WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2004

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4491

(By Delegates Frederick, Caputo, Kuhn, Varner, Pethtel, Stemple and Kominar)

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Passed March 10, 2004

In Effect Ninety Days from Passage
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COMMITTEE SUBSTITUTE

FOR

H. B. 4491

(BY DELEGATES FREDERICK, CAPUTO, KUHN, VARNER, PETHTEL, STEMPLE AND KOMINAR)

[Passed March 10, 2004; in effect ninety days from passage.]

Be it enacted by the Legislature of West Virginia:

That §22A-1-8, §22A-1-9, §22A-1-11, §22A-1-12 and §22A-1-13 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

ARTICLE 1. OFFICE OF MINERS’ HEALTH, SAFETY AND TRAINING; ADMINISTRATION; ENFORCEMENT.
§22A-1-8. Mine inspectors; regions and districts; employment; tenure; oath.

1 Notwithstanding any other provisions of this code to the contrary, mine inspectors shall be selected, serve and be removed as provided in this article.

4 The director shall divide the state into a sufficient number of regions, so as to equalize, as far as practical, the work of each inspector. The director may assign inspectors to districts and may designate and assign not more than one inspector-at-large and one assistant inspector-at-large to each region. The director may designate the places of abode of inspectors at points convenient to the mines of their respective districts, and, in the case of inspectors-at-large and assistant inspectors-at-large, their respective regions.

13 All mine inspectors appointed after the mine inspectors’ examining board has certified to the director an adequate register of qualified eligible candidates, so long as the register contains the names of at least three qualified eligible candidates, shall be appointed from the names on such register. Each original appointment shall be made by the director for a probationary period of not more than one year.

20 The director shall make each appointment from among the three qualified eligible candidates on the register having the highest grades: Provided, That the director may, for good cause, at least thirty days prior to making an appointment, strike any name from the register. Upon striking any name from the register, the director shall immediately notify in writing each member of the mine inspectors’ examining board of the action, together with a detailed statement of the reasons therefor. Thereafter, if the mine inspectors’ examining board finds, after hearing, that the action of the director was arbitrary or unreasonable, it may then order the name of any candidate so stricken
31 from the register to be reinstated thereon. The reinstatement is
32 effective from the date of removal from the register.

33 The name of any candidate passed over for appointment for
34 three years shall be deleted from the register.

35 After having served for a probationary period of one year
36 to the satisfaction of the director, a mine inspector has perma-
37 nent tenure, subject to dismissal only for cause in accordance
38 with the applicable provisions of section twelve of this article.
39 No mine inspector, while in office, may be directly or indirectly
40 interested as an employee, owner, lessor, operator, stockholder,
41 superintendent or engineer of any coal mine. Before entering
42 upon the discharge of the duties as a mine inspector, he or she
43 shall take the oath of office prescribed by section 5, article IV
44 of the constitution of West Virginia, a certificate of which oath
45 shall be filed in the office of the secretary of state.

46 The inspectors, inspectors-at-large and assistant inspec-
47 tors-at-large, together with the director, shall make all inspec-
48 tions authorized by this article and article two of this chapter
49 and shall perform such other duties as are imposed upon mine
50 inspectors by this chapter and by any applicable legislative
51 rules.

§22A-1-9. Mine safety instructors; eligibility; qualifications;
examinations; salary; provisions relating to
underground mine inspectors applicable to mine
safety instructors.

1 (a) The office shall employ a sufficient number of mine
2 safety instructors as the director determines to be reasonably
3 necessary in fully and effectively carrying out the applicable
4 provisions of this chapter.

5 (b) To be eligible for employment as a mine safety instruc-
6 tor, the applicant shall be: (1) A citizen of West Virginia, in
good health, not less than twenty-four years of age, of good
character and reputation, and of temperate habits; (2) a person
who has had at least five years of practical experience in coal
mines, at least two years of which has been in mines in this
state: Provided, That graduation from any accredited college of
mining engineering may be considered equivalent to two years
of practical experience; (3) a person who has had practical
experience with dangerous gases found in coal mines, and who
has a good theoretical and practical knowledge of mines,
mining methods, mine ventilation, sound safety practices and
applicable mining laws and rules; and (4) a person who
possesses a West Virginia foreman-fireboss certification; or a
person who has had at least three years of experience as an
actual working team member of a mine rescue team, or at least
three years of experience as a member of a first aid team or
emergency medical technician team; or a person who has had
at least three years of experience as the safety director, or the
equivalent as approved by the mine inspectors’ examining
board, of a mine; or a person who has had at least three years of
experience as an active member of a mine safety committee.
For the purpose of this section, practical experience means the
performance of normal mining duties requiring a person to hold
a certificate of competency and qualification as an experienced
miner prior to actually performing such duties.

(c)(1) In order to qualify for appointment as a mine safety
instructor, an eligible applicant shall submit to written, oral and
practical examinations administered by the mine inspectors’
examining board and furnish evidence of good health, character
and other facts establishing eligibility as the board may require.
The examinations shall relate to the duties to be performed by
a mine safety instructor and, subject to the approval of the mine
inspectors’ examining board, may be prepared by the director.

