

made quarterly, out of moneys appropriated to the Department of Public Instruction for special education, by warrant of the Auditor General upon the State Treasurer, after requisition by the Superintendent of Public Instruction. In no event shall the total payment for the cost of tuition and maintenance of any such child exceed [three thousand five hundred dollars (\$3,500)] four thousand two hundred dollars (\$4,200) per year. The maximum amount payable for the cost of tuition and maintenance of such children shall be subject to review at least once every four years for the purpose of recommending an adjustment thereof.

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APPROVED—The 10th day of December, A. D. 1968.

RAYMOND P. SHAFER.

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No. 370

AN ACT

SB 1676

Amending the act of May 31, 1945 (P. L. 1198), entitled "An act providing for the conservation and improvement of land affected in connection with the mining of bituminous coal by the open pit mining method; regulating such mining; and providing penalties," including within the scope of the act the mining or recovery of coal whether or not incidental to any other purpose.

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

Section 1. The definition "open pit mining" in section 3, act of May 31, 1945 (P. L. 1198), known as the "Bituminous Coal Open Pit Mining Conservation Act," amended January 19, 1968 (P. L. 1012), is amended to read:

Section 3. Definitions.—The following words and phrases, unless a different meaning is plainly required by the context, shall have the following meanings:

"Open pit mining" shall mean the mining or recovery of bituminous coal by removing the strata or material which overlies or is above the coal deposit or seam in its natural condition and shall include the mining or recovery of coal whether or not incidental to any other purpose.

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Section 2. Section 3.1 of the act, added July 16, 1963 (P. L. 238), is reenacted to read:

Section 3.1. (a) After January 1, 1964, it shall be unlawful for any person to proceed to mine coal commonly known as bituminous by the open pit mining method as an operator within this Commonwealth without first obtaining a license as an open pit mining operator from the Department of Mines and Mineral Industries. Applications for licensure as open pit mining operators shall be made in writing to the department, upon forms prepared and furnished by the department, and shall contain such information as to the applicant, or when the application is made by a corporation, partnership or association as to its officers, directors and principal owners, as the department shall require. The application for licensure shall be accompanied by a fee of three hundred dollars (\$300). It shall be the duty of all persons licensed as open pit mining operators to renew such license annually, and pay for each such license renewal the sum of three hundred dollars (\$300). The application for renewal of a license as an open pit mining operator shall be made annually on or before January 1 of the next succeeding year.

Penalty.—Any person who proceeds to mine coal commonly known as bituminous by the open pit mining method as an operator without having applied for and received a license as herein provided shall be guilty of a misdemeanor, and, upon conviction, shall be sentenced to pay a fine of not less than five thousand dollars (\$5,000) and not exceeding ten thousand dollars (\$10,000), or undergo imprisonment not exceeding six months, or both. The fine shall be payable to the Bituminous Coal Open Pit Mining Reclamation Fund.

(b) The department shall not issue any new open pit mining operator's license or renew any existing open pit mining operator's license to any person or operator if it finds, after investigation, that the applicant for licensure or renewal has previously failed and continues to fail to comply with any of the provisions of this act. Where the applicant is a corporation, partnership or association, the department shall not issue such license or renewal if, after investigation, it finds that any officer or director or principal owner of such corporation, partnership or association has previously failed and continues to fail to comply with any of the provisions of this act, or if any such officer or director or principal owner is or has been an officer or director or principal owner of any other corporation, partnership or association, which has previously failed and continues to fail to comply with any of the provisions of this act.

