

No. 278

AN ACT

HB 1725

Reenacting and amending the act of August 23, 1961 (P.L.1068), entitled, as amended, "An act to provide for the creation and administration of an Anthracite and Bituminous Coal and Clay Mine Subsidence Fund within the Department of Environmental Resources for the insurance of compensation for damages to subscribers thereto; declaring false oaths by the subscribers to be misdemeanors; providing penalties for the violation thereof; and making an appropriation," providing for the payment of the expenses of the administration of the fund from the appropriation of the Department of Environmental Resources and for additional appropriations for the maintenance of the fund; increasing the minimum amount of surplus to be maintained by the fund; and expanding the eligibility requirements for subscribers to the fund; redesignating the fund as the Coal and Clay Mine Subsidence Insurance Fund; making repeals and making changes to conform to existing law.

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

Section 1. The title and the act of August 23, 1961 (P.L.1068), entitled, as amended, "An act to provide for the creation and administration of an Anthracite and Bituminous Coal and Clay Mine Subsidence Fund within the Department of Environmental Resources for the insurance of compensation for damages to subscribers thereto; declaring false oaths by the subscribers to be misdemeanors; providing penalties for the violation thereof; and making an appropriation," amended August 10, 1965 (P.L.328) and July 1, 1971 (P.L.188), are reenacted and amended to read:

AN ACT

To provide for the creation and administration of **[an Anthracite and Bituminous] a Coal and Clay Mine Subsidence Insurance Fund** within the Department of Environmental Resources for the insurance of compensation for damages to subscribers thereto; declaring false oaths by the subscribers to be misdemeanors; providing penalties for the violation thereof; and making an appropriation.

Section 1. Purposes.—Whereas, the anthracite and bituminous coal and clay mine areas have been faced with the grave problem of subsidence for many years, and

Whereas, these problems are becoming more widespread, and

Whereas, these conditions cause undue hardship upon a multitude of persons, and

Whereas, studies reveal that the subsidence is traceable primarily to mining of thirty or more years ago and not necessarily to present day mining so that effective measures cannot readily be taken at this late date for the elimination of the problem, and

Whereas, it would be to the advantage of residents of the anthracite and

bituminous coal and clay mining regions to form a common bond to combat distress resulting from subsidence;

Now therefore, there shall be established **[an Anthracite and Bituminous]** a Coal and Clay Mine Subsidence *Insurance* Fund and **[an Anthracite and Bituminous]** a Coal and Clay Mine Subsidence *Insurance* Board with the powers and duties as herein set out.

Section 2. Terms.—The **[Anthracite and Bituminous]** Coal and Clay Mine Subsidence *Insurance* Board is hereinafter called the board, the **[Anthracite and Bituminous]** Coal and Clay Mine Subsidence *Insurance* Fund is hereinafter called the fund, and the Department of Environmental Resources is hereinafter called the department.

Section 3. The **[Anthracite and Bituminous]** Coal and Clay Mine Subsidence *Insurance* Board.—The **[Anthracite and Bituminous]** Coal and Clay Mine Subsidence *Insurance* Board is hereby created consisting of the Secretary of Environmental Resources, as chairman, and the Commissioner of Insurance and the State Treasurer.

Section 4. The **[Anthracite and Bituminous]** Coal and Clay Mine Subsidence *Insurance* Fund.—**[Certain sums]** *The premiums* to be paid by **[home]** owners *of structures*, as hereinafter described, are hereby constituted **[an Anthracite and Bituminous]** a Coal and Clay Mine Subsidence *Insurance* Fund, hereinafter called fund, for the purpose of insuring *from the moneys in the fund* such **[home]** owners against the damages resulting from subsidence, **[as provided hereinafter, and insure the payment of compensation, as herein provided, or of restoration, as herein provided]** *of coal or clay mines*. Such fund shall be administered by a board without liability on the part of the State except as hereinafter provided beyond the amount thereof and shall be applied to the payment of such damages.

Section 5. The Initial Source of Fund.— **[There shall be established a fund in the sum of one million dollars (\$1,000,000) to be used for the purposes herein provided until such time as premiums collected shall permit the payment of the said sum to the general fund of the Commonwealth. The expenses of the organization and administration of the fund shall, until January 1, 1965, be paid out of said sum and out of such money paid in premiums by subscribers.]**

The expenses of the administration of the fund shall after **[January 1, 1965, be paid out of such money paid in premiums by subscribers as is made available for the expense of the administration of the fund by section 10 of this act and out of the income from the investment of the initial appropriation and premiums by subscribers.] July 1, 1972, be paid out of the general appropriation of the Department of Environmental Resources.**

Section 6. State Treasurer Custodian of Fund.—The State Treasurer shall be the custodian of the fund and all disbursements therefrom shall be paid by him by check upon request by the board. It shall not be necessary for the State Treasurer to audit the accounts which the requisition of the board calls upon him to pay, and for making payments

without audit, the State Treasurer shall not be under any liability whatsoever. The State Treasurer may deposit any portion of the fund not needed for immediate use as other State funds are lawfully deposited. The interest shall be placed to the credit of the fund.

