

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-29-82

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1982

ENROLLED

Committee Substitute for
SENATE BILL NO. 404

(By Mr. Ineovich)

PASSED March 13 1982

In Effect July 1, 1982 ~~Passage~~



ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 404
(BY MR. TONKOVICH, *original sponsor*)

[Passed March 13, 1982; in effect July 1, 1982.]

AN ACT to amend and reenact sections three and seven, article two-a, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, and to further amend said article two-a by adding thereto two new sections, designated sections four-a and four-b, all relating to the board of coal mine health and safety generally; continuing the board as heretofore established; establishing the number of members and requiring that they be residents of the state; setting forth the method by which persons are nominated for membership and appointed to the board by the governor; establishing certain qualifications for persons who are appointed as members; requiring appointments to be made with the advice and consent of the Senate; making the director of the department of mines a member of the board; scheduling the expiration of beginning terms of members; providing for the appointment of a health and safety administrator by the governor; setting forth procedures for meetings; providing for the filling of vacancies; defining a quorum; outlining the preliminary procedures to be utilized for the promulgation of rules and regulations; describing the employment term of the health and safety administrator and providing for his qualifications and duties; authorizing the employment of additional employees; setting forth the requirements for compensation of the health and safety administrator and other employees; and allowing for compensation and expenses of board members.

Be it enacted by the Legislature of West Virginia:

That sections three and seven, 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 said article two-a be further amended by adding thereto two new sections, designated sections four-a and four-b, all to read as follows:

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

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

1 (a) The board of coal mine health and safety, heretofore
2 established, is continued as provided by this chapter. The
3 board shall consist of seven members who shall be residents
4 of this state, and who shall be appointed as hereinafter
5 specified in this section.

6 (1) The governor shall appoint one member to represent
7 the viewpoint of those operators in this state whose
8 individual aggregate production exceeds one million tons
9 annually and one member to represent the viewpoint of those
10 operators in this state whose individual aggregate production
11 is less than one million tons annually, which tonnage shall
12 include tonnage produced by affiliated, parent and subsidiary
13 companies and tonnage produced by companies which have
14 a common director or directors, shareholder or shareholders,
15 owner or owners. When such members are to be appointed,
16 the governor may request from the major trade association
17 representing operators in this state a list of three nominees for
18 each such position on the board. All such nominees shall be
19 persons with special experience and competence in coal mine
20 health and safety. There shall be submitted with such list a
21 summary of the qualifications of each nominee. If the full lists
22 of nominees are submitted in accordance with the provisions
23 of this subdivision, the governor shall make his appointments
24 from the persons so nominated. For purposes of this
25 subdivision, the major trade association representing
26 operators in this state shall be deemed to be that association
27 which represents operators accounting for over one half of
28 the coal produced in mines in this state in the year prior to the
29 year in which the appointment is to be made.

30 (2) The governor shall appoint two members who can
31 reasonably be expected to represent the viewpoint of the

32 working miners of this state. If the major employee
33 organization representing coal miners in this state is divided
34 into administrative districts, such members shall not be from
35 the same administrative district. The highest ranking official
36 within the major employee organization representing coal
37 miners within this state shall, upon request by the governor,
38 submit a list of three nominees for each such position on the
39 board: *Provided*, That if the major employee organization
40 representing coal miners in this state is divided into
41 administrative districts, and if there are two vacancies to be
42 filled in accordance with the provisions of this subdivision,
43 not more than two persons on each list of three nominees
44 shall be from the same administrative district and at least
45 three districts shall be represented on the two lists submitted,
46 and if there is one vacancy to be filled, no names shall be
47 submitted of persons from the same administrative district
48 already represented on the board. Said nominees shall have a
49 background in coal mine health and safety, and shall at the
50 time of their appointment be employed in a position which
51 involves the protection of health and safety of miners. There
52 shall be submitted with such list a summary of the
53 qualifications of each nominee. If the full lists of nominees
54 are submitted in accordance with the provisions of this
55 subdivision, the governor shall make his appointments from
56 the persons so nominated.

