

1966 SPECIAL SESSION NO. 1

No. 1

AN ACT

HB 13

To protect the public health, welfare and safety by regulating the mining of bituminous coal; declaring the existence of a public interest in the support of surface structures; forbidding damage to specified classes of existing structures from the mining of bituminous coal; requiring permits, and in certain circumstances bonds, for the mining of bituminous coal; providing for the filing of maps or plans with recorders of deeds; providing for the giving of notice of mining operations to political subdivisions and surface landowners of record; requiring mine inspectors to accompany municipal officers and their agents on inspection trips; granting powers to public officers and affected property owners to enforce the act; requiring grantors to certify as to whether any structures on the lands conveyed are entitled to support from the underlying coal and grantees to sign an admission of a warning of the possible lack of any such right of support; providing for acquisition with compensation of coal support for existing structures not protected by this act, and future structures; and imposing liability for violation of the act.

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

Section 1. This act shall be known and may be cited as "The Bituminous Mine Subsidence and Land Conservation Act of 1966."

Section 2. This act shall be deemed to be an exercise of the police powers of the Commonwealth for the protection of the health, safety and general welfare of the people of the Commonwealth, by providing for the conservation of surface land areas which may be affected in the mining of bituminous coal by methods other than "open pit" or "strip" mining, to aid in the protection of the safety of the public, to enhance the value of such lands for taxation, to aid in the preservation of surface water drainage and public water supplies and generally to improve the use and enjoyment of such lands.

Section 3. It is hereby determined by the General Assembly of Pennsylvania and declared as a matter of legislative findings that:

(1) Present mine subsidence legislation and coal mining laws have failed to protect the public interest in Pennsylvania in preserving our land.

(2) Damage from mine subsidence has seriously impeded land development of the Commonwealth.

(3) Damage from mine subsidence has caused a very clear and present danger to the health, safety and welfare of the people of Pennsylvania.

(4) Damage by subsidence erodes the tax base of the affected municipalities.

(5) Coal and related industries and their continued operation are important to the economic welfare and growth of the Commonwealth.

(6) In the past, owners of surface structures have not in many instances received adequate notice or knowledge regarding subsurface support, or lack thereof, for surface structures, and therefore

the State must exercise its police powers for the protection of the structures covered herein.

(7) In order to prevent the occurrence of such state of affairs in the future, the deed notice provisions relating to such subsurface support, or lack thereof to a person desiring to erect a surface structure after the effective date of this act, must be emphasized and strengthened and it is necessary to make available to those persons desiring to erect a surface structure procedures whereby adequate support of such structure can be acquired.

The Pennsylvania General Assembly therefore declares it to be the policy of the Commonwealth of Pennsylvania that:

(1) The protection of surface structures and better land utilization are of utmost importance to Pennsylvania.

(2) Damage to surface structures and the land supporting them caused by mine subsidence is against the public interest and may adversely affect the health, safety and welfare of our citizens.

(3) The prevention of damage from mine subsidence is recognized as being related to the economic future and well-being of Pennsylvania.

(4) The preservation within the Commonwealth of surface structures and the land supporting them is necessary for the safety and welfare of the people.

(5) It is the intent of this act to harmonize the protection of surface structures and the land supporting them and the continued growth and development of the bituminous coal industry in the Commonwealth.

(6) It is necessary to provide for the protection of those presently existing structures which are or may be damaged due to mine subsidence.

(7) It is necessary to provide a method whereby surface structures erected after the effective date of this act may be protected from damage arising from mine subsidence.

Section 4. In order to guard the health, safety and general welfare of the public, no owner, operator, lessor, lessee, or general manager, superintendent or other person in charge of or having supervision over any bituminous coal mine shall mine bituminous coal so as to cause damage as a result of the caving-in, collapse or subsidence of the following surface structures in place on the effective date of this act, overlying or in the proximity of the mine:

(1) Any public building or any noncommercial structure customarily used by the public, including but not being limited to churches, schools, hospitals, and municipal utilities or municipal public service operations.

(2) Any dwelling used for human habitation; and

(3) Any cemetery or public burial ground.

