving and responding to written comments
29 and objections and for presiding at a ~~legislative~~ public hearing, the
30 Arkansas Pollution Control and Ecology Commission or the Director of the
31 Arkansas Department of Environmental Quality may designate one (1) or more
32 examiners.

33 (b) An examiner ~~shall have the power~~ may:

34 (1)(A) ~~To set~~ Set the time and location of the public hearing.

35 (B) Public notice of the information shall be circulated
36 in accordance with regulations issued by the commission;

1 (2) ~~To receive~~ Receive all information submitted pursuant to the
2 pending action and ~~to~~ permit or deny cross-examination of witnesses;

3 (3) ~~To recommend~~ Recommend denial or approval, in whole or in
4 part, of the proposed or requested action;

5 (4) ~~To maintain~~ Maintain order at the public hearing;

6 (5) Generally ~~to~~ guide the course of the public hearing;

7 (6) ~~To arrange~~ Arrange with the applicant, upon request of any
8 party, access to the mining area for the purpose of gathering information
9 relevant to the proceeding.

10
11 SECTION 6. Arkansas Code § 15-58-402 is amended to read as follows:
12 15-58-402. State priorities.

13 Expenditure of moneys from the fund on lands and water eligible
14 ~~pursuant to~~ under § 15-58-401 for the purposes of this chapter shall reflect
15 the following priorities in the order stated:

16 ~~(1) The protection of public health, safety, general welfare,~~
17 ~~and property from extreme danger of adverse effects of coal mining practices;~~

18 ~~(2) The protection of public health, safety, and general welfare~~
19 ~~from adverse effects of coal mining practices;~~

20 ~~(3) The restoration of land and water resources and the~~
21 ~~environment previously degraded by adverse effects of coal mining practices,~~
22 ~~including measures for the conservation and development of soil, water~~
23 ~~excluding channelization, woodland, fish and wildlife, recreation resources,~~
24 ~~and agricultural productivity;~~

25 ~~(4) Research and demonstration projects relating to the~~
26 ~~development of surface mining reclamation and water quality control program~~
27 ~~methods and techniques;~~

28 ~~(5) The protection, repair, replacement, construction, or~~
29 ~~enhancement of public facilities such as utilities, roads, recreation, and~~
30 ~~conservation facilities adversely affected by coal mining practices; and~~

31 ~~(6) The development of publicly owned land adversely affected by~~
32 ~~coal mining practices, including land acquired as provided in this title for~~
33 ~~recreation and historic purposes, conservation and reclamation purposes, and~~
34 ~~open space benefits.~~

35 (1) "Priority I" includes the protection of public health,
36 safety, and property from extreme danger of adverse effects of coal mining

1 practices, including the restoration of land and water resources and the
2 environment that:

3 (A) Have been degraded by the adverse effects of coal
4 mining practices; and

5 (B) Are adjacent to a site that has been or will be
6 addressed to protect public health, safety, and property from extreme danger
7 of adverse effects of coal mining practices;

8 (2) "Priority II" includes the protection of public health and
9 safety from adverse effects of coal mining practices, including restoration
10 of land and water resources and the environment that:

11 (A) Have been degraded by the adverse effects of coal
12 mining practices; and

13 (B) Are adjacent to a site that has been or will be
14 addressed to protect the public health and safety from the adverse effects of
15 coal mining practices; and

16 (3)(A) "Priority III" includes the restoration of land and water
17 resources and the environment previously degraded by adverse effects of coal
18 mining practices, including measures for the conservation and development of
19 soil, water, excluding channelization, woodland, fish and wildlife,
20 recreational resources, and agricultural productivity.

21 (B) Priority III land and water resources that are
22 geographically contiguous with existing or remediated Priority I or II
23 problems shall be considered adjacent under the definitions of Priority I or
24 II above.