(2) If the board finds after investigation and examination
that an applicant: (A) Is eligible for appointment; and (B) has
passed each required examination with a grade of at least seventy-five percent or an overall combined average score of eighty percent, the board shall add the applicant's name and grades to the register of qualified eligible candidates and promptly certify its action in writing to the director. The director shall then appoint one of the candidates from the three having the highest grades.

(d) Mine safety instructors shall be paid an annual salary of not less than thirty-seven thousand four hundred dollars, which shall be fixed by the director, who shall take into consideration ability, performance of duty and experience. Mine safety instructors shall devote all of their time to the duties of the office.

(e) Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualification, appointment, tenure and removal of underground mine inspectors, as well as those provisions relating to compensatory time and reimbursement for necessary expenses, are applicable to mine safety instructors.

§22A-1-11. Employment of electrical inspectors; eligibility; qualifications; examinations; salary; provisions relating to underground mine inspectors applicable to electrical inspectors.

(a) The office shall employ a sufficient number of electrical inspectors as the director determines to be reasonably necessary in fully and effectively carrying out the applicable provisions of this chapter.

(b) To be eligible for employment as an electrical inspector, the applicant shall be: (1) A citizen of West Virginia, in good health, not less than twenty-four years of age, of good character and reputation, and of temperate habits; and (2) a person who has had five years of practical electrical experience in coal
mines, at least two of which were in mines in this state, or a
degree in electrical engineering from an accredited electrical
engineering school and three years of practical electrical
experience in underground coal mining. For the purposes of this
section, practical electrical experience means the performance
of duties requiring a person to be a certified electrician, as that
term is defined in subdivision (2), subsection (d), section two
of this article, prior to actually performing such duties.

(c)(1) In order to qualify for appointment as an electrical
inspector, an eligible applicant shall submit to written, oral and
practical examinations administered by the mine inspectors’
examining board and furnish evidence of good health, character
and other facts establishing eligibility as the board may require.
The examinations shall relate to the duties to be performed by
an electrical inspector and, subject to approval of the mine
inspectors’ examining board, may be prepared by the director.

(2) If the board finds after investigation and examination
that an applicant: (A) Is eligible for appointment; and (B) has
passed the required examinations with an average grade of at
least ninety percent, the board shall add the applicant’s name
and grades to the register of qualified eligible candidates and
promptly certify its action in writing to the director. The
director shall then appoint one of the candidates from the three
having the highest grades.

(d) Electrical inspectors shall be paid an annual salary of
not less than forty-two thousand eight hundred twenty-eight
dollars, which shall be fixed by the director, who shall take into
consideration ability, performance of duty and experience.
Electrical inspectors shall devote all of their time to the duties
of the office.

(e) Except as expressly provided in this section to the
contrary, all provisions of this article relating to the eligibility,
§22A-1-12. Employment of underground mine inspectors; eligibility; qualifications; examinations; salary and expenses; reinstatement; removal.

(a) The office shall employ as many underground mine inspectors as the director determines to be reasonably necessary in fully and effectively carrying out the applicable provisions of this chapter.

(b) To be eligible for employment as a mine inspector the applicant shall be: (1) A citizen of West Virginia, in good health, not less than twenty-four years of age, of good character and reputation and of temperate habits; (2) a person who has had at least five years of practical experience in coal mines, at least two years of which have been in mines of this state: Provided, That graduation from any accredited college of mining engineering may be considered the equivalent of two years of practical experience; (3) a person who has had practical experience with dangerous gases found in coal mines; and (4) a person who has a good theoretical and practical knowledge of mines, mining methods, mine ventilation, sound safety practices and applicable mining laws and rules. For the purpose of this section, practical experience means the performance of normal mining duties requiring a person to hold a certificate of competency and qualification as an experienced underground miner prior to actually performing such duties.

(c) In order to qualify for appointment as an underground mine inspector, an eligible applicant shall submit to written, oral and practical examinations administered by the mine inspectors’ examining board and furnish evidence of good
health, character and other facts establishing eligibility as the
board may require. The examinations shall relate to the duties
to be performed by an underground mine inspector and, subject
to the approval of the mine inspectors’ examining board, may
be prepared by the director. If the board finds after investigation
and examination that an applicant: (1) is eligible for appoint-
ment; and (2) has passed each required examination, with a
grade of at least seventy-five percent or an overall combined
average score of eighty percent, the board shall add
the applicant’s name and grades to the register of qualified
eligible candidates and promptly certify its action in writing to
the director. The director shall then appoint one of the candi-
dates from the three having the highest grades.

