

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

# 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.  
17  
18  
19

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:  
21

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 Department of Environmental Quality shall either deny the  
 16 petition, stating in writing its reasons for the denial, or shall initiate  
 17 rulemaking proceedings in accordance with subsection (a) of this section.

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

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

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

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

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

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

35 (e) No rule or regulation shall be valid unless adopted and filed in  
 36 substantial compliance with this chapter.

1  
2 SECTION 4. Arkansas Code § 15-58-207 is amended to read as follows:  
3 15-58-207. ~~Legislative~~ Public hearing – Procedures.

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

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

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

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

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

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

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

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

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

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

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

34 (d) Any person shall be permitted to submit oral or written statements  
35 concerning the subject matter of the public hearing, to call witnesses who  
36 may present oral statements, and to present recommendations as to an

1 appropriate decision.

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

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

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

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

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

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

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

24  
25 SECTION 5. Arkansas Code § 15-58-208 is amended to read as follows:  
26 15-58-208. ~~Legislative~~ Public hearing – Examiners.

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

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

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

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

36 (2) ~~To receive~~ Receive all information submitted pursuant to the

1 pending action and ~~to~~ permit or deny cross-examination of witnesses;

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

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

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

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

9  
10 SECTION 6. Arkansas Code § 15-58-402 is amended to read as follows:

11 15-58-402. State priorities.

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

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

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

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

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

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

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

34 (1) "Priority I" includes the protection of public health,  
35 safety, and property from extreme danger of adverse effects of coal mining  
36 practices, including the restoration of land and water resources and the

1 environment that:

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

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

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

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

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

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

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

24 (C) If the state receives any funding under 30 CFR §  
 25 872.14, 30 CFR § 872.17, or 30 CFR § 872.21, then the state may expend these  
 26 funds to reclaim Priority III lands and waters if the loan is made  
 27 conditional upon either of the following issues being addressed by the state:

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

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

33  
 34  
 35 SECTION 7. Arkansas Code § 15-58-404 is amended to read as follows:  
 36 15-58-404. Abatement of adverse effects – Lien.



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

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

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

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

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

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

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

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

35           (B) ~~However, this provision is not intended to~~ Subdivision  
 36 **(b)(3)(A) of this section does not** create ~~a new~~ rights right of action or

1 eliminate existing immunities.

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

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

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

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

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

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

22 ~~(d)(e)~~ No A lien shall not be filed against the property of any  
23 person, ~~in accordance with~~ under this subsection, ~~who owned the surface prior~~  
24 ~~to May 2, 1977, and~~ section who neither consented to, participated in, nor  
25 exercised control over the mining operation ~~which~~ that necessitated the  
26 reclamation performed ~~hereunder~~ under this section,

27  
28  
29  
30  
31  
32  
33  
34  
35  
36