

CHAPTER 32

(SB 187)

AN ACT relating to abandoned mine land.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 350 IS CREATED TO READ AS FOLLOWS:

The cabinet may use amounts available in grants made annually to the Commonwealth under Section 2 of this Act for the reclamation of eligible land and water prioritized under subsection (3) of Section 3 of this Act. However, the expenditure shall not occur unless the reclamation is done in conjunction with the expenditure of funds for reclamation projects prioritized under subsections (1) and (2) of Section 3 of this Act, irrespective of when the higher priority project was initially funded.

Section 2. KRS 350.550 is amended to read as follows:

- (1) There is hereby created within the Commonwealth of Kentucky an Abandoned Mine Lands Program, to be administered within the Environmental and Public Protection Cabinet. The secretary of the Environmental and Public Protection Cabinet may promulgate regulations necessary to implement this program. The provisions of KRS 350.150, 350.152, 350.154, 350.156(1) and (2), 350.158, 350.161, and 350.163 shall not be applicable to this program.
- (2) The Finance and Administration Cabinet is hereby directed to establish a fund to be known as the Abandoned Mine Reclamation Fund (hereinafter referred to as the "fund").
- (3) The fund shall consist of amounts deposited in the fund from time to time, including but not limited to:
 - (a) The reclamation fees levied pursuant to Section 402 of P.L. 95-87 and allocated to the Commonwealth of Kentucky;
 - (b) Any income derived from or any user charge imposed on or for land reclaimed pursuant to the Abandoned Mine Lands Program after the expenses of the program have been deducted;
 - (c) Donations by persons, corporations, associations, governmental entities, and foundations for the purposes of the Abandoned Mine Lands Program;
 - (d) Interest credited to the fund pursuant to Section 401(e) of P.L. 95-87 and allocated to the Commonwealth of Kentucky; and
 - (e) All other moneys as provided for consistent with this chapter.
- (4) Moneys in the fund may be used for the following purposes:
 - (a) Reclamation and restoration of land and water resources adversely affected by past coal mining, including but not limited to reclamation and restoration of abandoned surface mine areas, abandoned coal processing areas, and abandoned coal refuse disposal areas; sealing and filling of abandoned deep mine entries and voids; planting of land adversely affected by past coal mining to prevent erosion and sedimentation; prevention, abatement, treatment, and control of water pollution created by coal mine drainage, including restoration of stream beds, and construction and operation of water treatment plants; prevention, abatement, and control of burning coal refuse disposal areas and burning coal in situ; and prevention, abatement, and control of coal mine subsidence;
 - (b) Acquisition and filling of voids and sealing of tunnels, shafts, and entryways;
 - (c) Acquisition of land as provided for in this chapter;
 - ~~(d) Studies by state agencies, by contract with public and private organizations to provide information, advice, and technical assistance, including research and demonstration projects, conducted for the purposes of this program;~~
 - ~~(e)~~ Restoration, reclamation, abatement, control, or prevention of adverse effects of coal mining which constitute an emergency as provided for in this program;
 - ~~(e)~~~~(f)~~ Administrative expenses of the program to accomplish the purposes of this program;
 - ~~(f)~~~~(g)~~ For the purposes of Section 507(c) of P.L. 95-87; and

~~(g)(h)~~ All other necessary expenses to accomplish the purposes of this program.

Section 3. KRS 350.555 is amended to read as follows:

Expenditure of moneys from the fund on lands and water eligible pursuant to KRS 350.560~~{350.565}~~ for the purposes of the Abandoned Mine Lands Program shall reflect the following priorities in the order stated:

- (1) (a) The protection of public health, safety, ~~general welfare,~~ and property from extreme danger of adverse effects of coal mining practices; *and*
 - (b) *The restoration of land and water resources and the environment that have been degraded by the adverse effects of coal mining practices and which are situated adjacent to a site that has been or will be remediated under this subsection;*
- (2) (a) The protection of public health *and* ~~safety,~~ ~~and general welfare~~ from *the* adverse effects of coal mining practices; *and*
 - (b) *The restoration of land and water resources and the environment that have been degraded by the adverse effects of coal mining practices and which are situated adjacent to a site that has been or will be remediated under this subsection; and*
- (3) The restoration of land and water resources and the environment previously degraded by adverse effects of coal mining practices, including measures for the conservation and development of soil, water (excluding channelization), and woodland resources, fish and wildlife, recreation resources, and economic productivity~~;~~
- ~~(4) Research and demonstration projects relating to the development of surface mining reclamation and water quality control program methods and techniques;~~
- ~~(5) The protection, repair, replacement, construction, or enhancement of public facilities such as utilities, roads, and recreation and conservation facilities adversely affected by coal mining practices; and~~
- ~~(6) The development of publicly owned land adversely affected by coal mining practices, including land acquired for reclamation as provided in the Abandoned Mine Lands Program for recreation and historic purposes, conservation, and open space benefits].~~

Section 4. KRS 350.560 is amended to read as follows:

