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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 2005



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 3089**

(By Delegates Boggs, R. M. Thompson, Butcher and Tansill)



Passed April 9, 2005

In Effect Ninety Days from Passage

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FOR

H. B. 3089

(BY DELEGATES BOGGS, R. M. THOMPSON, BUTCHER AND TANSILL)

[Passed April 9, 2005; in effect ninety days from passage.]

AN ACT to amend and reenact §17C-17A-3 and §17C-17A-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24A-1A-2 of said code, all relating to the regulation of the commercial transportation of coal; adding representatives to the commercial motor vehicle weight and safety enforcement advisory committee; authorizing the division to provide for special crossing permits by legislative rule; creating the Coal Resource Transportation Designation Committee and authorizing it to make recommendations to the Joint Committee on Government and Finance and to designate roads to the coal resource transportation road system under certain circumstances; and adding routes to the coal resource transportation road system in Braxton, Webster, Nicholas and Ohio counties.

Be it enacted by the Legislature of West Virginia:

That §17C-17A-3 and §17C-17A-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24A-1A-2 of said code be amended and reenacted, all to read as follows:

**CHAPTER 17C. TRAFFIC REGULATIONS
AND LAWS OF THE ROAD.**

ARTICLE 17A. REGULATION OF THE COMMERCIAL TRANSPORTATION OF COAL.

§17C-17A-3. Authority of the division of highways and public service commission generally.

1 (a) The division of highways shall establish all legal vehicle
2 weight limits for all public highways including roads within the
3 coal resource transportation road system. Public highways shall
4 be designated as coal resource transportation roads by the
5 commissioner of the division of highways pursuant to this
6 article. Only state-maintained roads and public highways found
7 in the following areas: Boone; Fayette; Lincoln; Logan;
8 McDowell; Mercer; Mingo; Raleigh; Wayne and Wyoming
9 counties; in Braxton county, Braxton county route 19/29 from
10 Mine 5 haulroad to intersection of county route 36/1, county
11 route 36/1 to intersection of county route 36 and county route
12 36 to the Webster County line (Webster County route 9); in
13 Ohio County, county route 1 from the intersection of county
14 route 7 to intersection of Riley Delaplaine Road; in Greenbrier
15 County, routes west of Sam Black Church and southwest to the
16 Summers County line; in Clay County, routes 4 and 16; in
17 Nicholas County, routes 1/11, 16, 19, 19/2, 19/40, 20, 39, 41, 55
18 abd 82; in Webster County, routes 9, 9/1, 9/2, 20, 32 and 82;
19 and all state-maintained roads and public highways found in
20 Washington, Malden, Loudon and Cabin Creek districts,
21 Kanawha County, are eligible to qualify as part of the coal
22 resource transportation road system. The division shall post
23 signs on roads informing the public of the designation and shall

24 also list a toll-free telephone line for public reporting of poor
25 driving or law violations by special permit operators. The
26 division shall provide periodic reports to the commercial motor
27 vehicle weight and safety enforcement advisory committee as
28 established in section two, article one-a, chapter twenty-four-a
29 of this code relating to the study of coal resource transportation
30 roads. The periodic reports shall include the following at a
31 minimum: (1) Citations issued for violations of this chapter; (2)
32 disposition of the violations; (3) road conditions and mainte-
33 nance; and (4) the amount of undue road damage attributable to
34 coal resource transportation road system permit use.

35 (b) The public service commission shall administer the coal
36 resource transportation road permitting program and otherwise
37 enforce the provisions of this article. The commission shall
38 establish requirements for vehicle operators holding coal
39 resource transportation road permits pursuant to section five of
40 this article consistent with federal statutory and regulatory
41 requirements.

42 (1) The commission may, during normal business hours,
43 conduct inspections of all trucking-related records of shippers,
44 vehicle operators, vehicle owners and receivers engaged in the
45 transportation of coal. Copies of records shall be provided to
46 commission employees upon request. This provision may not
47 be construed to authorize the commission to reveal trade secrets
48 or other confidential financial information of those persons
49 inspected; however the commission may use any weight
50 measurement records as evidence of a violation of this article.

51 (2) The commission shall establish and maintain a toll-free
52 telephone line for public reporting of poor driving or law
53 violations by special permit operators. In addition, the commis-
54 sion shall require all vehicles operating under a permit issued
55 pursuant to the provisions of this article to clearly display on
56 the vehicle the toll-free telephone number.

57 (3) The commission shall implement a study of commercial
58 vehicle safety-related issues, including using higher education
59 institutions and other research organizations. The commission
60 shall provide periodic reports to the commercial motor vehicle
61 weight and safety enforcement advisory committee as estab-
62 lished in section two, article one-a, chapter twenty-four-a of this
63 code relating to the study of motor vehicle weight and safety
64 enforcement.