57 (3) The governor shall appoint one public member who is
58 professionally qualified in the field of occupational health
59 and safety and who shall be (A) an employee of the institute of
60 labor studies at West Virginia university or (B) a person who
61 is engaged in or who has broad experience in occupational
62 health and safety from the perspective of the worker. Such
63 nominee shall have technical experience in occupational
64 health and safety or education and experience in such field:
65 *Provided*, That the nominee shall not have been, prior to his
66 appointment to the board, employed by a mining or industrial
67 business entity in a managerial or supervisory position, or
68 shall not have been employed by the major employee
69 organization representing coal miners in this state, or shall
70 not have been a miner.

71 (4) The governor shall appoint one public member who is
72 professionally qualified in the field of occupational health
73 and safety and who shall have a degree in engineering or
74 industrial safety and a minimum of five years' experience in

75 the field of industrial safety engaged in constructing,
76 designing, developing or administering safety programs:
77 *Provided*, That the nominee shall not have been, prior to his
78 appointment to the board, employed by a mining business
79 entity in a managerial or supervisory position or shall not
80 have been employed by the major employee organization
81 representing coal miners in this state, or shall not have been a
82 miner.

83 (5) All appointments made by the governor under the
84 provisions of subdivisions (1), (2), (3) and (4) of this subsection
85 shall be with the advice and consent of the Senate.

86 (6) The seventh member of the board shall be the director
87 of the department of mines who shall serve as chairman of the
88 board. The director shall furnish to the board such secretarial,
89 clerical, technical, research and other services as are deemed
90 necessary to the conduct of the business of the board, not
91 otherwise furnished by the board.

92 (b) The members of the board to be appointed as provided
93 for in subsection (a) of this section shall be so appointed
94 within sixty days following the effective date of this section.
95 Any unexpired term of members of the board under prior
96 enactments of this section shall end upon the appointment of
97 members in accordance with the provisions of this section.
98 Upon the initial appointment of members, the governor shall
99 specify the length of the beginning term which each member
100 shall serve, pursuant to the following formula:

101 (1) With regard to the two members appointed in
102 accordance with the provisions of subdivision (1) of
103 subsection (a) of this section, one member shall serve a
104 beginning term of one year, and one member shall serve a
105 beginning term of two years.

106 (2) With regard to the two members appointed in
107 accordance with the provisions of subdivision (2) of
108 subsection (a) of this section, one member shall serve a
109 beginning term of one year and one member shall serve a
110 beginning term of two years.

111 (3) The members appointed in accordance with the
112 provisions of subdivisions (3) and (4) of subsection (a) of this
113 section shall each be appointed to serve a beginning term of
114 three years.

115 (4) Following the beginning terms provided for in this
116 subsection, members shall be nominated and appointed in

117 the manner provided for in this section and shall serve for a
118 term of three years. Members shall be eligible for
119 reappointment.

120 (c) The governor shall appoint a health and safety
121 administrator in accordance with the provisions of section
122 four-b of this article, who shall certify all official records of
123 the board. The health and safety administrator shall be a
124 full-time officer of the board of coal mine health and safety
125 with the duties provided for in section four-b of this article.
126 The health and safety administrator shall have such
127 education and experience as the governor deems necessary to
128 properly investigate areas of concern to the board in the
129 development of rules and regulations governing mine health
130 and safety. The governor shall appoint as health and safety
131 administrator a person who has an independent and impartial
132 viewpoint on issues involving mine safety. The health and
133 safety administrator shall be a person who has not been,
134 during the two years immediately preceding his
135 appointment, and is not during his term, an officer, trustee,
136 director, substantial shareholder, or employee of any coal
137 operator, or an employee or officer of an employee
138 organization, or a spouse of any such person. The health and
139 safety administrator shall have the expertise to draft
140 proposed rules and regulations and shall prepare such rules
141 and regulations as are required by this chapter and on such
142 other areas as will improve coal mine health and safety.

