WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1980

ENROLLED
Committee Substitute for
SENATE BILL NO. 102

(By Mr. Harmon & Mr. Sisson)

PASSED March 8, 1980
In Effect from Passage
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 102

(MR. HARMAN and MR. SUSMAN, original sponsors)

[Passed March 8, 1980; in effect from passage.]

AN ACT to amend and reenact section three, article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section four, article two-a of said chapter, all relating to the powers and duties of the board of coal mine health and safety.

Be it enacted by the Legislature of West Virginia:

That section three, article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section four, article two-a of said chapter be amended and reenacted, all to read as follows:

ARTICLE 2A. BOARD OF COAL MINE HEALTH AND SAFETY.

§22-2A-3. Board created; membership; method of nomination and appointment; meetings; vacancies; quorum.

(a) There is hereby created a board of coal mine health and safety, which shall consist of seven members who shall be residents of this state, six of whom shall be appointed as hereinafter specified in this section.

(1) The governor shall appoint one member to represent the viewpoint of those operators in this state whose individual aggregate production exceeds one million tons annually and one member to represent the viewpoint of those operators in this state whose individual aggregate production exceeds three hundred fifty thousand tons annually but is less than one million tons annually but is less than one million...
tons annually. When such members are to be appointed, the governor may request from the major trade association representing operators in this state a list of three nominees for each such position on the board. All such nominees shall be persons with special experience and competence in coal mine health and safety. There shall be submitted with such list a summary of the qualifications of each nominee. For purposes of this subsection, the major trade association representing operators in this state shall be deemed to be that association which represents operators accounting for over one half of the coal produced in mines in this state in the year prior to the year in which the appointment is to be made.

(2) The governor shall appoint one member to represent the viewpoint of those operators in this state whose individual aggregate production is less than three hundred fifty thousand tons annually which tonnage shall include tonnage produced by affiliated, parent and subsidiary companies and tonnage produced by companies which have a common director or directors, shareholder or shareholders, owner or owners.

(3) Three members who can reasonably be expected to represent the interests of the working miners in this state. If the major employee organization representing coal miners in this state is divided into administrative districts, the employee organization of each district shall, upon request by the governor, submit a list of three nominees for membership on the board. If such major employee organization is not so divided into administrative districts, such employee organization shall, upon request by the governor, submit a list of twelve nominees for membership on the board. The governor shall make such appointments from the persons so nominated: Provided, That in the event nominations are made by administrative districts, not more than one member shall be appointed from the nominees of any one district unless there are less than three such districts in this state.

(4) All appointments made by the governor under
this section shall be with the advice and consent of the Senate.

(b) The seventh member of the board shall be the director of the department of mines who shall serve as chairman of the board. The director shall furnish to the board such secretarial, clerical and other services as are deemed necessary to the conduct of the business of the board.

(c) The six members of the board to be appointed by the governor shall be appointed by him within ninety days of the effective date of this article (July 8, 1977). As soon as such members of the board are appointed, the director of the department of mines shall call an organizational meeting of the board. At such meeting, the group of members appointed to represent the viewpoint of operators and the group of members appointed to represent the viewpoint of working miners shall draw lots by group to determine the length of the term the members of each group shall serve. One member from each group shall serve for three years; one member from each group shall serve for two years; and one member from each group shall serve for one year. Thereafter, members shall be nominated and appointed in the manner provided in this section and shall serve for a term of three years. The board shall meet at least once each month, or more often as may be necessary, at the call of the director or upon the request of any three members of the board. The director shall prepare an agenda for each board meeting giving priority to the promulgation of rules and regulations as may be required from time to time by this chapter, and as may be required to improve coal mine health and safety. Members of the board may suggest to the director items for inclusion on the board’s agenda. Upon a majority vote of the quorum present at any board meeting the item or items suggested shall be placed on the agenda for consideration. A majority of the board must approve the items to be acted upon for that agenda. The director shall provide each member of the board with notice of the meeting and the agenda as far in advance of the meeting as practical,
but in any event, at least five days prior thereto. No
meeting of the board shall be conducted unless said
notice and agenda are given to the board members at
least five days in advance, as provided herein, except
in cases of emergency, as declared by the director, in
which event members shall be notified of the board
meeting and the agenda in a manner to be determined
by the director: Provided, That upon agreement of a
majority of the quorum present, any scheduled meet-
ing may be ordered recessed to another day certain
without further notice or additional agenda.

(d) Whenever a vacancy on the board occurs, nom-
inations and appointments shall be made in the manner
prescribed in this section: Provided, That in the case
of an appointment to fill a vacancy, nominations of
three persons for each such vacancy shall be requested
by and submitted to the governor within thirty days
after the vacancy occurs by the major trade associa-
tion or major employee organization, if any, which nom-
inated the person whose seat on the board is vacant.
The vacancy shall be filled by the governor within thirty
days of his receipt of the list of nominations.

(e) A quorum of the board shall be five members
which shall include the director, at least two members
representing the viewpoint of operators and at least two
members representing the viewpoint of working miners,
and the board may act officially by a majority of those
members who are present.

§22-2A-4. Board powers and duties.