65 (4) The commission shall establish procedures to use
66 electronic real time reporting of coal vehicle weights on coal
67 resource transportation roads by shippers and receivers. The
68 commission may require daily certified reports from shippers
69 or receivers if electronic reporting methods are not used. The
70 commission may authorize alternative measures of reporting
71 that require same-day reporting of weight measurements by
72 shippers and receivers.

73 (5) The commission shall impose and collect from shippers
74 of coal on the coal resource transportation road system through
75 the use of the special permit, issued pursuant to section five of
76 this article, for the privilege of loading coal in excess of
77 eighty-eight thousand pounds for transport on a coal resource
78 transportation road. The fee shall be assessed in the amount of
79 five cents per ton of coal hauled over the road. Revenue from
80 the fees shall be deposited in the coal resource transportation
81 fund created in said section.

82 (c) Notwithstanding the provisions of section three, article
83 one, chapter twenty-nine-a of this code, the commission and the
84 division shall each propose legislative rules for promulgation in
85 accordance with the provisions of article three of said chapter
86 to carry out their duties and responsibilities pursuant to the
87 provisions of this article.

88 (d) Notwithstanding any provisions of this code to the
89 contrary, the division may propose rules for legislative approval
90 in accordance with the provisions of article three, chapter
91 twenty-nine-a of this code which would provide a process for
92 approval by the commissioner of the division of a special
93 crossing permit and renewals thereof. Special crossing permits
94 authorized by this subsection would authorize the holder of the
95 permit to operate or move a vehicle or combination of vehicles
96 which exceed the maximum weight allowance specified in this
97 chapter or are otherwise not in conformity with the provisions
98 of this chapter on limited sections of public highways under
99 specific circumstances specified in the permit: *Provided*, That
100 no special crossing permit may allow the operation or move-
101 ment of any vehicle or combination of vehicles on a public
102 highway for more than one-half of a mile: *Provided, however*,
103 That no special crossing permit may allow the operation or
104 movement of any vehicle or combination of vehicles on a
105 public highway if the commissioner of the division of highways
106 determines there is an existing alternate off-road route avail-
107 able. Each special crossing permit shall contain the specific
108 section or mileage of the public highway where operation is
109 authorized. Special crossing permits may not exceed a three-
110 year period and may be renewed upon approval by the commis-
111 sioner of the division of highways as specified in legislative
112 rule. The commissioner of the division may provide for fees for
113 the processing of applications for special crossing permits. As
114 a condition of approval of a special crossing permit, an appli-
115 cant shall agree to pay for all actual expenditures incurred by
116 the department of transportation for the upgrading or repair of
117 the public highway, including traffic control devices, for which
118 the applicant seeks the special crossing permit. In addition, all
119 holders of special crossing permits shall pay for the restoration
120 of the public highway to its original condition after the permit
121 has expired. The initial rule filed by the division pursuant to
122 this subsection shall be filed as an emergency rule.

§17C-17A-12. Designating special coal resource transportation roads, highways and bridges.

1 (a) From those counties and districts described in subsec-
2 tion (a), section three of this article, the commissioner of the
3 division of highways shall identify those public roads, high-
4 ways and bridges used during the previous twelve-month period
5 for transportation of quantities of coal in excess of fifty
6 thousand tons or projected to be used for transporting quantities
7 of coal in excess of fifty thousand tons during the ensuing year.
8 The identification process shall include the following as to each
9 discretely identifiable section of the public highway:

10 (1) The current condition of the public roads, highways and
11 bridges;

12 (2) The estimated quantities of coal transported;

13 (3) Any planned or necessary maintenance or improvement;

14 (4) The number of truck loads of coal transported in an
15 average day;

16 (5) Any anticipated increase or decrease in the quantity of
17 coal being transported; and

18 (6) Other information determined by the commissioner to
19 be relevant.

20 (b) Upon completion of the identification process, but in no
21 event later than the first day of July, two thousand three, the
22 commissioner shall designate by order an interim coal resource
23 transportation road system consisting of those public roads,
24 highways, bridges or segments thereof which may be used as
25 special coal haulage roads consistent with the authority con-
26 tained in this article. The commissioner shall establish a process
27 for the receipt and evaluation of public comment on the

28 designations contained within the interim coal resource
29 transportation road system, and designate weight limits and
30 other conditions for use of the coal resource transportation road
31 system as public interest so provides. The commissioner shall
32 publish a directory, including supporting maps and other
33 documents, of the interim coal resource transportation road
34 system.

35 (c) By no later than the first day of January, two thousand
36 four, the commissioner shall designate by order the coal
37 resource transportation road system and shall publish a direc-
38 tory, including supporting maps and other documents, of that
39 road system.

40 (d) The commissioner shall establish a process for periodic
41 evaluation of the designations contained in the coal resource
42 transportation road system in order to add to or delete from the
43 road system certain additional sections of public highways:
44 *Provided*, That the evaluations and modifications of the road
45 system shall be completed at a minimum on an annual basis.