Section 7. Schedule of Premiums.—At any time during each year, the said board shall prepare and publish a schedule of premiums or rates of insurance for subscribers, which schedule shall be printed and distributed free of charge to such persons who shall make application therefor, and any such subscriber may, at his option as hereinafter provided, pay to the fund the amount of premium appropriate, and upon payment thereof, shall be insured, as hereinafter provided, for the year for which such premium is paid, and such insurance shall cover all payments becoming due for which said premium is paid. The premium is fixed and shall be adequate to enable payment of all sums which may become due and payable under the provisions of this act, and adequate reserve sufficient to carry all policies and claims to maturity. In fixing the premiums payable by any subscriber, the board may take into account the condition of the premises of such subscriber in respect to the possibility of subsidence as shown by the report of any inspector appointed by the board or by the department, and they may from time to time change the amount of premiums payable by any of the subscribers as circumstances may require and the condition of the premises of such subscribers in respect to the possibility of subsidence may justify, and they may increase the premiums of any subscriber whose loss experience warrants such change. The insurance of any subscriber shall not be effective until he shall have paid in full the premium so fixed and determined.

Section 8. Surplus.—The board shall set aside five per centum of all premiums collected for the creation of a surplus until such surplus shall amount to [**one hundred thousand dollars (\$100,000),**] *two hundred thousand dollars (\$200,000)*, and thereafter they may set apart such percentage not exceeding five per centum as in their discretion they may determine to be necessary to maintain such surplus sufficiently large to cover the catastrophe hazard of all the subscribers to the fund and to guarantee the solvency of the fund.

Section 9. Investment of Surplus.—The said board may invest any of the surplus or reserve belonging to the fund in such securities and investments as are authorized for investment by savings banks. All such securities or evidences of indebtedness shall be placed in the hands of the State Treasurer who shall be the custodian thereof. He shall collect the principal and interest thereof when due and pay the same into the fund. The State Treasurer shall pay for all such securities or evidences of indebtedness by check issued upon requisition of the board. All such payments shall be made only upon delivery of such securities or evidences of indebtedness to the State Treasurer. To all requisitions calling upon the State Treasurer to pay for any securities or evidences of indebtedness,

there shall be attached a certified copy of the resolution of the board authorizing the investment. The said board may upon like resolution sell any of such securities.

Section 10. Disbursements from Fund.—(a) **[The moneys paid in premiums by subscribers and from income from the investment of the initial appropriation and premiums by subscribers]** *Moneys from the general appropriation of the Department of Environmental Resources* are hereby made available for the expense of administering the fund including the purchase through the Department of Property and Supplies of surety bonds for such officers or employes of the board as may be required to furnish them supplies, materials, motor vehicles, workmen's insurance covering the officers and employes of the board, and liability insurance covering vehicles **[purchased out of moneys of said fund and]** operated by the officers and employes of the board. **[In the event that the use of motor vehicles is required only temporarily, then such moneys in the fund are available for the payment to the Department of Property and Supplies for the use of such motor vehicles on a mileage basis at such amount per mile as the Department of Property and Supplies, with the approval of the Governor, shall determine.]**

(b) **[The moneys in the fund]** *Moneys from the general appropriation of the Department of Environmental Resources* shall also be available for payment, to the Insurance Department, of the cost incurred by that department in examining and auditing the fund in such amounts as the Insurance Department shall determine, and for payment, to the Treasury Department, of the cost of making disbursements out of the fund on behalf of the fund at such amounts as the Treasury Department, with the approval of the Executive Board, shall determine.

(c) The board shall keep an accurate account of the money paid in premiums by the subscribers and the disbursements on account of damages to the premises thereof, and on account of administering the fund, and if at the expiration of any year there shall be a balance remaining after deducting such disbursements, the unearned premiums on undetermined risks and the percentage of premiums paid or payable to create or maintain the surplus provided herein, and after setting aside an adequate reserve, so much of the balance as the board may determine to be safely distributable shall be distributed among the subscribers in proportion to the premiums paid by them and the proportionate share of such subscribers as shall remain subscribers to the fund shall be credited to the installment of premiums next due by them and the proportionate share of such subscribers as shall have ceased to be subscribers in the fund shall be refunded to them out of the fund in the manner hereinafter provided.