Section 3. Section 4 of the act, amended July 16, 1963 (P. L. 238), is reenacted to read:

Section 4. (a) Before any person licensed as an open pit mining operator shall hereafter proceed to mine coal commonly known as bituminous by the open pit method, he shall apply to the Department of Mines and Mineral Industries, on a form prepared and furnished by the department, for a permit for each separate operation, which permit when issued shall be valid until such operation is completed or abandoned, unless sooner suspended by the Secre-

tary of Mines and Mineral Industries. As a part of each application for a permit, the operator shall furnish, in duplicate, a map or plan on a scale of not less than four hundred feet to the inch in a manner satisfactory to the Secretary of Mines and Mineral Industries, showing the location of the tract or tracts of land to be affected by the operation contemplated. Such map or plan shall be prepared and certified by a registered professional engineer or registered surveyor and shall show the boundaries of the area of land which will be affected, the drainage area above and below such area, the location and names of all streams, roads, railroads and utility lines on or immediately adjacent to the area, the location of all buildings, the name of the owner of the area and the names of adjacent landowners, the municipality or township and county, and if in a township, the nearest municipality. Such map or plan shall also show the results of test borings which the operator has conducted at the site of the proposed operation and shall include the nature and depth of the overburden, the thickness of the coal seam, a complete analysis of the coal seam, the crop line of the coal seam and the location of test boring holes. The information pertaining to test borings, the depth of the overburden, the thickness of the coal seam, the analysis of the coal seam, the crop line of the coal seam and the location of the test boring holes shall be deemed confidential information and shall not be deemed a matter of public record. Aerial photographs of the tract or tracts of land to be affected by the operation shall be acceptable if such photographs show the details of contour to the satisfaction of the Secretary of Mines and Mineral Industries.

(b) In addition to the information and maps otherwise required by this act, each application for a permit shall be accompanied by a detailed proposal showing the manner, time and distance for backfilling. Such proposal shall also show the manner in which the operator plans to divert surface water from draining into the pit and the manner in which he plans to prevent water from accumulating in the pit, unless the operator plans that type of restoration commonly known as terracing or restoration to approximate contour. Copies of such data shall be furnished by the Secretary of Mines and Mineral Industries to the Land Reclamation Board as hereinafter constituted. No permit in such event shall issue unless the plan of backfilling is approved by the Land Reclamation Board. The Secretary may approve terracing: Provided, however, That approval for this type of contouring shall not be granted unless the steepest contour of the highwall shall be no greater than forty-five degrees and there be no depressions to hold water which may percolate through the spoil and produce acid drainage. The approval of such contouring shall in no way be construed as reducing the responsibility of the operator to prevent stream pollution. Terracing as hereafter referred to shall be as described above. The operator shall be responsible for the prevention of stream pollution by acid drainage or avoid-

able siltation. Failure to adequately maintain such ditches, dikes, pumps and drainage facilities as may be necessary to prevent water from draining into or accumulating in the pit, or to prevent stream pollution by acid drainage, or avoidable siltation during the open pit mining, or during any drift or auger mining following such open pit mining, shall render the operator liable to the sanctions and penalties provided in this act. Nothing herein contained shall be construed to abrogate any of the enforcement or regulatory powers of the Sanitary Water Board. The Department of Mines and Mineral Industries shall be the exclusive investigating, examining, reporting and enforcement agent of the Sanitary Water Board in the Department of Health, or its duly constituted successor in its administration of the act of June 22, 1937 (P. L. 1987), as amended, where such law has application to bituminous coal stripping operations and shall do such work through its appropriate personnel subject to the direction of the Secretary of Mines and Mineral Industries.

(c) Except where leases in existence on the effective date of this amending act do not so provide or permit, the application for a permit shall include, upon a form prepared and furnished by the department, the written consent of the landowner to entry upon any land to be affected by the operation by the operator or by the Commonwealth or any of its authorized agents within a period of five years after the operation is completed or abandoned for the purpose of backfilling, planting, reclamation and inspection.

(d) The Department of Mines and Mineral Industries shall not issue any additional permits to any operator who has failed, or continues to fail to comply with the provisions of this act under any permit previously issued.

(e) When the requirements of this act are met and no claims are outstanding under this act against the operator, or in the case of any corporation against any officer or director, a permit shall issue forthwith.

(f) If the Secretary of Mines and Mineral Industries does not approve the application for a permit, or an amended permit, he shall promptly notify the operator by registered mail setting forth his reasons therefor. The operator may then take such steps as are required to remove the objections. Any operator who shall be aggrieved by any action of the Secretary of Mines and Mineral Industries under this section, or the failure of the Secretary of Mines and Mineral Industries to act upon the application for a permit, may proceed under the provisions of section 14 of this act.

