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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001

ENROLLED

Committee Substitute for

SENATE BILL NO. 53

(By Senator Anderson, et al)

PASSED April 14, 2001

In Effect from **Passage**

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 53

(SENATORS ANDERSON, BURNETTE, CHAFIN, DEEM, HELMICK,
JACKSON, MCKENZIE, ROSS AND SHARPE, *original sponsors*)

[Passed April 14, 2001; in effect from passage.]

AN ACT to amend and reenact sections one hundred one, three hundred three, three hundred eight, three hundred nine and three hundred ten, article two-a, chapter twenty-two-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the establishment of standards and procedures for the use and maintenance of diesel-powered equipment in underground coal mines; general prohibition on use of diesel equipment in underground mines; diesel equipment commission; extending the time for the commission to promulgate initial rules; eliminating the arbitration process; providing for petition to commission for exemption from prohibition on diesel equipment; and granting authority to commission to grant certain limited site-specific requests.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 2A. USE OF DIESEL-POWERED EQUIPMENT IN UNDERGROUND COAL MINES.

PART I. GENERAL PROVISIONS.

§22A-2A-101. Use of diesel-powered equipment authorized.

1 Diesel-powered equipment for use in underground coal
2 mines may only be approved, operated and maintained in
3 accordance with rules, requirements and standards
4 established pursuant to this article. Diesel-powered
5 equipment may not be used in underground coal mines
6 until the West Virginia diesel equipment commission
7 promulgates its initial rules, requirements and standards
8 governing the operation of diesel equipment in under-
9 ground coal mines: *Provided*, That the diesel equipment
10 commission may approve limited site-specific requests for
11 experimental and testing use of diesel-powered equipment
12 in underground coal mines and for the use of alternative
13 diesel-related health and safety technologies and methods
14 consistent with the provisions of section three hundred ten
15 of this article.

§22A-2A-303. Appointment and terms of commission members.

1 (a) The members of the commission shall be appointed
2 to initial terms as follows:

3 (1) Two members shall serve for a term beginning on the
4 first day of May, one thousand nine hundred ninety-seven,
5 and ending on the thirtieth day of June, one thousand nine
6 hundred ninety-nine;

7 (2) Two members shall serve for a term beginning on the
8 first day of May, one thousand nine hundred ninety-seven,
9 and ending on the thirtieth day of June, two thousand;

10 (3) Two members shall serve for a term beginning on the
11 first day of May, one thousand nine hundred ninety-seven,
12 and ending on the thirtieth day of June, two thousand one.

13 (b) Of the two members appointed under each of subdivi-
14 sions (1), (2) and (3), subsection (a) of this section, one
15 shall be a person who can reasonably be expected to
16 represent the viewpoint or interests of coal operators in
17 this state and one shall be a person who can reasonably be
18 expected to represent the viewpoint or interests of working
19 miners in this state.

20 (c) Members serving on the commission on the effective
21 date of the amendment of this section may continue to
22 serve until the expiration of their terms. Thereafter,
23 members shall be nominated and appointed in the manner
24 provided in this section and section three hundred four of
25 this article.

26 (d) After the initial appointments, all members shall be
27 appointed for terms of four years. Members are eligible for
28 reappointment.

§22A-2A-308. Promulgation of initial rules by the commission.

1 (a) The West Virginia diesel equipment commission shall
2 prepare and adopt the initial rules for the operation of
3 diesel equipment in underground coal mines in this state.
4 In preparing and adopting initial rules, the commission
5 shall consider the highest achievable measures of protec-
6 tion for miners' health and safety through available
7 technology, engineering controls and performance require-
8 ments and shall further consider the cost, availability,
9 adaptability and suitability of any available technology,
10 engineering controls and performance requirements as
11 they relate to the use of diesel equipment in underground
12 coal mines.

13 (b) In promulgating the initial rules pursuant to subsec-
14 tion (a) of this section, the commission shall follow the
15 procedures set forth in article three, chapter twenty-nine-a

16 of this code that are prescribed for an agency proposing a
17 legislative rule, to the point where an agency would
18 approve a rule for submission to the Legislature. At that
19 point, the commission shall proceed to final adoption of
20 the initial rules and file a notice of the final adoption in
21 the state register and with the legislative rule-making
22 review committee. Final adoption of the initial rules may
23 be approved only upon a majority vote of all six members
24 of the commission. All six members must be present when
25 a vote is taken. Upon final adoption by the commission,
26 the initial rules are thereby promulgated and have the
27 effect of law without further action by the commission or
28 the Legislature. The initial rules shall be published in the
29 code of state rules and continue in effect until modified or
30 superseded in accordance with the provisions of this
31 article.

**§22A-2A-309. Commission's authority to approve site-specific
experimental testing prior to initial rules.**

1 The commission is hereby authorized to approve limited
2 site-specific requests for experimental and testing use of
3 diesel-powered equipment in underground coal mines
4 prior to promulgation of initial rules in accordance with
5 subsections (b), (c), (d), (e), (f) and (g), section three hun-
6 dred ten of this article. Final approval of a site-specific
7 request may be approved only upon a majority vote of all
8 six members of the commission. All six members must be
9 present when a vote is taken.

