WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1982

ENROLLED
Committee Substitute for
SENATE BILL NO. 401

(By Mr. ________)

PASSED March 13, 1982
In Effect July 1, 1982
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.
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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 established, is continued as provided by this chapter. The board shall consist of seven members who shall be residents of this state, and who shall be appointed as hereinafter specified in this section.

2. (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 is less than one million 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. 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. If the full lists of nominees are submitted in accordance with the provisions of this subdivision, the governor shall make his appointments from the persons so nominated. For purposes of this subdivision, 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.

3. (2) The governor shall appoint two members who can reasonably be expected to represent the viewpoint of the
working miners of this state. If the major employee organization representing coal miners in this state is divided into administrative districts, such members shall not be from the same administrative district. The highest ranking official within the major employee organization representing coal miners within this state shall, upon request by the governor, submit a list of three nominees for each such position on the board: Provided, That if the major employee organization representing coal miners in this state is divided into administrative districts, and if there are two vacancies to be filled in accordance with the provisions of this subdivision, not more than two persons on each list of three nominees shall be from the same administrative district and at least three districts shall be represented on the two lists submitted, and if there is one vacancy to be filled, no names shall be submitted of persons from the same administrative district already represented on the board. Said nominees shall have a background in coal mine health and safety, and shall at the time of their appointment be employed in a position which involves the protection of health and safety of miners. There shall be submitted with such list a summary of the qualifications of each nominee. If the full lists of nominees are submitted in accordance with the provisions of this subdivision, the governor shall make his appointments from the persons so nominated.

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

(4) The governor shall appoint one public member who is professionally qualified in the field of occupational health and safety and who shall have a degree in engineering or industrial safety and a minimum of five years' experience in
Provided, That the nominee shall not have been, prior to his appointment to the board, employed by a mining business entity in a managerial or supervisory position or shall not have been employed by the major employee organization representing coal miners in this state, or shall not have been a miner.

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

(6) 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, technical, research and other services as are deemed necessary to the conduct of the business of the board, not otherwise furnished by the board.

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

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

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

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

(4) Following the beginning terms provided for in this subsection, members shall be nominated and appointed in
the manner provided for in this section and shall serve for a
term of three years. Members shall be eligible for
reappointment.

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

(d) The board shall meet at least once during each
calendar month, or more often as may be necessary, and at
other times upon the call of the chairman, or upon the request
of any three members of the board. Under the direction of the
board, the health and safety administrator 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. The health and safety
administrator 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 chairman, in which event
members shall be notified of the board meeting and the agenda in a manner to be determined by the chairman: Provided, That upon agreement of a majority of the quorum present, any scheduled meeting may be ordered recessed to another day certain without further notice or additional agenda.

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

(e) Whenever a vacancy on the board occurs, nominations 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 association or major employee organization, if any, which nominated 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.

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


(a) Prior to the posting of proposed rules and regulations as provided for in subsection (c), section four of this article,
the board shall observe the preliminary procedure for the development of rules and regulations set forth in this section.

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

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

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

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

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

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

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

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

(b) By the concurrence of at least four members of the board, the board may dispense with the procedure set out in (a) above or any other procedural rule established, except that the board shall in all instances when adopting rules and regulations prepare findings of fact and conclusions of law consistent with this section and section four of this article.
Without undue delay, the board shall adopt an order of business for the conduct of meetings which will promote the orderly and efficient consideration of proposed rules and regulations in accordance with the provisions of this section.

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

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

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

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

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

(e) The health and safety administrator shall review all coal mining fatalities and major causes of injuries as mandated by section four of this article. An analysis of such fatalities and major causes of injuries shall be prepared for consideration by the board within ninety days of the occurrence of the accident.
(f) At the direction of the board, the administrator shall also conduct an annual study of occupational health issues relating to employment in and around coal mines of this state and submit a report to the board with findings and proposals to address the issues raised in such study. The administrator shall be responsible for preparing the annual reports required by subparagraph (e), section four of this article and section six of this article.


Each member of the board not otherwise employed by the state shall receive one hundred dollars per diem while actually engaged in the performance of the duties of the board. All members shall be reimbursed for all reasonable and necessary expenses actually incurred during the performance of their duties, except that in the event the expenses are paid by a third party, the members shall not be reimbursed by the state. The reimbursement shall be paid out of the state treasury upon a requisition upon the state auditor, properly certified by the director of the department of mines. No employer shall prohibit a member of the board from exercising leave of absence from his place of employment in order to attend a meeting of the board or a meeting of a subcommittee of the board, or to prepare for a meeting of the board, any contract of employment to the contrary notwithstanding.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

[Signature]

Chairman House Committee

[Signature]

Originated in the Senate.

To take effect July 1, 1982.

Clerk of the Senate

[Signature]

Clerk of the House of Delegates

[Signature]

President of the Senate

[Signature]

Speaker House of Delegates

[Signature]

The within is approved this the 25th day of March, 1982.

Governor

[Signature]