Section 5. (a) Before any bituminous coal mine subject to the provisions of this act is opened, reopened, or continued in operation, the

owner, operator, lessor, lessee, general manager, superintendent or other person in charge of or having supervision over such mine or mining operation 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 bituminous coal mine or mining operation, which permit, when issued or reissued shall be valid until such mine or mining operation is completed or abandoned, unless sooner suspended or revoked by an order of the Secretary of Mines and Mineral Industries, as hereinafter provided. As a part of such application for a permit the applicant shall furnish, in duplicate, a map or plan of a scale and in a manner in accordance with rules and regulations of the Department of Mines and Mineral Industries showing the location of the mine or mining operation, the extent to which mining operations presently have been completed, and the extent to which mining operations will be conducted under the permit being requested. Such map or plan shall show the boundaries of the area of surface land overlying the mine or mining operation, the location and/or designation of all structures in place on the effective date of this act which overlie the proposed mine or mining operation, the name of the record owner or owners of said surface structures, the location of all bodies of water, rivers and streams, roads and railroads, and the political subdivision and county in which said structures are located. Such map or plan shall include, in addition to the information specified above, such information on the character of the mining operation, overburden, rock strata, proximity of and conditions in overlying or underlying coal seams and other geological conditions as the Secretary of Mines and Mineral Industries, by rules and regulations, shall direct. The map or plan must set forth a detailed description of the manner, if any, by which the applicant proposes to support the surface structures overlying the bituminous mine or mining operation. Upon receipt of such application in proper form, the Secretary of Mines and Mineral Industries shall cause a permit to be issued or reissued if, in his opinion, the application discloses that sufficient support will be provided for the protected structures.

(b) If the Secretary of Mines and Mineral Industries determines that the permit applicant does not possess adequate financial responsibility, the secretary may require the applicant to file a bond or other security as recited in section 6 (b), to insure the the applicant's faithful performance of mining or mining operations, in accordance with the provisions of section 4.

(c) At the time an application under this act is filed with the Secretary of Mines and Mineral Industries, the owner, operator, lessor, lessee, general manager, superintendent, or other person in charge of or having supervision over such mining operation shall immediately file a copy of said application with the recorder of deeds of each county where such mining operation is located. Notice of such filing shall be given within five days by the applicant to each political subdivision where such mining operation is or will be conducted.

(d) A bituminous coal mine in operation on the effective date of this act may continue mining operations if an application for a permit covering such operations shall have been filed as heretofore required; provided that no person shall be required to suspend the operation of any coal mine or mining operation which is being conducted on the effective date of this act for a period during which the forms for applying for a permit are not available, and for a period of one hundred twenty days thereafter.

Section 6. (a) If the removal of coal or other mining operations by a holder of a permit granted under section 5 causes damage to structures set forth in section 4 of this act evidence that such damage has been repaired or that all claims arising therefrom have been satisfied, shall be furnished to the Secretary of Mines and Mineral Industries within six months from the date that the holder of such permit knows, or has reason to know, such damage has occurred or, at the option of the permit holder, within such period there shall be deposited with the Secretary of Mines and Mineral Industries as security for such repair or such satisfaction a sum of money in an amount equal to said damage or the reasonable cost of repair thereof, as estimated by a reputable expert. In default of the filing of such evidence or such deposit, the Secretary of Mines and Mineral Industries shall suspend or revoke said permit.

(b) No permit revoked or suspended pursuant to this section shall be reissued or reinstated until the applicant shall have furnished satisfactory evidence to the Department of Mines and Mineral Industries that the damage for which the permit was revoked or suspended has been repaired or all claims arising therefrom satisfied, in accordance with subsection (a) above. In addition, the Secretary of Mines and Mineral Industries may, in his discretion, require the applicant to file a bond in a form prescribed by the secretary payable to the Commonwealth and conditioned upon the applicant's faithful performance of mining or mining operations, in accordance with the provisions of section 4. Such bond shall be in a reasonable amount as determined by the Secretary of Mines and Mineral Industries. Liability under such bond shall continue for the duration of the mining or mining operation, and for a period of ten years thereafter, at which time the bond shall become of no force and effect, and it, or any cash or securities substituted for it as hereinafter provided, shall be returned to the applicant. Upon application of any proper party in interest, the Secretary of Mines and Mineral Industries, after due notice to any person who may be affected thereby, and hearing, may order the amount of said bond to be increased or reduced or may excuse the permit holder from any further duty of keeping in effect any bond furnished pursuant to a prior order of the secretary and return said bond, or the securities or cash posted in lieu thereof, to the permit holder, notwithstanding any different provision herein respecting the duration or term of said bond. Such bond shall be executed by the applicant and a corporate surety licensed to do business in the Commonwealth: Provided, however, That the applicant 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 Secretary of Mines and Mineral Industries in lieu of a corporate surety. The cash deposit or market value of such securities shall be at least equal 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 safe-keeping of such deposits. The applicant 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 become due and payable: Provided, however, That where securities, deposited as aforesaid, mature or are called, the State Treasurer, at the request of the applicant, shall convert such securities into such other negotiable securities of the classes herein specified as may be designated by the applicant.