25 (C) If the state receives any funding under 30 CFR §
26 872.14, 30 CFR § 872.17, or 30 CFR § 872.21, then the state may expend these
27 funds to reclaim Priority III lands and waters if either of the following
28 conditions applies:

29 (i) Facilitate the Priority I or Priority II
30 reclamation; or

31 (ii) Provide reasonable savings towards the
32 objective of reclaiming all Priority III land and water problems within the
33 state's jurisdiction.

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36 SECTION 7. Arkansas Code § 15-58-404 is amended to read as follows:

1 15-58-404. Abatement of adverse effects – Lien.

2 (a) ~~If the~~ The Director of the Arkansas Department of Environmental
3 Quality or his or her authorized representative, ~~pursuant to~~ under the state
4 abandoned mine reclamation program, ~~makes~~ shall make a finding of fact that:

5 (1) Land or water resources have been adversely affected by past
6 coal mining practices; and

7 (2) The adverse effects are at a state ~~where~~ in which, in the
8 public interest, action to restore, reclaim, abate, control, or prevent
9 should be taken; and

10 (3)(A) The owners of the land or water resources where entry
11 must be made to restore, reclaim, abate, control, or prevent the adverse
12 effects of past coal mining practices are not known, or readily available; or

13 (B)(i) The owners will not give permission for the state
14 or political subdivisions of the state, or their agents, employees, or
15 contractors to enter upon ~~such~~ the property to restore, reclaim, abate,
16 control, or prevent the adverse effects of past coal mining practices~~;~~.

17 (b)(1) If the director determines that the conditions listed in
18 subsection (a) of this section exist, the director or his or her authorized
19 representative then, upon giving notice by mail to the owners, if known, or
20 if not known, by posting notice upon the premises and advertising ~~once~~ one
21 (1) time in a newspaper of general circulation in the county in which the
22 land lies, ~~the director or his or her authorized representative shall have~~
23 ~~the right to~~ may enter upon the property adversely affected by past coal
24 mining practice and any other property to have access to the property to do
25 all things necessary or expedient to restore, reclaim, abate, control, or
26 prevent adverse effects.

27 (2) The entry shall be construed as an exercise of the police
28 power for the protection of public health, safety, and general welfare and
29 shall not be construed as an act of condemnation of property nor of trespass
30 thereon.

31 (3)(A) The moneys expended for the work and the benefits
32 accruing to any premises so entered upon shall be chargeable against the land
33 and shall mitigate or offset any claim in or any action brought by any owner
34 of any interest in the premises for any alleged damages by virtue of the
35 entry.

36 (B) However, this provision is not intended to Subdivision

1 (b)(3)(A) of this section does not create a new ~~rights~~ right of action or
2 eliminate existing immunities.

3 ~~(b)(c)(1) There shall exist a lien~~ A lien exists against the property
4 so reclaimed under this section if the moneys expended for reclamation ~~shall~~
5 ~~result~~ results in a significant increase in property value.

6 (2)(A) The lien ~~shall be~~ under subdivision (c)(1) of this
7 section is effective upon the filing by the director of a notice of lien with
8 the circuit clerk of the county in which the land is located, and in
9 accordance with the regulations issued by the Arkansas Pollution Control and
10 Ecology Commission.

11 (B) ~~but~~ However, the notice shall constitute a lien upon
12 the land as of the date of the expenditure of the moneys and shall have
13 priority as a lien second only to the lien of real estate taxes imposed upon
14 the land.

15 ~~(e)(d)(1)~~ The lien obtained ~~pursuant to~~ under this section shall not
16 exceed the amount determined by an independent appraisal to be the increase
17 in the market value of the land as a result of the reclamation undertaken.

18 (2) The commission by regulations shall establish procedures for
19 determining the amount of the lien.

20 (3) The landowner or any parties aggrieved by the decision
21 determining the amount of the lien may request an adjudicatory hearing before
22 the commission ~~pursuant to~~ under §§ 15-58-209 – 15-58-211.

23
24 /s/Leding
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