

103<sup>D</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 363

To require the Secretary of the Interior to establish a program to insure the stockpiling and replacement of topsoil on public lands and other lands which are moved or covered by surface mining projects, reclamation projects, and other Federal and federally assisted projects, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. SMITH of Iowa introduced the following bill; which was referred jointly to the Committees on Agriculture and Natural Resources

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## A BILL

To require the Secretary of the Interior to establish a program to insure the stockpiling and replacement of topsoil on public lands and other lands which are moved or covered by surface mining projects, reclamation projects, and other Federal and federally assisted projects, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*  
3       That this Act may be cited as the “National Topsoil Pres-  
4       ervation Act of 1993”.

5       SEC. 2. The Congress finds and declares that—

1           (1) topsoil is a valuable, unique, and peculiar  
2 natural resource upon which future generations will  
3 be dependent and that while ownership of land in  
4 the United States, both privately and under the con-  
5 trol of government agencies, provides those in con-  
6 trol with certain rights, it also carries with it a re-  
7 sponsibility not to destroy the topsoil or so inter-  
8 mingle or bury it that it will not be easily and eco-  
9 nomically accessible for use at a later date;

10           (2) in order to promote the general welfare and  
11 to protect the natural resources of the Nation for  
12 both present and future generations, it is necessary  
13 in the use and management of the Nation's land re-  
14 sources to provide minimum standards which incor-  
15 porate environmental, ecological, social, esthetic, eco-  
16 nomic, conservation, and other factors and prevent  
17 the destruction of topsoil and unnecessary interrup-  
18 tion of plant reproduction and soil-building proc-  
19 esses; and

20           (3) failure to establish minimum standards for  
21 the use of land which will protect against the loss of  
22 topsoil in and of itself causes those using inadequate  
23 standards to move to areas where destructive prac-  
24 tices are permitted and therefore such failure to es-

1        establish such minimum standards affect and is a bur-  
2        den upon commerce among the States.

3        SEC. 3. Each project or activity which is carried out  
4        on Federal land (including lands under the jurisdiction of  
5        the Secretary of the Interior), for which any direct or indi-  
6        rect Federal assistance is provided, or which is carried out  
7        by the Secretary of the Interior or any other agency or  
8        instrumentality of the United States, and which involves  
9        the moving or covering of topsoil in changing an area of  
10       land from its natural state shall be subject to this Act.  
11       Such projects and activities shall hereinafter in this Act  
12       be referred to as “projects”.

13       SEC. 4. (a) There is hereby established a National  
14       Land Resources Protection Commission, hereinafter in  
15       this Act referred to as “the Commission”, which shall be  
16       composed of the Secretary of the Interior and four other  
17       members. The President shall designate the Secretary of  
18       the Interior as Chairman of the Commission.

19       (b) Members of the Commission shall be appointed  
20       by the President, by and with the advice and consent of  
21       the Senate, for terms of four years beginning July 1 of  
22       the year following each Presidential election. Vacancies on  
23       the Commission shall be filled in the same manner as  
24       original appointments but only for the unexpired term and  
25       any member of the Commission may be removed by the

1 President at any time. Each member shall receive com-  
2 pensation at the rate of \$67,500 per annum.

3 (c) The Commission is authorized, subject to the civil  
4 service and classification laws, to select, appoint, employ,  
5 and fix the compensation of such officers and employees  
6 as are necessary to carry out the provisions of this Act  
7 and to prescribe their authority and duties.

8 (d) The Commission shall hold such meetings, con-  
9 duct such hearings, and establish such rules and regula-  
10 tions in accordance with chapter 5, title 5, United States  
11 Code, relating to administrative procedure, as may be rea-  
12 sonably necessary to enable it to carry out the provisions  
13 of this Act.

14 (e) The Commission may delegate responsibilities  
15 hereunder within any particular State to a commission or  
16 commissions within that State under terms and conditions  
17 assuring that at least the Federal minimum standards es-  
18 tablished under the provisions of this Act will be adhered  
19 to in such State. In each State where responsibilities have  
20 been delegated hereunder, the Commission shall exercise  
21 a continuing oversight to assure that the purposes of this  
22 Act are being constantly carried out and the Commission  
23 is also authorized to cancel such delegation of authority  
24 at any time.

1 (f) The Commission or any member may administer  
2 oaths or affirmations or take evidence; and may by a ma-  
3 jority vote subpoena and compel the attendance of wit-  
4 nesses or the production of materials.

5 SEC. 5. (a) The Commission shall establish minimum  
6 standards for all projects which assure that a minimum  
7 of twelve inches of topsoil or such lesser amount of topsoil  
8 as may exist shall be stockpiled from those areas of each  
9 project where the shape or contour of the land is changed  
10 or where the land is covered. Such topsoil shall not be  
11 intermingled with other materials or buried so that it will  
12 not be easily and economically accessible for use at a later  
13 date; and, to the extent it is sufficient or adequate to do  
14 so, such topsoil shall be used to form a top layer of uni-  
15 form depth and a minimum of twelve inches deep on all  
16 areas of the completed project where soil will be exposed  
17 to natural elements. Any excess topsoil from such stockpile  
18 which is not so used or needed to cover such exposed areas  
19 to a depth of twelve inches or more shall be stockpiled  
20 permanently in a place where it will improve plant produc-  
21 tion or be easily and economically accessible for use at  
22 a later date.