(c) If it shall be determined by the Secretary of Mines and Mineral Industries that the holder of a permit issued pursuant to the provisions of this act who has furnished a bond under this section, has failed or refused to comply with the provisions of this act, the Secretary of Mines and Mineral Industries shall certify such determination to the Attorney General. The Attorney General shall proceed immediately to enter suit upon said bond and to collect such amount as may be necessary to redress or repair the damage occasioned by such violation, together with the costs of said proceedings. Where the holder of the permit has deposited cash or securities as collateral in lieu of a corporate surety, the Secretary of Mines and Mineral Industries shall declare such collateral forfeited and shall direct the State Treasurer to pay said funds or proceed to sell said securities and pay the proceeds thereof to the Department of Mines and Mineral Industries to be used in accordance with the purposes of this section. Should the amount so collected be insufficient to redress or repair the damage, the owner, operator, lessor, lessee, general manager, and superintendent or other person having charge of said mine or mining operation, shall be jointly and severally liable for the deficiency. Should the amount so collected exceed the amount necessary to restore or repair the damage occasioned by such violation, such excess shall be paid over to the party entitled thereto.

Section 7. Except as otherwise provided herein, all bituminous coal

mines or mining operations coming within the provisions of this act shall be under the exclusive jurisdiction of the Department of Mines and Mineral Industries and shall be conducted in accordance with the act of July 17, 1961 (P. L. 659), known as the "Pennsylvania Bituminous Coal Mine Act," and with such reasonable rules and regulations as may be deemed necessary by the Secretary of Mines and Mineral Industries for the health and safety of those persons engaged in the work. The Secretary of Mines and Mineral Industries, through the mine inspectors, shall have the power to enforce the provisions of this act and the rules and regulations promulgated hereunder by him.

Section 8. Every owner, operator, lessor or lessee engaged in the mining of bituminous coal subject to the provisions of this act shall make or cause to be made a true and accurate map or plan of the workings or excavations of such coal mine or colliery which shall be in accordance with standards established by the Department of Mines and Mineral Industries. Such maps or plans shall show in detail, and in markings of a distinctive color, all contemplated workings which are intended to be undertaken or developed within the succeeding six months and shall show, distinctively and in detail, all supports, artificial or otherwise, to be provided in accordance with the permit. Such maps or plans shall be deposited as often as once in six months with the recorder of deeds of any county in which such mining of bituminous coal is or will be conducted and in addition thereto, with such political subdivisions where mining is taking place or is contemplated, as shall request such maps. Such maps or plans shall be considered public records and shall be open to the inspection of the public and copies or tracings may be made therefrom. After one hundred twenty days following the effective date of this act, no mining shall be done which is not shown on such map or plan filed at least ten days previously.

Section 9. Any mine inspector directed by the Department of Mines and Mineral Industries shall have the right to enter upon and inspect all bituminous coal mines and coal mining operations coming within the provisions of this act for the purpose of determining conditions of safety and for compliance with the provisions of this act and all rules and regulations promulgated pursuant hereto. The mine inspector shall report all violations of this act, or any rules and regulations promulgated pursuant hereto, to the secretary, who shall immediately notify the person in charge of or having supervision over said mine or mining operation by registered or certified mail of such violation or violations. Unless the conditions of this act and said rules and regulations are complied with within thirty days from the receipt of such notice, the secretary may, after hearing and final determination, suspend the permit for the aforesaid mine or mining operation and issue a cease and desist order requiring immediate cessation of any mine or mining operation until such time as it is determined by the secretary that said mine or mining operation is in full compliance with the provisions of this act and any rules and regulations promul-

gated pursuant hereto. A mine inspector shall have the authority to order the immediate cessation of any operation that is being conducted without a permit, as required by this act, or in any case where safety regulations are being violated. The right of the secretary to suspend a permit is in addition to any penalty which may be imposed pursuant to this act.