[Section 11. Disbursements from Fund Submitted to Auditor General; Inspection by Auditor General.—Hereafter disbursements for salaries and expenses incurred in the administration of the fund shall only be made after they

shall first be submitted to the Auditor General for approval and audit in the manner provided by law for the examination, audit and approval of public accounts originating in or through any department, bureau, board or commission of the State government.

The fund, its officers and employes shall, whenever a demand is made upon them by the Auditor General or his agents, submit for the inspection and examination of the Auditor General or his agent all reports, vouchers, checks, receipts, books and records, as well as any cash or securities or property representing cash or cash disbursements in their possession, and the failure of the members of such fund so to do shall make each member that so refuses liable to a penalty of five thousand dollars (\$5,000) and the failure of the officers and employes of such board so to do shall disqualify them from holding their respective offices or employment.]

Section 12. Application for Insurance; Terms of Insurance; Penalty for False Statement.—Any [home owner living] *owner of a structure located* within the anthracite or bituminous coal or clay mine region and who desires to become a subscriber to said fund for the purpose of insuring *such a structure* therein [himself from damages through] *against damages from coal or clay mine* subsidences, shall make a written application for such insurance to the said board in which application the applicant shall state the name, address, date of ownership of the premises to be insured, the condition of the premises, prior subsidence experience, if any, nature of title whether it includes any subsurface support, whether any agreement exists concerning surface support. Thereupon, the board shall make such investigation as may be necessary *if such application complies with the rules and regulations of the board* and within thirty days after such application shall issue a certificate showing the acceptance of the application and the amount of premium payable by such applicant for the year for which premium is sought. Policies may be issued for one year, for two years or for three years as the board may establish. No insurance shall become effective until the premiums have been paid. All premiums shall be payable to the State Treasurer [who shall issue a receipt] *whereupon a receipt shall be issued* therefor. The receipt for premium together with a certificate of the board shall be evidence that the applicant has become a subscriber to the fund and is insured.

Whoever shall knowingly furnish or make any false certificate, application or statement herein required shall be guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to pay a fine not exceeding one thousand five hundred dollars (\$1,500) and shall undergo imprisonment not exceeding one year.

Section 13. Audit by Auditor General.—The Auditor General through such agents as he may select shall, [during the calendar] *at least once each* year, make a complete examination and audit of the fund including all receipts and expenditures, cash on hand and securities, investments or property held representing cash or cash disbursements, and for these

purposes the Auditor General is hereby authorized to employ such consultants, experts, accountants or investigators as he may deem advisable.

The expense incurred in making said examination and audit shall be certified to the fund by the Auditor General [**which board shall then draw its warrant for the amount thereof payable out of the fund in the manner provided for payment of other expenses of administering said fund.**] *and shall be paid from the general appropriation of the Department of Environmental Resources.*

The first audit of such fund may, in the discretion of the Auditor General, extend back to the creation of such fund or to any other period in its life.

Section 14. Audit by Insurance Department.—The Insurance Department at least once each year shall make a complete examination and audit of the affairs of the fund including all receipts and expenditures, cash on hand and securities, investments or property held representing cash or cash disbursements to ascertain its financial condition and its ability to fulfill its obligations, whether the board in managing the fund has complied with the provisions of law relating to the fund and the equity of the board's plans and dealings with its policyholders.

For the purpose of any examination and audit authorized by this act, the Commissioner of Insurance, his deputy or his examiners shall have free access to all the books, records and papers pertaining to the fund, and all persons charged with the management of the fund or connected therewith as employes are hereby directed and required to give to the Commissioner of Insurance, his deputy or officers the means, facilities and opportunity for such examination and audit.

The expenses incurred by the Insurance Department in making any examination and audit under the provisions of this act shall be ascertained by the department, [**and shall be**] certified to the fund, [**whereupon the board shall draw its warrant for the payment thereof to the department out of the fund.**] Any amount so received by the Insurance Department shall be paid by it into the General Fund through the Department of Revenue. The moneys in the fund are hereby appropriated for payment of expenses of audits and examinations made under this act.] *and paid from the general appropriation of the Department of Environmental Resources.*

Section 15. Claims against Fund.—Any subscriber to the fund must file with the board a true statement of his claim for any subsidence and shall give to the board an opportunity to investigate and to determine whether the board will pay the claim. [**or will repair the damages sustained.**]

Section 16. Defenses against Claims; Suits; Procedure; Investigations of Claims.—In every case where a claim is made against the fund, the fund shall be entitled to every defense against such claim under the policy and shall be subrogated to every right of the subscriber arising out of such accidents against any third persons. The fund may, in the name of the fund, sue in any county of

this Commonwealth or be sued in the *Commonwealth* Court [of Common Pleas of Dauphin County] to enforce any right given against or to any subscriber or other persons under this act.