143 (d) The board shall meet at least once during each
144 calendar month, or more often as may be necessary, and at
145 other times upon the call of the chairman, or upon the request
146 of any three members of the board. Under the direction of the
147 board, the health and safety administrator shall prepare an
148 agenda for each board meeting giving priority to the
149 promulgation of rules and regulations as may be required
150 from time to time by this chapter, and as may be required to
151 improve coal mine health and safety. The health and safety
152 administrator shall provide each member of the board with
153 notice of the meeting and the agenda as far in advance of the
154 meeting as practical, but in any event, at least five days prior
155 thereto. No meeting of the board shall be conducted unless
156 said notice and agenda are given to the board members at
157 least five days in advance, as provided herein, except in cases
158 of emergency, as declared by the chairman, in which event

159 members shall be notified of the board meeting and the
160 agenda in a manner to be determined by the chairman:
161 *Provided*, That upon agreement of a majority of the quorum
162 present, any scheduled meeting may be ordered recessed to
163 another day certain without further notice or additional
164 agenda.

165 When proposed rules and regulations are to be finally
166 adopted by the board, copies of such proposed rules and
167 regulations shall be delivered to members not less than five
168 days before the meeting at which such action is to be taken. If
169 not so delivered, any final adoption or rejection of rules and
170 regulations shall be considered on the second day of a
171 meeting of the board held on two consecutive days, except
172 that by the concurrence of at least four members of the board,
173 the board may suspend this rule of procedure and proceed
174 immediately to the consideration of final adoption or
175 rejection of rules and regulations. When a member shall fail to
176 appear at three consecutive meetings of the board or at
177 one-half of the meetings held during a one-year period, the
178 health and safety administrator shall notify the member and
179 the governor of such fact. Such member shall be removed by
180 the governor unless good cause for absences is shown.

181 (e) Whenever a vacancy on the board occurs, nominations
182 and appointments shall be made in the manner prescribed in
183 this section: *Provided*, That in the case of an appointment to
184 fill a vacancy, nominations of three persons for each such
185 vacancy shall be requested by and submitted to the governor
186 within thirty days after the vacancy occurs by the major trade
187 association or major employee organization, if any, which
188 nominated the person whose seat on the board is vacant. The
189 vacancy shall be filled by the governor within thirty days of
190 his receipt of the list of nominations.

191 (f) A quorum of the board shall be five members which
192 shall include the director, at least one member representing
193 the viewpoint of operators and at least one member
194 representing the viewpoint of the working miners, and the
195 board may act officially by a majority of those members who
196 are present.

**§22-2A-4a. Preliminary procedures for promulgation of rules
and regulations.**

- 1 (a) Prior to the posting of proposed rules and regulations
- 2 as provided for in subsection (c), section four of this article,

3 the board shall observe the preliminary procedure for the
4 development of rules and regulations set forth in this section.

5 (1) During a board meeting or at any time when the board
6 is not meeting, any board member may suggest to the health
7 and safety administrator, or such administrator on his own
8 initiative may develop, subjects for investigation and possible
9 regulation;

10 (2) Upon receipt of a suggestion for investigation, the
11 health and safety administrator shall prepare a report, to be
12 given at the next scheduled board meeting, of the technical
13 evidence available which relates to such suggestion, the staff
14 time required to develop the subject matter, the legal
15 authority of the board to act on the subject matter, including a
16 description of findings of fact and conclusions of law which
17 will be necessary to support any proposed rules and
18 regulations.

19 (3) The board shall by majority vote of those members
20 who are present determine whether the health and safety
21 administrator shall prepare a draft regulation concerning the
22 suggested subject matter;

23 (4) After reviewing the draft regulation, the board shall
24 determine whether the proposed rules and regulations should
25 be posted and made available for comment as provided for in
26 section four of this article;

27 (5) The board shall receive and consider those comments
28 to the proposed rules and regulations as provided for in
29 section four of this article;

30 (6) The board shall direct the health and safety
31 administrator to prepare for the next scheduled board
32 meeting findings of fact and conclusions of law for the
33 proposed rules and regulations, which may incorporate
34 comments received and technical evidence developed, and
35 which are consistent with section four of this article;

36 (7) The board shall adopt or reject or modify the proposed
37 findings of fact and conclusions of law; and

38 (8) The board shall make a final adoption or rejection of
39 the rules and regulations.