**§22A-2A-310. Duties of commission following promulgation of
initial rules.**

1 (a) After the promulgation of the initial rules, the
2 commission shall have as its primary duties the implemen-
3 tation of this article and the evaluation and adoption of
4 state of the art technology and methods, reflected in
5 engines and engine components, emission control equip-
6 ment and procedures, that when applied to diesel-powered
7 underground mining machinery shall reasonably reduce or

8 eliminate diesel exhaust emissions and enhance
9 protections of the health and safety of miners. The
10 technology and methods adopted by the commission shall
11 have been demonstrated to be reliable. In making a
12 decision to adopt new technology and methods, the
13 commission shall consider the highest achievable measures
14 of protection for miners' health and safety through
15 available technology, engineering controls and perfor-
16 mance requirements and shall further consider the cost,
17 availability, adaptability and suitability of any available
18 technology, engineering controls and performance require-
19 ments as they relate to the use of diesel equipment in
20 underground coal mines. Any state of the art technology
21 or methods adopted by the commission shall not reduce or
22 compromise the level of health and safety protection of
23 miners.

24 (b) Upon application of a coal mine operator, the com-
25 mission shall consider site-specific requests for the use of
26 diesel equipment in underground coal mines and for the
27 use of alternative diesel-related health and safety technol-
28 ogies and methods. The commission's action on applica-
29 tions submitted under this subsection shall be on a mine-
30 by-mine basis. Upon receipt of a site-specific application,
31 the commission shall conduct an investigation, which
32 investigation shall include consultation with the mine
33 operator and the authorized representatives of the miners
34 at the mine. Authorized representatives of the miners
35 shall include a mine health and safety committee elected
36 by miners at the mine, a person or persons employed by an
37 employee organization representing miners at the mine or
38 a person or persons authorized as the representative or
39 representatives of miners of the mine in accordance with
40 MSHA regulations at 30 C.F.R. Pt. 40 (relating to represen-
41 tative of miners). Where there is no authorized representa-
42 tive of the miners, the commission shall consult with a
43 reasonable number of miners at the mine. Upon comple-
44 tion of the investigation, the commission may approve the
45 application for the site-specific request: *Provided*, That an

46 application for a site-specific request under this subsection
47 tion may be approved only upon a majority vote of all six
48 members of the commission. All six members must be
49 present when a vote is taken.

50 (1) Within one hundred eighty days of receipt of an
51 application for use of alternative technologies or methods,
52 the commission shall complete its investigation. The time
53 period may be extended with the consent of the applicant.

54 (2) The commission shall have thirty days in which to
55 render a final decision approving or rejecting the applica-
56 tion.

57 (3) The commission members shall not approve an
58 application made under this section if, at the conclusion of
59 the investigation, the commission members have made a
60 determination that the use of the alternative technology or
61 method will reduce or compromise the level of health and
62 safety protection of miners.

63 (4) The written approval of an application for the use of
64 alternative technologies or methods shall include the
65 results of the commission's investigation and describe the
66 specific conditions of use for the alternative technology or
67 method.

68 (5) The written decision to reject an application for the
69 use of alternative technologies or methods shall include
70 the results of the commission's investigation and shall
71 outline in detail the basis for the rejection.

72 (c) The commission shall establish conditions for the use
73 of diesel-powered equipment in shaft and slope construc-
74 tion operations at coal mines.

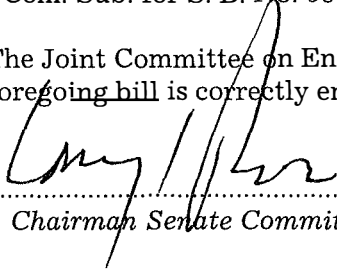
75 (d) In performing its functions, the commission shall
76 have access to the services of the board of coal mine health
77 and safety. The board shall make clerical support and
78 assistance available to enable the commission to carry out
79 its duties.

80 (e) Any action taken by the commission to either approve
81 or reject the use of an alternative technology or method, or
82 establish conditions under subsection (c) of this section,
83 shall be final and binding and not subject to further
84 review except where a decision by the commission may be
85 deemed to be an abuse of discretion or contrary to law. If
86 any party affected by a decision of the commission be-
87 lieves that the decision is an abuse of discretion or con-
88 trary to law, that party may file a petition for review with
89 the circuit court of Kanawha County in accordance with
90 the provisions of the administrative procedures act
91 relating to judicial review of governmental determina-
92 tions. The court, in finding that any decision made by the
93 commission is an abuse of discretion or contrary to law,
94 shall vacate and, if appropriate, remand the case.

95 (f) The powers and duties of the commission shall be
96 limited to the matters regarding the use of diesel-powered
97 equipment in underground coal mines.

98 (g) Appropriations for the funding of the commission
99 and to effectuate the purposes of this article shall be made
100 to a budget account hereby established for that purpose in
101 the general revenue fund.

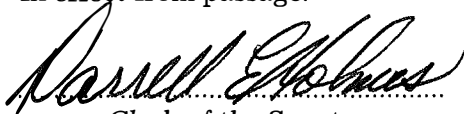
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

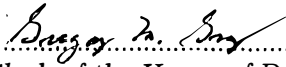

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Chairman Senate Committee

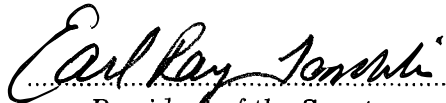

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Chairman House Committee


Originated in the Senate.

In effect from passage.

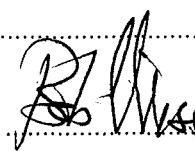

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Clerk of the Senate


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Clerk of the House of Delegates


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President of the Senate


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Speaker House of Delegates

The within is approved this the 2nd
Day of May, 2001.


.....
Governor

PRESENTED TO THE

GOVERNOR

Date 4/20/01

Time 3:50 pm