[Upon receipt of a notice or statement of knowledge of an accident to a subscriber, the said board may, if necessary, cause an investigation to be made by an inspector appointed by it.]

Section 17. Subrogation to Rights of Claimants.—Nothing herein shall relieve [such] *any* person, partnership, or corporation [of] *otherwise liable therefor from* any liability for [the] damages sustained and the fund shall be subrogated to the rights of any property owners' insurance herein.

Section 18. Insurance Companies May Cover This Type of Risk.—Any insurance company [so desiring] may issue policies covering this type of risk [at premiums to be fixed and applicable thereto as herein provided.] *subject to the prior approval of the Insurance Commissioner as to policy form and rates.*

Section 19. Power to Make Rules and Regulations.—The board may make such rules and regulations and such other conditions of the policies as it deems just and expedient in keeping with the fulfillment of the purposes herein set out, *including reasonable classification of risks eligible for coverage hereunder, limits of coverage, and rules covering the adjustment and settlement of claims.*

[Section 20. Personnel; Appointment.—The board may, with the approval of the Governor, appoint a director at a salary to be determined by the board and the Governor. The Secretary of Mines and Mineral Industries shall, subject to board approval, secure personnel such as underwriters, bookkeepers, controllers, auditors, inspectors, examiners, agents and other personnel as may be deemed necessary and proper for the due administration of the fund and the performance of the duties imposed on the board by the provisions of this act.

Section 21. Personnel Deemed Officers and Employees of the Commonwealth.—The officers and employees of the board and the fund shall be deemed and held to be for all purposes whatsoever officers and employees of the Commonwealth of Pennsylvania and shall be entitled to and shall have and exercise the rights, powers and privileges and be subject to all restrictions of other officers and employees of the Commonwealth.]

Section 22. [Board and Personnel] *Employees of the Board* to Be Part of the Department of [Mines and Mineral Industries.—The board, its officers and employees for administrative and other purposes] *Environmental Resources.*—*All employees of the board shall be employed by and located in the Department of [Mines and Mineral Industries] Environmental Resources and shall be subject to the administrative jurisdiction and authority of the Secretary of [Mines and Mineral Industries.] Environmental Resources.*

Section 23. Attorney General to Be Counsel for Board.—The Attorney General shall, ex officio, be the general counsel of the board and shall appoint such attorney or attorneys as may be deemed necessary to aid the board in its functioning.

Section 24. Appropriation.—The sum of one million dollars (\$1,000,000), or so much thereof as may be necessary, is hereby appropriated for the purposes of this act, expenses of organization and administration of the fund as is herein provided.

If, upon completion of the annual examinations and audits required under sections 13 and 14 of this act, commencing with the annual examinations and audits for the calendar year 1971, it shall be determined that the total asset value of the fund is less than one million dollars (\$1,000,000), such additional sum as may be necessary to increase the total asset value of the fund to one million dollars (\$1,000,000) shall be appropriated to the fund for the purposes of this act for the fiscal year immediately following such examinations and audits.

Section 24.1. Appeals.—Any party aggrieved by an action of the board hereunder shall have the right to appeal to the Environmental Hearing Board.

Section 25. Constitutionality and Severability.—The provisions of this act are severable and if any provision, sentence, clause, section, or part thereof, shall be held illegal, invalid, unconstitutional or inapplicable to any person or circumstances, such illegality, invalidity, unconstitutionality or inapplicability shall not affect or impair any of the remaining provisions, sentences, clauses, sections or parts of the act or their application to him, or to other persons and circumstances. It is hereby declared to be the legislative intent that this act would have been adopted if such illegal, invalid or unconstitutional provision, sentence, clause, section or part had not been included therein, and if the person or circumstances to which the act or any part thereof is inapplicable had not specifically been exempted therefrom.

Section 2. This act shall take effect immediately.

APPROVED—The 27th day of November, A. D. 1972.

MILTON J. SHAPP

The foregoing is a true and correct copy of Act of the General Assembly No. 278.



Secretary of the Commonwealth.