(a) At the organizational meeting of the board re-
quired by subsection (c), section three of this article,
the board shall adopt as standard rules and regula-
tions the “coal mine health and safety provisions of
this chapter.” Such standard rules and regulations and
any other rules and regulations shall be adopted by the
board without regard to the provisions of chapter
twenty-nine-a of this code. The board of coal mine
health and safety shall devote its time toward promul-
gating rules and regulations in those areas specifically
directed by this chapter and those necessary to prevent fatal accidents and injuries.

(b) The board shall review such standard rules and regulations and, when deemed appropriate to improve or enhance coal mine health and safety, revise the same or develop and promulgate new rules and regulations dealing with coal mine health and safety.

(c) The board shall develop, promulgate and revise, as may be appropriate, rules and regulations as are necessary and proper to effectuate the purposes of article two of this chapter and to prevent the circumvention and evasion thereof, all without regard to the provisions of chapter twenty-nine-a of this code.

(1) Upon consideration of the latest available scientific data in the field, the technical feasibility of standards, and experience gained under this and other safety statutes, such rules and regulations may expand protections afforded by this chapter notwithstanding specific language herein, and such rules and regulations may deal with subject areas not covered by this chapter to the end of affording the maximum possible protection to the health and safety of miners.

(2) No rules or regulations promulgated by the board of mines shall reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by this chapter.

(3) Any miner or representative of any miner, or any coal operator shall have the power to petition the circuit court of Kanawha County for a determination as to whether any rule or regulation promulgated or revised reduces the protection afforded miners below that provided by this chapter, or is otherwise contrary to law: Provided, however, That any rule or regulation properly promulgated by the board pursuant to the terms and conditions of this chapter shall create a rebuttable presumption that said rule or regulation does not reduce the protection afforded miners below that provided by this chapter.

(4) The director shall cause proposed rules and regulations and a notice thereof to be posted and in the
same manner as notices, orders and decisions are required to be posted in section seventeen of this article. The director shall deliver a copy of such proposed rules and regulations and accompanying notice to each operator affected. A copy of such proposed rules and regulations shall be provided to any individual by the director upon request. The notice of proposed rules and regulations shall contain a summary in plain language explaining the effect of the proposed rules and regulations.

(5) The board shall afford interested persons a period of not less than thirty days after releasing proposed rules and regulations to submit written data or comments. The board may, upon the expiration of such period and after consideration of all relevant matters presented, promulgate such rules and regulations with such modifications as it may deem appropriate.

(6) On or before the last day of any period fixed for the submission of written data or comments under subdivision (5) of this section, any interested person may file with the board written objections to a proposed rule or regulation, stating the grounds therefor and requesting a public hearing on such objections. As soon as practicable after the period for filing such objections has expired, the board shall release a notice specifying the proposed rules or regulations to which objections have been filed and a hearing requested.

(7) Promptly after any such notice is released by the board under subdivision (6) of this section, the board shall issue notice of, and hold a public hearing for the purpose of receiving relevant evidence. Within sixty days after completion of the hearings, the board shall make findings of fact which shall be public, and may promulgate such rules and regulations with such modifications as it deems appropriate. In the event the board determines that a proposed rule or regulation should not be promulgated or should be modified, it shall within a reasonable time publish the reasons for its determination.

(8) All rules and regulations promulgated by the
board shall be published in the state register and shall continue in effect until modified or superseded in accordance with the provisions of this chapter.

(d) To carry out its duties and responsibilities, the board is authorized to employ such personnel, including legal counsel, experts and consultants as it deems necessary. In addition, the board, within the appropriations provided for by the Legislature, may conduct or contract for research and studies and shall be entitled to the use of the services, facilities and personnel of any agency, institution, school, college or university of this state.

(e) The director shall within sixty days of a coal mining fatality or fatalities provide the board with all available reports regarding such fatality or fatalities. The board shall review all such reports, receive any additional information, and may, on its own initiative, ascertain the cause or causes of such coal mining fatality or fatalities. Within one hundred twenty days of such review of each such fatality, the board shall promulgate such rules and regulations as are necessary to prevent the recurrence of such fatality, unless a majority of the quorum present determines that no rules and regulations shall assist in the prevention of the specific type of fatality. Likewise, the board shall annually, not later than the first day of July, review the major causes of coal mining injuries during the previous calendar year, reviewing the causes in detail, and shall promulgate such rules and regulations as may be necessary to prevent the recurrence of such injuries.

Further, the board shall, on or before the tenth day of January of each year, submit a report to the governor, president of the Senate and speaker of the House, which report shall include but not be limited to:

(1) The number of fatalities during the previous calendar year, the apparent reason for each fatality as determined by the department of mines and the action, if any, taken by the board to prevent such fatality;

(2) Any rules and regulations promulgated by the board during the past year;
(3) What rules and regulations the board intends to promulgate during the current calendar year;
(4) Any problem the board is having in its effort to promulgate rules and regulations to enhance health and safety in the mining industry;
(5) Recommendations, if any, for the enactment, repeal or amendment of any statute which would cause the enhancement of health and safety in the mining industry;
(6) Any other information the board deems appropriate;
(7) In addition to the report by the board, as herein contained, each individual member of said board shall have the right to submit a separate report, setting forth any views contrary to the report of the board, and the separate report, if any, shall be appended to the report of the board and be considered a part thereof.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis
Chairman Senate Committee

Clarence E. Chestnut Jr.
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Todd C. Willis
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

W. T. Bothum
President of the Senate

[Signature]
Speaker House of Delegates

The within is approved this the 26

day of March 1980.

[Signature]
Governor