Section 10. Every owner, operator, lessor or lessee engaged in the mining of bituminous coal or every general manager, superintendent or other person in charge of, or having supervision over, any bituminous coal mine or mining operation presently open, or hereafter opened or reopened, shall give, or cause to be given, by registered mail or certified mail, notice of the present existence of such a mine or mining operation, or of the intent to commence or to recommence mining or mining operations within six months thereafter, to the political subdivisions within which such mine or mining operation is, or is to be, located and to the owners of record of the surface lands overlying such existing or proposed mine or mining operation. All notices given, or caused to be given, to the owners of record of the surface lands pursuant to this section shall contain a statement that the maps or plans required under sections 5 and 8 of this act have been filed with the appropriate public officers, and shall contain the locations of the offices where such maps and plans may be inspected.

Section 11. The mayors of cities, boroughs and incorporated towns, the boards of township commissioners or supervisors of townships of the second class, and the county commissioners of any county in which the mining of bituminous coal is conducted and such engineers and other agents as they may employ or appoint, shall, at all reasonable times, be given access to any portion of any bituminous coal mines or mining operations which it may be necessary to inspect for the purpose of determining whether the provisions of this act are being complied with, and all reasonable facilities shall be extended by the owner or operator of such mine or mining operation for ingress, egress or inspection. The mine inspector for the district in which the mine or mining operation is located shall be required to accompany the mayors of cities, boroughs and incorporated towns, the boards of township commissioners or supervisors of townships of the second class, the county commissioners of any county in which the mining of bituminous coal is conducted, and such engineers and other agents as they may employ for purposes of inspection to determine whether the provisions of this act are being complied with.

Section 12. The county commissioners shall have the power to prevent the mining of bituminous coal beneath the surface in any mine or mining operation in violation of this act, and where mining operations are being conducted in violation of this act, they shall have the power to prevent any miner or laborer, other than those necessary for the protection of life and property, from entering the mine or

mining operation until such time as the provisions of this act have been complied with.

Section 13. The courts of common pleas shall have the power to award injunctions to prevent violations of this act and otherwise to provide for its enforcement upon suit brought by the Attorney General of Pennsylvania or the county commissioners of any county, the mayor of any city, borough or incorporated town, or the board of township commissioners or supervisors of any township in which the mining of bituminous coal is conducted, or upon the suit of any property owner affected by such bituminous coal mining, without the necessity of posting a bond on application for a permanent injunction, but a bond shall be required on the granting of a temporary restraining order.

Section 14. After the effective date of this act the grantor in every deed for the conveyance of surface land in a county in which bituminous coal has been found and is separately assessed for taxation shall certify in the deed whether any structure then or thereafter erected on the land so conveyed is entitled to support from the underlying coal. If the grantor shall not certify that there is such a right of support, the grantee shall sign a statement printed in the deed in a contrasting color with no less than twelve point type that he knows that he may not be obtaining the right of protection against subsidence resulting from coal mining operations and that the purchased property may be protected from damage due to mine subsidence by a private contract with the owners of the economic interests in the coal. Such statement shall be preceded by the word "Notice" printed in the same color as the statement with no less than twenty-four point type.

Section 15. (a) After the effective date of this act, any owner of a structure erected prior to the effective date of this act on land overlying coal, which structure is not of a class enumerated in section 4 and any owner of the surface land who shall decide to erect or who shall erect any structure upon the land overlying the coal, but who shall not have the right to have such structure protected against subsidence caused by bituminous coal mining operations, and who shall desire to acquire such protection, shall notify the owners of the economic interests in such coal or the operator of the mine, in writing, of his desire to acquire such protection. Within thirty days after the receipt of such notice, the owners of the economic interests in such coal or the operator of the mine shall notify such surface owner, in writing, of the amount of coal necessary to be left in place for surface support and the owners of the economic interests in such coal shall endeavor to agree with the surface owner on just compensation for the coal to be left in place. If the owners of the economic interests in the coal and the surface owner cannot agree upon the price for the coal to be left in place, any of the parties may, within thirty days after the date of such notice to the surface owner, request the Secretary of Mines and Mineral Industries to appoint a mediator. The

secretary shall promptly appoint a mediator who shall, in accordance with procedures established by the secretary, within ninety days after his appointment determine just compensation for the coal to be left in place for surface support. If either the surface owner or any owner of an economic interest in said coal shall not be satisfied with the determination of the mediator, any such party may proceed within thirty days to have the amount of just compensation determined in accordance with articles V, VI, and VII of the act of June 22, 1964 (P. L. 84) known as the "Eminent Domain Code."