(g) After receiving notification from the Secretary of Mines and Mineral Industries that an application for a permit has been approved, but prior to commencing open pit mining, the operator shall file with the Department of Mines and Mineral Industries a bond for each operation, on a form to be prescribed and furnished by the department, payable to the Commonwealth and conditioned

that the operator shall faithfully perform all of the requirements of this act. The amount of the bond required for each operation shall be dependent upon the overburden and the contour and shall be determined by the Secretary of Mines and Mineral Industries, but such bond shall not be less than five hundred dollars (\$500.00) nor more than one thousand dollars (\$1000.00) per acre based upon the number of acres of land in each operation, which will be affected by open pit mining during the following year: Provided, That no bond shall be filed for less than five thousand dollars (\$5000.00). Liability under such bond shall be for the duration of open pit mining at each operation, and for a period of five years thereafter, unless released prior thereto as hereinafter provided. Such bond shall be executed by the operator and a corporate surety licensed to do business in the Commonwealth: Provided, however, That the operator may elect to deposit cash or negotiable bonds of the United States Government or the Commonwealth of Pennsylvania, the Pennsylvania Turnpike Commission, the General State Authority, the State Public School Building Authority, or any municipality within the Commonwealth, with the department in lieu of a corporate surety. The cash deposit or market value of such securities shall be equal at least to the sum of the bond. The Secretary of Mines and Mineral Industries shall, upon receipt of any such deposit of cash or securities, immediately place the same with the State Treasurer, whose duty it shall be to receive and hold the same in the name of the Commonwealth, in trust, for the purposes for which such deposit is made. The State Treasurer shall at all times be responsible for the custody and safekeeping of such deposits. The operator making the deposit shall be entitled from time to time to demand and receive from the State Treasurer, on the written order of the Secretary of Mines and Mineral Industries, the whole or any portion of any securities so deposited, upon depositing with him, in lieu thereof, other negotiable securities of the classes herein specified having a market value at least equal to the sum of the bond, and also to demand, receive and recover the interest and income from said securities as the same becomes due and payable: Provided, however, That where securities, deposited as aforesaid, mature or are called, the State Treasurer, at the request of the operator, shall convert such securities into such other negotiable securities of the classes herein specified as may be designated by the operator.

(h) The operator shall, prior to commencing operations on any additional land exceeding the estimate made in the application for a permit, file an additional bond. Upon receipt of such bond and such additional material as would have been required for the additional land had it been included in the original application for a permit and should all the requirements of this act be met as were necessary to secure the permit, the Secretary of Mines and Mineral Industries shall promptly issue an amended permit covering the additional acreage covered by such bond.

Section 4. Section 4.1, subsection (a) of section 4.2 and sections 4.3 and 4.4 amended January 19, 1968 (P. L. 1012), are reenacted to read:

Section 4.1. On or before the third day of each month, every operator of a coal stripping operation shall furnish the mine conservation inspector in whose district the operation is located, on a form provided by the department, an accurate monthly report of coal produced, number of employes and days worked, and also a report of all fatal and nonfatal accidents for the previous month. An annual report shall be furnished to the mine conservation inspector in whose district the operation is located on a form provided for that purpose not later than the twenty-fifth day of January each year for the preceding year.

Section 4.2. (a) Except as otherwise provided hereunder, all coal stripping operations coming within the provisions of this act shall be under the exclusive jurisdiction of the department and shall be conducted in compliance with such reasonable rules and regulations as may be deemed necessary by the secretary for the health and safety of those persons engaged in the work. The secretary through the mine conservation inspectors shall have the authority and power to enforce the provisions of this act and the rules and regulations promulgated thereunder by him.