40 (b) By the concurrence of at least four members of the
41 board, the board may dispense with the procedure set out in
42 (a) above or any other procedural rule established, except that
43 the board shall in all instances when adopting rules and
44 regulations prepare findings of fact and conclusions of law
45 consistent with this section and section four of this article.

46 (c) Without undue delay, the board shall adopt an order of
47 business for the conduct of meetings which will promote the
48 orderly and efficient consideration of proposed rules and
49 regulations in accordance with the provisions of this section.

**§22-2A-4b. Health and safety administrator; qualifications;
duties; employees; compensation.**

1 (a) The governor shall appoint the health and safety
2 administrator of the board for a term of employment of one
3 year. The health and safety administrator shall be entitled to
4 have his contract of employment renewed on an annual basis
5 except where such renewal is denied for cause: *Provided,*
6 That the governor shall have the power at any time to remove
7 the health and safety administrator for misfeasance,
8 malfeasance or nonfeasance: *Provided, however,* That the
9 board shall have the power to remove the health and safety
10 administrator without cause upon the concurrence of five
11 members of the board.

12 (b) The health and safety administrator shall work at the
13 direction of the board, independently of the director of the
14 department of mines, and shall have such authority and
15 perform such duties as may be required or necessary to
16 effectuate this article.

17 (c) In addition to the health and safety administrator,
18 there shall be such other research employees hired by the
19 health and safety administrator as the board determines to
20 be necessary. The health and safety administrator shall
21 provide supervision and direction to the other research
22 employees of the board in the performance of their duties.

23 (d) The employees of the board shall be compensated at
24 rates determined by the board. The salary of the health and
25 safety administrator shall be fixed by the governor: *Provided,*
26 That the salary of the health and safety administrator shall
27 not be reduced during his annual term of employment or
28 upon the renewal of his contract for an additional term. Such
29 salary shall be fixed for any renewed term at least ninety days
30 before the commencement thereof.

31 (e) The health and safety administrator shall review all
32 coal mining fatalities and major causes of injuries as
33 mandated by section four of this article. An analysis of such
34 fatalities and major causes of injuries shall be prepared for
35 consideration by the board within ninety days of the
36 occurrence of the accident.

37 (f) At the direction of the board, the administrator shall
 38 also conduct an annual study of occupational health issues
 39 relating to employment in and around coal mines of this state
 40 and submit a report to the board with findings and proposals
 41 to address the issues raised in such study. The administrator
 42 shall be responsible for preparing the annual reports required
 43 by subparagraph (e), section four of this article and section
 44 six of this article.

§22-2A-7. Compensation and expenses of board members.

1 Each member of the board not otherwise employed by the
 2 ~~X~~ state shall receive one hundred dollars per diem while
 3 ~~X~~ actually engaged in the performance of the duties of the
 4 ~~X~~ board. All members shall be reimbursed for all reasonable
 5 ~~X~~ and necessary expenses actually incurred during the
 6 ~~X~~ performance of their duties, except that in the event the
 7 ~~X~~ expenses are paid by a third party, the members shall not be
 8 ~~X~~ reimbursed by the state. The reimbursement shall be paid out
 9 ~~X~~ of the state treasury upon a requisition upon the state auditor,
 10 ~~X~~ properly certified by the director of the department of mines.
 11 ~~X~~ No employer shall prohibit a member of the board from
 12 ~~X~~ exercising leave of absence from his place of employment in
 13 ~~X~~ order to attend a meeting of the board or a meeting of a
 14 ~~X~~ subcommittee of the board, or to prepare for a meeting of the
 15 ~~X~~ board, any contract of employment to the contrary
 16 ~~X~~ notwithstanding.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. D. Bayler
Chairman Senate Committee

Jon E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1982.

Todd C. With
Clerk of the Senate

C. Blankenship
Clerk of the House of Delegates

Warren R. McGraw
President of the Senate

W. H. Lee, Jr.
Speaker House of Delegates

The within *is approved* this the *29*

day of *March*, 1982.

John D. Sawyer
Governor

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