- (1) Lands and water eligible for reclamation or drainage abatement expenditures under the Abandoned Mine Lands Program are those which were mined for coal or which were affected by coal mining, wastebanks, coal processing, or other coal mining processes, and were abandoned or left in an inadequate reclamation status prior to August 3, 1977, and for which there is no continuing reclamation responsibility under the provisions of this chapter. Surface coal mining operations on lands eligible for remining shall not affect the eligibility of those lands for reclamation and restoration under this chapter after the release of the bond or deposit for a remining operation as provided under KRS 350.093. In the event the bond or deposit for a surface coal mining operation on lands eligible for remining is forfeited, funds available under this chapter may be used if the amount of the bond or deposit is not sufficient to provide for adequate reclamation or abatement, except that if conditions warrant the cabinet shall immediately exercise its authority under KRS 350.585.
- (2) If the cabinet determines that the reclamation priority, under the priorities of KRS 350.555(1) and (2), of a site is the same or more urgent than the priority of sites under subsection (1) of this section, the following sites shall also be eligible for reclamation or drainage abatement expenditures:
 - (a) Unreclaimed sites which were mined for coal or which were affected by coal mining, waste banks, coal processing, or other mining processes and left in an inadequate reclamation status during the period beginning August 4, 1977, and ending May 18, 1982, for which the bond, or other form of financial guarantee, was insufficient to provide adequate reclamation or abatement of the site; or
 - (b) Unreclaimed sites which were mined for coal or which were affected by coal mining, waste banks, coal processing, or other coal mining processes and left in an inadequate reclamation status during the period beginning on August 4, 1977, and ending on or before November 5, 1990, where the surety for the permittee became insolvent during the period, and as of November 5, 1990, funds immediately available from proceedings relating to the insolvency, or from other sources have been insufficient to provide for adequate reclamation and abatement at the site.
- (3) Sites under subsection (2) in the immediate vicinity of a residential area or which have an adverse economic impact upon a local community shall be given priority.

- (4) ~~Up to thirty percent (30%) of the~~ Funds allocated to the Commonwealth through annual grants from the Secretary of the Interior may be expended for the purposes of protecting, repairing, replacing, constructing, or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal mining practices. If the adverse effect on water supplies referred to in this subsection occurred both prior to and after August 3, 1977, subsections (1) and (2), above, shall not be construed to prohibit use of funds for the purposes of this subsection, if the adverse effects occurred predominantly prior to August 3, 1977.
- (5) Where the Governor has made a certification under KRS 350.553 and the Secretary of the Interior has concurred in the certification, the reclamation categories of KRS 350.553(2) shall take effect, supplanting the categories of subsections (1), (2), and (4) above.

Section 5. KRS 350.575 is amended to read as follows:

- (1) Within six (6) months after the completion of projects to restore, reclaim, abate, control, or prevent adverse effects of past coal mining practices on privately owned land, the cabinet shall itemize the moneys so expended and may file a statement thereof in the office of the county in which the land lies which has the responsibility under local law for the recording of judgments against land, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of adverse effects of past coal mining practices if the moneys so expended shall result in a significant increase in property value. Such statement shall constitute a lien upon the said land. The lien shall not exceed the amount determined by the appraisal to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. No lien shall be filed against the property of any person, in accordance with this section, ~~who owned the surface prior to May 2, 1977, and~~ who neither consented to nor participated in nor exercised control over the mining operation which necessitated the reclamation performed hereunder. The cabinet may waive the lien consistent with its regulations.
- (2) The landowner may proceed as provided by local law to petition within sixty (60) days of the filing of the lien, to determine the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. The amount reported to be the increase in value of the premises shall constitute the amount of the lien and shall be recorded with the statement herein provided. Any party aggrieved by the decision may appeal as provided by local law.
- (3) The lien provided in this section shall be entered in the county office in which the land lies and which has responsibility under local law for the recording of judgments against land. Such statement shall constitute a lien upon the said land as of the date of the expenditure of the moneys and shall have priority as a lien second only to the lien of real estate taxes imposed upon said land.

Section 6. KRS 350.597 is amended to read as follows:

- (1) The Finance and Administration Cabinet shall establish a special trust fund which may receive and retain up to **thirty percent (30%)** ~~ten percent (10%)~~ of the total grants made annually by the Secretary of the Interior, pursuant to Section 402(g)(6) ~~and (7)~~ of *Pub. L. No. [P.L.] 95-87, as amended by the Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432.*
- (2) Sums deposited into the special trust fund, and interest earned thereon, shall be expended ~~for either:~~
- (a) ~~For the priorities stated in KRS 350.555 after September 30, 1995; or~~
- (b) ~~For~~ acid mine drainage abatement and treatment in accordance with the requirements of Section 402(g)(6) ~~(7)~~ of *Pub. L. No. [P.L.] 95-87, as amended by the Tax Relief and Health Care Act of 2006, Pub. L. No. 109-432.*

Approved March 21, 2007.