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Section 4.3. Any mine conservation inspector directed by the department shall have the right to enter upon and inspect all stripping operations for the purpose of determining conditions of safety and for compliance with the provisions of this act, and all rules and regulations promulgated pursuant thereto. Should an operator fail to comply with the requirements of this act, or any rules or regulations promulgated pursuant thereto, the mine conservation inspector shall report the matter to the secretary who shall immediately notify the operator by registered mail of such failure. Unless the operator complies with the act, and such rules and regulations, within thirty (30) days from the receipt of such notice, the secretary may, after hearing and final determination, suspend the open pit mining operator's license of the operator and issue a cease and desist order requiring the operator to immediately cease open pit mining within this Commonwealth until such time as it is determined by the secretary that the operator is in full compliance. A mine conservation inspector shall have the authority to order the immediate stopping of any operation that is started by an unlicensed operator, or without the operator thereof having first obtained a permit as required by this act, or in any case where safety regulations are being violated or where the public welfare or safety calls for the immediate halt of the operation until corrective steps have been started by the operator to the satisfaction of the mine conservation inspector. Any operator who believes he is aggrieved by the action of the mine conservation inspector

may immediately appeal to the secretary, setting forth reasons why his operation should not be halted. The secretary shall determine when the operation shall continue.

Section 4.4. If an operator continues to operate beyond one year, the mine conservation inspector shall be furnished with a new map, at the end of each year of operation, on which is outlined the area affected and restored during the preceding year.

Section 5. Sections 5, 7 and 8 of the act, amended July 16, 1963 (P. L. 238), are reenacted to read:

Section 5. Operation Report and Backfilling.—Within thirty (30) days after starting the removal of overburden at each operation for the removal of coal by open pit mining, the operator shall file an operation report with the Department of Mines and Mineral Industries on a form to be prescribed and furnished by the secretary, giving the following information: (a) Name or number of the operation; (b) Location of the operation as to county and township and with reference to the nearest public road; (c) A description of the tract or tracts; and (d) The name and address of the landowner or his duly authorized representative.

The operator in all cases shall backfill the pits made by the open pit mining operation to a distance of one hundred feet beyond the boundary line of the right of way of any public highway and to a distance of two hundred twenty-five feet from any occupied dwelling house, unless released by owner thereof, public building, school, church and community or institutional building.

Nothing contained in this section shall be construed to prohibit the relocation of any public road in the manner provided by law.

Section 7. If an operation is not completed or abandoned within one year following the date of issuance of the permit for the operation, the operator shall, within thirty (30) days after the end of said year, file with the Department of Mines and Mineral Industries an annual report for each such operation, on a form to be prescribed and furnished by the secretary, stating the area of land affected by open pit mining at the operation during the said year.

Section 8. Upon receipt of a completion report or annual report, the Secretary of Mines and Mineral Industries shall charge the land affected in each operation by open pit mining against the bond filed by the operator at the time of issuance of the permit at the rate of the amount of the bond required per acre for such land. Should the land actually affected in any operation by open pit mining within the year exceed the estimate made at the time of issuance of the permit, or any amendment thereof, the operator shall thereafter file an additional bond with the annual report or completion report. Upon receipt of such bond, the Secretary of Mines and Mineral Industries shall promptly issue an amended permit covering the additional acreage covered by such bond. If the land actually affected in any operation by open pit mining during the year following the issuance of the permit is less than the estimate made by the operator in the

application for the permit for the operation, the secretary shall, at the end of the year, release the surplus of the bond and collateral upon which liability has not been charged as aforesaid: Provided, That except as provided in section 10, no bond or collateral shall be released below five thousand dollars (\$5000.00) in the absence of complete compliance with the requirements of this act, and should there be a failure of complete compliance with the requirements of this act not less than the minimum bond in the amount of five thousand dollars (\$5000.00) shall be forfeited.

Section 6. Section 10 of the act, amended January 19, 1968 (P. L. 1012), is reenacted to read:

Section 10. Within six months after the operation is completed or abandoned, the operator shall backfill all pits in accordance with the plan previously approved by the secretary or by the board. Such backfilling shall be terraced as previously described or shall begin at or beyond the top of the highwall and be sloped to the toe of the spoil bank at a maximum angle not to exceed the approximate original contour of the land with no depressions to accumulate water. An operator may, with the written approval of the landowner, except where leases in existence on January 1, 1964 do not so provide or permit, propose alternative plans for reclamation wherein the land can be used for suitable purposes consistent with the exercise of the police power as set forth in section 1 of this act. Such plans are to be submitted to the board, and if such plans are approved by the board and complied with within the times herein prescribed for backfilling and planting, or such other times limits as may be agreed upon as being reasonable for carrying out such plans, the backfilling and planting requirements will be waived by the department. Whenever reasonable and practicable, the department shall require backfilling and planting as the open pit mining progresses. All backfilling shall be completed before necessary backfilling equipment is moved from the operation. Within three months after the backfilling is completed, the operator shall file with the Department a completion report on a form prescribed and furnished by the secretary. If the operator or other person desires to conduct drift mining upon the premises or use the openings for haulageways or other lawful purposes, the operator may designate locations to be used for such purposes at which places it will not be necessary to backfill as herein provided for until such drift mining or other use is completed, during which time the bond on file for that portion of such operation shall not be released. That portion of such locations shall be described in the completion report and designated on the map attached thereto. When the backfilling and leveling on that portion of the entire area of land affected by the operation for the previous years have been completed and reports filed by the mine conservation inspector certifying that it has been done in the manner prescribed by law, the secretary shall release the bond which was filed for that portion of such operation in its full amount less one hundred dollars (\$100.00)

per acre, which shall be retained by the secretary until such time as the planting is completed and certified by the board as being done in a workmanlike manner, at which time the secretary shall release the bond in the remaining amount of one hundred dollars (\$100.00) per acre.

Section 7. Sections 11, 12 and 14 of the act, amended July 16, 1963 (P. L. 238), are reenacted to read:

Section 11. Within one year after the operation has been back-filled in compliance with the plan earlier submitted, the operator shall plant trees, shrubs or grasses upon the land affected by open pit mining: Provided, however, That the operator shall be relieved from the obligation to plant trees, shrubs or grasses required by this section if the Land Reclamation Board shall find as a fact that such planting is not reasonable, practicable or likely to succeed, or if the Land Reclamation Board, upon application by the landowner, approves the use of the land for a purpose other than the growing of trees, shrubs or grasses, or if the operator, in lieu of planting trees, shrubs or grasses, shall pay to the Secretary of Mines and Mineral Industries one hundred dollars (\$100.00) per acre of land affected by open pit mining. Funds received by the secretary in lieu of such planting shall be paid by him into the Bituminous Coal Open Pit Mining Reclamation Fund and used by him as hereinafter prescribed for the use of funds derived from the forfeiture ¹ of bonds. When deemed necessary, the Land Reclamation Board may extend the period ² for planting trees, shrubs or grasses beyond the limitations of the period of time provided in this act. Such planting shall be done in accordance with a plan or procedure prescribed by the Land Reclamation Board. The trees, shrubs or grasses shall become the property of the landowner, unless the operator and the landowner agree otherwise. The operator shall plant only seeds, plants or seedlings secured from a source approved by the Land Reclamation Board.

Section 12. When the planting is completed the operator shall file a planting report with the Secretary of Mines and Mineral Industries, on a form to be prescribed and furnished by the secretary, giving the following information: (a) Identification of the operation; (b) The type of planting; (c) The date of planting; and (d) The area of land planted; and (e) Such other relevant information as the secretary may require. The Secretary of Mines and Mineral Industries shall submit such report to the Land Reclamation Board which shall inspect the premises, either in person or by its duly authorized representative, within one (1) year after the planting report is filed. If the Land Reclamation Board finds that the planting has been done in a workmanlike manner and that the area reported has been planted in accordance with the prescribed plan or procedure, or if the operator has been relieved from the obligation to plant trees, shrubs or grasses as hereinabove provided, it shall so notify the Secretary of Mines

¹ "of" not in original.

² "of" in original.

and Mineral Industries who shall release the bond and collateral in proportion to the area planted or relieved from planting. Upon such release the State Treasurer shall immediately return to the operator the amount of cash or securities specified therein.

