WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1995

ENROLLED

Com. Sub. For
HOUSE BILL No. 2257

(By Delegates Kiss and Wallace)

Passed March 11, 1995
In Effect Ninety Days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 2257
(BY DELEGATES KISS AND WALLACE)
[Passed March 11, 1995; in effect ninety days from passage.]

AN ACT to amend and reenact section sixty-three, article two, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to underground mines; miners' health, safety and training; fees for certificate of approval and permit; providing that the fees collected for certificates of approval and permits be placed in the "Miners' Health, Safety and Training Fund"; providing for expenditure of moneys placed in the fund; and setting forth the responsibility for compliance of operations with the mining laws, notices of violations and clarifying the responsibility of the office of miner's health, safety and training.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2. UNDERGROUND MINES.

§22A-2-63. No mine to be opened or reopened without prior approval of the director of the office of miners'
health, safety and training; certificate of approval; approval fees; extension of certificate of approval; certificate of approval not transferable; section to be printed on certificates of approval; creation of miners' health, safety and training fund; deposits into same; and expenditures from same.

(a) After the first day of July, one thousand nine hundred seventy-one, no mine may be opened or reopened unless prior approval has been obtained from the director of the office of miners' health, safety and training, which approval may not be unreasonably withheld. The operator must pay for this approval a fee of one hundred dollars, which payment must be tendered with the application for approval: Provided, That mines producing coal solely for the operator's use shall be issued a permit without charge if coal production will be less than fifty tons a year.

Within thirty days after the first day of January of each year, the holder of a permit to open a mine must apply for the extension of that permit for an additional year. Such extension, evidenced by a document issued by the director, shall be granted as a matter of right for a fee of one hundred dollars if, at the time application is made, the permit holder is in compliance with the provisions of section seventy-seven of this article and has paid or otherwise appealed all coal mine assessments issued to the mine if operated by the permit holder and imposed under article one of this chapter. Applications for extension of these permits not submitted within the time required shall be processed as an application to open or reopen a mine and must be accompanied by a fee of one hundred dollars.

(b) Permits issued pursuant to this section are not transferable.

(c) If the operator of a mine is not the permit holder as defined in subsection (a) of this section, then the opera-
tor must apply for and obtain a certificate of approval to
operate the mine on which the permit is held prior to com-
mening operations. An operator who is not the permit
holder operating the mine on the tenth day of April, one
thousand nine hundred ninety-three, must apply for a
certificate of approval on or before the first day of July,
one thousand nine hundred ninety-three. The operator
must pay a fee of one hundred dollars, which payment
must be tendered with the application for approval. Such
approval, evidenced by a certificate issued by the director,
shall be granted if, at the time application is made, the
applicant is in compliance with the provisions of section
seventy-seven of this article and has paid or otherwise
appealed all coal mine assessments imposed on him or her
for the certificate of approval under article one of this
chapter.

(d) In addition to the director's authority to file a peti-
tion for enforcement under subdivision (4), subsection (a),
section twenty-one, article one of this chapter, if an opera-
tor holding a certificate of approval issued pursuant to
subsection (c) of this section, has been assessed a civil
penalty in accordance with section twenty-one, article one
of this chapter and implementing rules, and the penalty
has become final, and the operator has failed to pay the
penalty within the time prescribed in the order assessing
the penalty, the director or the authorized representative of
the director, by certified mail, return receipt requested,
shall send a notice to the operator advising the operator of
the unpaid penalty. If the penalty is not paid in full within
sixty days from the issuance of the notice of delinquency
by the director, then the director may revoke the
operator's certificate of approval: Provided, That the
operator to whom the delinquency notice is issued has
thirty days from receipt thereof to request, by certified
mail, return receipt requested, a public hearing held in
accordance with the procedures of section seventeen, arti-
cle one of this chapter, and implementing rules, including
application for temporary relief. Once an operator's cer-
tificate of approval is revoked pursuant to this subsection,
that operator is prohibited from obtaining any certificate of approval under the provisions of this section to operate any other mine until that operator pays the delinquent penalties that have become final.

(e) Notwithstanding any provision in this chapter or any regulation promulgated hereunder to the contrary, every firm, corporation, partnership or individual referred to in subsection (h) of this section shall have the sole and independent responsibility and duty for ensuring that their operations are conducted at all times in compliance with all the mining laws and regulations of this state and this responsibility may not be deemed to have been assigned, in whole or in part, to any third person by operation of law.

(f) Every firm, corporation, partnership or individual referred to in subsection (h) of this section shall have the sole and independent responsibility and duty for all notices of violations and associated assessments and penalties levied against it for violations of the mining laws and regulations of this state, except in those cases where a third person is found to have willfully contributed to the act or omission which gave rise to the violation, in which case, such third person shall be jointly liable for such notices of violations and associated assessments and penalties.

(g) Nothing contained in this chapter may be construed as limiting or in any way delegating to any third person the responsibility of the office of miner's health, safety and training, in issuing certificates of approval to every firm, corporation, partnership or individual referred to in subsection (h) of this section, to regulate such of their activities as are covered by the mining laws and regulations which are the responsibility of this state to enforce, so as to ensure their competency and overall qualifications and thereby protect the safety of the workers whom that office is charged with protecting.

(h) Every firm, corporation, partnership or individual that contracts to perform services or construction at a coal
mine is deemed to be an operator and beginning the first day of January, one thousand nine hundred ninety-five, must apply for and obtain a certificate of approval prior to commencing operations: Provided, That these persons may be required to obtain only one certificate annually: Provided, however, That persons including, but not limited to, consultants, mine vendors, office equipment suppliers, and maintenance and delivery personnel are excluded from this requirement to obtain a certificate of approval. Operators who are required to obtain a certificate of approval pursuant to this subsection must pay a fee of one hundred dollars which must be tendered with the application for approval. This approval, evidenced by a certificate issued by the director, shall be granted if, at the time application is made, the applicant has paid or otherwise appealed all coal mine assessments imposed on him or her under article one of this chapter.

Within thirty days after the first day of January of each year, the holder of a certificate of approval must apply for the extension of that approval for an additional year. Applications for extension must be accompanied by a fee of one hundred dollars. An extension shall be granted if, at the time application is made, the applicant has paid or otherwise appealed all coal mine assessments imposed on him or her under article one of this chapter. No assessment imposed upon an operator which is either: (1) An applicant under this subsection or (2) a certificate of approval holder under this subsection, which has become delinquent, may be imposed upon: (1) Any permit holder or applicant therefor under subsection (a) of this section; or (2) any certificate of approval holder or applicant therefor under subsection (c) of this section.

(i) The provisions of this section shall be printed on the reverse side of every permit issued under subsection (a) and certificate of approval issued under subsection (d) herein.

(j) The district mine inspector shall conduct a preinspection of the area proposed for underground min-
ing prior to issuance of any new opening permit approval.

(k) After the thirtieth day of June, one thousand nine
hundred ninety-six, all moneys collected by the office of
miners' health, safety and training for the approval fees set
forth in subsections (a), (c) and (e) of this section shall be
deposited with the treasurer of the state of West Virginia in
a special account in accordance with the provisions of
subsection (f), section twenty-one, article one of this chap-
ter, and entitled, "Health, Safety and Training Fund." Ex-
penditures from the fund herein created may be made
only pursuant to appropriation by the Legislature.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is disapproved this the 24th
day of March, 1995.

Governor