(b) Upon payment by the surface owner to the owners of the economic interests in the coal of the just compensation as finally determined under subsection (a) of this section 15, which payment shall be made within ninety days after such final determination, the operator of the mine shall be responsible for any damage to the structure or structures specified in the award of the mediator, or to such structures covered by contractual agreement between or among the parties, caused by the subsequent mining and removal of coal. The Secretary of Mines and Mineral Industries may, whenever he deems it necessary and appropriate, require the operator of the mine to post a bond to guarantee payment for any damage to such structures, such bond to be in accordance with the provisions of section 6 (b) hereof.

(c) Any owner of surface land without the right of surface support who shall not take advantage of the provisions of this section shall have no recourse under law for any damage caused by subsidence resulting from coal mining operations.

(d) Nothing herein shall prohibit the owners of the economic interests in the coal and the surface owner from voluntarily entering into an agreement providing for coal support, and the amount to be paid therefor, applicable to structures to which this section applies.

Section 16. The "Administrative Agency Law," act of June 4, 1945 (P. L. 1388), as amended, shall apply to all administrative rules, regulations and orders issued pursuant to this act, except as otherwise provided for proceedings to determine compensation payable in section 15 hereof. Any owner, operator, lessor, lessee, general manager, superintendent, or other person in charge of or having supervision over any bituminous coal mine or mining operation subject to the provisions of this act, any landowner, or any political subdivision or county which shall be aggrieved or affected by any administrative rule, regulation or order of the Secretary of the Department of Mines and Mineral Industries issued pursuant to the provisions of this act, shall have the right to appear at any hearing before the Secretary of Mines and Mineral Industries at which the secretary shall reconsider said action. After such hearing the secretary shall issue an adjudication from which the aggrieved or affected party may appeal in the manner provided by the act of June 4, 1945 (P. L. 1388), known as the "Administrative Agency Law."

Section 17. Any person who shall engage in bituminous coal mining without a permit as required by this act shall be deemed guilty

of a misdemeanor and upon conviction shall be sentenced to pay a fine of not less than one hundred dollars (\$100.00) and not more than five thousand dollars (\$5,000.00) for each offense, or to undergo imprisonment in the county jail for a period of not more than one year, or both, and a further fine of fifty dollars (\$50.00) for each day the offense is continued; and in addition thereto shall be liable for the payment of damages to the owner of any structure set forth in section 4 of this act for any injury to said structure as a result of subsidence caused by said bituminous coal mining in an amount as determined by law in a civil proceeding.

Section 18. This act is intended as remedial legislation designed to cure existing evils and abuses and each and every provision hereof is intended to receive a liberal construction such as will best effectuate that purpose, and no provision is intended to receive a strict or limited construction.

Section 19. It is hereby declared that the provisions of this act are severable one from another and if for any reason this act shall be judicially declared and determined to be unconstitutional so far as relates to one or more words, phrases, clauses, sentences, paragraphs or sections hereof, such judicial determination shall not affect any other provision of this act. It is hereby declared that the remaining provisions would have been enacted notwithstanding such judicial determination of the validity in any respect of one or more of the provisions of this act.

Section 20. All acts and parts of acts are repealed insofar as they are inconsistent herewith.

Section 21. This act shall take effect immediately.

APPROVED—The 27th day of April, A. D. 1966.

WILLIAM W. SCRANTON

1966 SPECIAL SESSION NO. 1

No. 2

AN ACT

SB 5

Providing that the Commonwealth of Pennsylvania enter into the interstate mining compact to assure sound mining practices with other States of the United States of America which are signatories thereto, granting to the Governor authority to execute such compact, and to serve as the official representative of the Commonwealth, creating a Mining Practices Advisory Council.

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

Section 1. The Governor of this Commonwealth is hereby authorized and directed to execute, on behalf of the Commonwealth, the interstate mining compact to assure sound mining practices.