23 (b) Where sufficient subsoil which is nontoxic to  
24 plantlife will not otherwise be available on the exposed  
25 areas of a completed project and to the extent available

1 from the project, the Commission shall require the sepa-  
2 rate stockpiling and replacement in a sublayer of sufficient  
3 quantities of appropriate soil to provide such a nontoxic  
4 layer of subsoil as if necessary for the production of such  
5 plantlife as is normally considered environmentally, eco-  
6 logically, esthetically, and economically acceptable to the  
7 area.

8 (c) The overriding objective of this section is to re-  
9 quire that the areas of a completed project where the earth  
10 is normally exposed shall be left in at least substantially  
11 as good a condition to sustain vegetation as existed prior  
12 to the beginning of the project and to protect against the  
13 destruction of the productive capacity of existing topsoil  
14 which has currently been exposed to the elements or used  
15 to sustain plantlife; and the Commission shall establish  
16 rules and regulations and provide interpretations consist-  
17 ent with such objective.

18 (d) For the purposes of this Act, the term “topsoil”  
19 shall mean the surface layer of soil, commonly known as  
20 the A-horizon, which contains organic and mineral matter  
21 in such quantities as are needed to provide the fertility  
22 necessary for the production of vegetation.

23 SEC. 6. The Commission shall establish minimum  
24 standards to assure that projects covered by this Act will  
25 not cause pollution of existing streams, land slides, flood-

1 ing or substantially change the volume of water to be car-  
2 ried by natural waterways on land adjoining the imme-  
3 diate construction area except where such change is con-  
4 sistent with an approved State or Federal water resource  
5 policy or law.

6       SEC. 7. No soil shall be moved on any project where  
7 the moving or covering of topsoil covers an area in excess  
8 of one hundred thousand square feet until a license or let-  
9 ter of approval to do so has been issued by the Commission  
10 or by a commission to whom authority has been delegated  
11 under section 4(e) of this Act. A letter of approval from  
12 the director of the appropriate State soil conservation  
13 service shall be deemed sufficient for purposes of the pre-  
14 ceding sentence with regard to any agricultural lands  
15 being restructured for the purpose of increased productiv-  
16 ity, soil conservancy, water conservancy, or reduction of  
17 air or water pollution.

18       SEC. 8. On all projects where the Commission deems  
19 it necessary to assure the fulfillment of the purposes of  
20 this Act, the Commission may require prior to the begin-  
21 ning of any moving of earth, the submission of a plan pre-  
22 pared by a professional engineer or surveyor. Where ap-  
23 propriate, aerial photographs showing details in sufficient  
24 contour to the satisfaction of the Commission or a United  
25 States Department of the Interior Geological Survey topo-

1 graphic map may be substituted to show the area in its  
2 current state. Such plan may require the showing of  
3 boundaries of the area of land affected and the elevation  
4 involved, drainage plans below, above, and away from the  
5 area of land affected both before and after construction,  
6 the topography of the land involved and its relationship  
7 to adjoining property, the direct flow of the water and its  
8 relationship to natural waterways, a definite and detailed  
9 plan in accordance with section 5 herein for removing and  
10 stockpiling and replacing the soil from the land in separate  
11 layers and a segregated state so as to assure that it will  
12 be kept and replaced in a usable condition for sustaining  
13 vegetation, and such other information as the Commission  
14 deems necessary to assure that the particular project will  
15 not violate the minimum standards established under this  
16 Act. The Commission may also require the posting of such  
17 bond or deposit of cash or securities as it deems necessary  
18 to assure that such standards will be met prior to comple-  
19 tion of the project and within a reasonable time during  
20 the completion of various stages of the project.

21       SEC. 9. The Commission shall submit a report to the  
22 Congress by July 31 of each year setting forth the activi-  
23 ties of the Commission and shall also submit to the Con-  
24 gress such other reports as may be requested by commit-  
25 tees of the Congress established by either the United

1 States Senate or the United States House of Representa-  
2 tives.

3 SEC. 10. There is authorized to be appropriated not  
4 more than \$6,000,000 annually for the administration of  
5 this Act for each fiscal year commencing after September  
6 30, 1993.

7 COMPLIANCE WITH BUDGET ACT

8 SEC. 11. No authority under this Act to enter into  
9 contracts or to make payments shall be effective except  
10 to the extent and in such amounts as provided in advance  
11 in appropriations Acts. Any provision of this Act which,  
12 directly or indirectly, authorizes the enactment of new  
13 budget authority shall be effective only for fiscal years be-  
14 ginning after September 30, 1993.

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