(d) Underground mine inspectors shall be paid an annual
salary of not less than thirty-eight thousand one hundred sixty
dollars; assistant inspectors-at-large, not less than forty-four
thousand four hundred forty-eight dollars; inspectors-at-large,
not less than forty-six thousand one hundred four dollars, each
of which shall be fixed by the director, who shall take into
consideration ability, performance of duty, and experience. In
accordance with established rules of the state’s travel manage-
ment office, underground mine inspectors shall also be allowed
and paid expenses necessarily incident to the performance of
their official duties: Provided, That no reimbursement for
expenses may be made other than upon the timely submittal of
a properly itemized expense account settlement completed by
the underground mine inspector, approved and countersigned
by the director, or his or her designated representative, verify-
ing that the expenses were actually incurred in the performance
of official duties. Underground mine inspectors shall devote all
of their time to the duties of the office and shall be afforded
compensatory time or compensation of at least the regular rate
for all time in excess of forty hours per week.
(e)(1) An underground mine inspector, after having received a permanent appointment, may be removed from office only for physical or mental impairment, incompetency, neglect of duty, public intoxication, malfeasance in office or other similarly good cause.

(2) Proceedings for the removal of an underground mine inspector may be initiated by the director whenever there is reasonable cause to believe that adequate cause exists, warranting removal. The proceeding may be initiated by a verified petition, filed with the mine inspectors' examining board by the director, setting forth with particularity the facts alleged. Not less than twenty reputable citizens, who are operators or employees in mines in this state, may petition the director for the removal of an underground mine inspector. If the petition is verified by at least one of the petitioners, based on actual knowledge of the affiant of the alleged facts, which, if true, warrant the removal of the inspector, the director shall cause an investigation of the alleged facts to be made. If, after the investigation, the director finds that there is substantial evidence, which, if true, warrants removal of the inspector, the director shall file a petition with the board requesting removal of the inspector.

(3) On receipt of a petition by the director seeking removal of an underground mine inspector, the board shall promptly notify the inspector to appear before it at a time and place designated in the notice, which time shall be not less than fifteen days thereafter. There shall be attached to the copy of the notice served upon the inspector a copy of the petition filed with the board.

(4) At the time and place designated in the notice, the board shall hear all evidence offered in support of the petition and on behalf of the inspector. Each witness shall be sworn, and a transcript shall be made of all evidence taken and proceedings
had at the hearing. No continuance may be granted except for
good cause shown. The chair of the board and the director have
power to administer oaths and subpoena witnesses.

(5) If any mine inspector against whom a petition has been
filed willfully refuses or fails to appear before the board, or
having appeared, refuses to answer under oath any relevant
question on the basis that the testimony or answer might
incriminate him or her or refuses to waive immunity from
prosecution because of any relevant matter about which the
inspector may be asked to testify, then the inspector shall forfeit
his or her position.

(6) If, after hearing, the board finds that the inspector
should be removed, it shall enter an order to that effect. The
decision of the board is final and is not subject to judicial
review.

§22A-1-13. Employment of surface mine inspectors; eligibility;
qualifications; examinations; salary; provisions
relating to underground mine inspectors applicable to surface mine inspectors.

(a) The office shall employ as many surface mine inspec­tors as the director determines to be reasonably necessary in
fully and effectively carrying out the applicable provisions of
this chapter.

(b) To be eligible for employment as a surface mine
inspector the applicant shall be: (1) A citizen of West Virginia,
in good health, not less than twenty-four years of age, of good
character and reputation and of temperate habits; (2) a person
who has had at least five years of practical experience in coal
mines, at least two years of which have been in surface mines
in this state: Provided, That graduation from any accredited
college of mining engineering may be considered the equivalent
of two years of practical experience; and (3) a person who has
a good theoretical and practical knowledge of surface mines, surface mining methods, sound safety practices and applicable mining laws and rules. For the purpose of this section, practical experience means the performance of normal mining duties requiring a person to hold a certificate of competency and qualification as an experienced surface miner prior to actually performing such duties.

(c)(1) In order to qualify for appointment as a surface mine inspector, an eligible applicant shall submit to written, oral and practical examinations administered by the mine inspectors’ examining board and furnish evidence of good health, character and other facts establishing eligibility as the board may require. The examinations shall relate to the duties to be performed by a surface mine inspector and, subject to the approval of the mine inspectors’ examining board, may be prepared by the director.

(2) If the board finds after investigation and examination that an applicant is: (A) Eligible for appointment; and (B) has passed each required examination with a grade of at least seventy-five percent, or an overall combined average score of eighty percent, the board shall add the applicant’s name and grades to the register of qualified eligible candidates and promptly certify its action in writing to the director. The director shall then appoint one of the candidates from the three having the highest grades.

(d) Surface mine inspectors shall be paid an annual salary of not less than thirty-seven thousand three hundred thirty-two dollars, which shall be fixed by the director, who shall take into consideration ability, performance of duty, and experience. Surface mine inspectors shall devote all of their time to the duties of the office.
(e) Except as expressly provided in this section to the contrary, all provisions of this article relating to the eligibility, qualification, appointment, tenure, and removal of underground mine inspectors, as well as those provisions relating to compensatory time and reimbursement for necessary expenses, are applicable to surface mine inspectors.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the 25th day of March, 2004.

[Signature]
Governor