Section 14. If upon inspection, the Land Reclamation Board does not approve the planting, it shall notify the operator in writing, setting forth the reasons therefor. The operator may then take such steps as are required to remove the objections. Any operator or landowner who shall be aggrieved by any administrative regulation, directive or order of the Secretary of Mines and Mineral Industries, the Land Reclamation Board or any other administrative agency making application of the provisions of this act, may file a petition in the court of common pleas of the county where the land is located, alleging therein the action complained of and praying for remedy thereof, and the said court shall proceed therein by rule or rules upon the proper administrative officer, body or authority to show cause why the petitioner should not have the remedy prayed for by his, her, or its petition. The court in such proceedings shall make such procedural orders as may be necessary for facilitating and expediting hearings and disposition of the matters complained of. From the decision of the said court of common pleas an appeal may be taken by either party to the Superior or Supreme Court of Pennsylvania as in other causes. Every such petition shall specify the petitioner's objection to the action of the administrative officer, body or authority, and such officer, body or authority, on or before the return day of the rule, shall make answer thereto and certify to the said court of common pleas, the record of the proceedings to which the petition refers. Such record shall include the testimony taken therein, the findings of fact, if any, of the officer, body or authority based upon such testimony, and a copy of all decisions and orders made by the said officer in the proceedings. The case shall be heard upon the record certified to the court as aforesaid. No additional testimony shall be taken before the court, but the court may, in proper cases, remit the record to the respondent for the taking of further testimony and from the record, the court may review, modify or affirm or make new findings of fact as well as decide the law applicable.

Section 8. Section 15 of the act, amended September 2, 1961 (P. L. 1210), is reenacted to read:

Section 15. If the operator fails or refuses to comply with the requirements of the act in any respect for which liability has been charged on the bond, the Secretary of Mines and Mineral Industries shall declare such portion of the bond forfeited, and shall certify the same to the Department of Justice, which shall proceed to enforce and collect the amount of liability forfeited thereon, and where the operator has deposited cash or securities as collateral in lieu of a corporate surety, the Secretary of Mines and Mineral Industries shall declare such portion of said collateral forfeited and shall direct

the State Treasurer to pay said funds into the Bituminous Coal Open Pit Mining Reclamation Fund, or to proceed to sell said securities to the extent forfeited and pay the proceeds thereof into the Bituminous Coal Open Pit Mining Reclamation Fund. Any operator aggrieved by reason of forfeiting the bond or converting collateral, as herein provided, shall have a right to contest such action and appeal as provided in section fourteen of this act.

Section 9. Section 16 of the act, amended July 16, 1963 (P. L. 238), is reenacted to read:

Section 16. Any operator who proceeds to mine bituminous coal by the open pit mining method without having received a permit, as herein provided, or who proceeds to mine bituminous coal by the open pit mining method without securing an amended permit, or who proceeds to mine bituminous coal by the open pit mining method without having furnished the proper bond, as herein provided, or who has intentionally filed false information in the application for a permit, shall be guilty of a misdemeanor, and upon conviction, shall be sentenced to pay a fine of not less than five hundred dollars (\$500.00) or not exceeding five thousand dollars (\$5000.00), or imprisonment in the county jail for a period not exceeding three months, or both. The fines shall be paid into and held by the State Treasurer in the "Bituminous Coal Open Pit Mining Reclamation Fund," provided for in section eighteen of this act, and shall be used by the Secretary of Mines and Mineral Industries for the sole purpose of foresting or reclaiming land affected by open pit mining of bituminous coal upon lands situated in the county in which the violation occurred.

APPROVED—The 10th day of December, A. D. 1968.

RAYMOND P. SHAFER.

No. 371

AN ACT

HB 2583

Amending the act of April 11, 1929 (P. L. 488), entitled, as amended, "An act providing for the certification of inspected seed potatoes, agricultural and vegetable seeds; prohibiting the use of the words "certified," "inspected," "registered," or similar terms, in connection with the sale of seed potatoes and agricultural and vegetable seeds and crop plants vegetatively propagated, unless inspected and certified as provided in this act; providing for the enforcement of this act by the Department of Agriculture; prescribing penalties, and conferring jurisdiction in certain cases upon the courts of common pleas," extending the act to tree and shrub seeds and plants vegetatively propagated, changing the definition of "certified," and providing penalties.