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
ENROLLED

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.


Diesel-powered equipment for use in underground coal mines may only be approved, operated and maintained in accordance with rules, requirements and standards established pursuant to this article. Diesel-powered equipment may not be used in underground coal mines until the West Virginia diesel equipment commission promulgates its initial rules, requirements and standards governing the operation of diesel equipment in underground coal mines: Provided, That the diesel equipment commission may approve limited site-specific requests for experimental and testing use of diesel-powered equipment in underground coal mines and for the use of alternative diesel-related health and safety technologies and methods consistent with the provisions of section three hundred ten of this article.


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

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

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

(b) Of the two members appointed under each of subdivisions (1), (2) and (3), subsection (a) of this section, one shall be a person who can reasonably be expected to represent the viewpoint or interests of coal operators in this state and one shall be a person who can reasonably be expected to represent the viewpoint or interests of working miners in this state.

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

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

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

(a) The West Virginia diesel equipment commission shall prepare and adopt the initial rules for the operation of diesel equipment in underground coal mines in this state. In preparing and adopting initial rules, the commission shall consider the highest achievable measures of protection for miners' health and safety through available technology, engineering controls and performance requirements and shall further consider the cost, availability, adaptability and suitability of any available technology, engineering controls and performance requirements as they relate to the use of diesel equipment in underground coal mines.

(b) In promulgating the initial rules pursuant to subsection (a) of this section, the commission shall follow the procedures set forth in article three, chapter twenty-nine-a.
of this code that are prescribed for an agency proposing a
legislative rule, to the point where an agency would
approve a rule for submission to the Legislature. At that
point, the commission shall proceed to final adoption of
the initial rules and file a notice of the final adoption in
the state register and with the legislative rule-making
review committee. Final adoption of the initial rules may
be approved only upon a majority vote of all six members
of the commission. All six members must be present when
a vote is taken. Upon final adoption by the commission,
the initial rules are thereby promulgated and have the
effect of law without further action by the commission or
the Legislature. The initial rules shall be published in the
code of state rules and continue in effect until modified or
superseded in accordance with the provisions of this
article.

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

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

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

(a) After the promulgation of the initial rules, the
commission shall have as its primary duties the implemen-
tation of this article and the evaluation and adoption of
state of the art technology and methods, reflected in
engines and engine components, emission control equip-
ment and procedures, that when applied to diesel-powered
underground mining machinery shall reasonably reduce or
eliminate diesel exhaust emissions and enhance protections of the health and safety of miners. The technology and methods adopted by the commission shall have been demonstrated to be reliable. In making a decision to adopt new technology and methods, the commission shall consider the highest achievable measures of protection for miners' health and safety through available technology, engineering controls and performance requirements and shall further consider the cost, availability, adaptability and suitability of any available technology, engineering controls and performance requirements as they relate to the use of diesel equipment in underground coal mines. Any state of the art technology or methods adopted by the commission shall not reduce or compromise the level of health and safety protection of miners.

(b) Upon application of a coal mine operator, the commission shall consider site-specific requests for the use of diesel equipment in underground coal mines and for the use of alternative diesel-related health and safety technologies and methods. The commission's action on applications submitted under this subsection shall be on a mine-by-mine basis. Upon receipt of a site-specific application, the commission shall conduct an investigation, which investigation shall include consultation with the mine operator and the authorized representatives of the miners at the mine. Authorized representatives of the miners shall include a mine health and safety committee elected by miners at the mine, a person or persons employed by an employee organization representing miners at the mine or a person or persons authorized as the representative or representatives of miners of the mine in accordance with MSHA regulations at 30 C.F.R. Pt. 40 (relating to representative of miners). Where there is no authorized representative of the miners, the commission shall consult with a reasonable number of miners at the mine. Upon completion of the investigation, the commission may approve the application for the site-specific request: Provided, That an
application for a site-specific request under this subsection may be approved only upon a majority vote of all six members of the commission. All six members must be present when a vote is taken.

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

(2) The commission shall have thirty days in which to render a final decision approving or rejecting the application.

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

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

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

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

(d) In performing its functions, the commission shall have access to the services of the board of coal mine health and safety. The board shall make clerical support and assistance available to enable the commission to carry out its duties.
(e) Any action taken by the commission to either approve or reject the use of an alternative technology or method, or establish conditions under subsection (c) of this section, shall be final and binding and not subject to further review except where a decision by the commission may be deemed to be an abuse of discretion or contrary to law. If any party affected by a decision of the commission believes that the decision is an abuse of discretion or contrary to law, that party may file a petition for review with the circuit court of Kanawha County in accordance with the provisions of the administrative procedures act relating to judicial review of governmental determinations. The court, in finding that any decision made by the commission is an abuse of discretion or contrary to law, shall vacate and, if appropriate, remand the case.

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

(g) Appropriations for the funding of the commission and to effectuate the purposes of this article shall be made to a budget account hereby established for that purpose in the general revenue fund.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ....... approved ........ this the ........... Day of ............... 2001.

Governor