46 (e) Effective the first day of July, two thousand five, there
47 is created the coal resource transportation designation commit-
48 tee, the purpose of which is to approve the designation of
49 additional coal resource transportation roads pursuant to the
50 provisions of this section: *Provided*, That the committee may
51 only consider those applications for designation of roads,
52 highways and bridges not located within those whole counties
53 identified in section three of this article.

54 (f) The committee consists of the following members:

55 (1) The commissioner of highways, or his or her designee;

56 (2) The superintendent of the state police, or his or her
57 designee;

58 (3) One member who is representative of the coal industry,
59 to be appointed by the governor;

60 (4) One citizen member from the largest citizen action
61 group, to be appointed by the governor; and

62 (5) One member of the largest organization representing
63 coal miners, to be appointed by the governor.

64 (g) The governor shall appoint members with the advice
65 and consent of the Senate. Appointed members shall serve for
66 terms of three years. No member may be appointed to serve
67 more than two consecutive terms. The committee shall annually
68 nominate from its members a chair, who shall hold office for
69 one year.

70 (h) The public members of the committee may receive
71 compensation for attendance at official meetings, not to exceed
72 the amount paid to members of the Legislature for their interim
73 duties as recommended by the citizens legislative compensation
74 commission and authorized by law. Committee members may
75 be reimbursed for actual and necessary expenses incurred for
76 each day or portion of a day engaged in the discharge of
77 committee duties in a manner consistent with guidelines of the
78 travel management office of the department of administration.

79 (i) The committee shall accept applications from any person
80 for designation or decertification of public roads, highways and
81 bridges, or segments thereof in any county in the state, which
82 may be used as special coal haulage roads consistent with the
83 authority contained in this article. The committee shall establish
84 a process for the receipt and evaluation of public comment on
85 the designations contained in applications: *Provided*, That, prior
86 to any designation the committee shall first have held a public
87 hearing in the county wherein the public road, highway or
88 bridge is located: *Provided, however*, That, where a public road,
89 highway or bridge is located in more than one county, the

90 hearing shall be conducted in the county containing the longest
91 mileage under designation: *Provided further*, That prior to any
92 public hearing the applicant shall cause notice of such public
93 hearing or hearings by Class I legal advertisement.

94 (j) Once an application has been approved by the committee
95 and the public road, highway or bridge has become part of the
96 coal resource transportation road system, such route must be
97 used for coal haulage pursuant to the provisions of this article
98 within one year of its designation. In the event any public road,
99 highway or bridge that is part of the coal resource transportation
100 road system ceases to be used for coal haulage for a period of
101 time exceeding one year, then such route may be decertified by
102 the committee upon application by any person: *Provided*, That
103 prior to any decertification the committee shall first have held
104 a public hearing in the county wherein the public road, high-
105 way, or bridge is located: *Provided, however*, That where a
106 public road, highway or bridge is located in more than one
107 county, the hearing shall be conducted in the county containing
108 the longest mileage under decertification: *Provided further*,
109 That prior to any public hearing the applicant shall cause notice
110 of such public hearing or hearings by Class I legal advertise-
111 ment.

112 (k) Prior to rendering a final decision on any application for
113 designation or decertification of a coal resource transportation
114 road, the committee shall first report its findings and recom-
115 mendations on each pending application to the Joint Committee
116 on Government and Finance. The Joint Committee on Govern-
117 ment and Finance may comment on the application which
118 comments shall be considered by the committee. The commit-
119 tee may not make final any designation or decertification before
120 thirty days after reporting its findings and recommendations on
121 an application to the Joint Committee on Government and
122 Finance.

123 (l) The coal resource transportation designation committee
124 created in this section shall report its activities to the Secretary
125 of Transportation who will provide the necessary staff to assist
126 the committee in the discharge of its functions pursuant to this
127 section.

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

ARTICLE 1A. COMMERCIAL VEHICLE REGULATION.

§24A-1A-2. Creation of advisory committee; purpose; members; terms.

1 (a) There is created the commercial motor vehicle weight
2 and safety enforcement advisory committee, the purpose of
3 which is to study the implementation of the commercial motor
4 vehicle weight and safety enforcement program set forth in this
5 article.

6 (b) The committee consists of the following members:

7 (1) One member who is an employee of the division of
8 highways, to be appointed by the commissioner of highways;

9 (2) One member who is an employee of the public service
10 commission, to be appointed by the chairman of the public
11 service commission;

12 (3) One member who is a state police officer, to be ap-
13 pointed by the superintendent of the state police;

14 (4) One member who is an employee of the division of
15 motor vehicles, to be appointed by the commissioner of motor
16 vehicles;

17 (5) One member who is an employee of the development
18 office, to be appointed by the governor;

19 (6) One member who is representative of the coal industry,
20 to be appointed by the governor;

21 (7) One member of the Senate, to be appointed by the
22 president of the Senate;

23 (8) One member of the House of Delegates, to be appointed
24 by the speaker of the House of Delegates;

25 (9) Two citizen members, to be appointed by the governor;

26 (10) One member of the largest organization representing
27 coal miners, to be appointed by the governor; and

28 (11) One member of the largest organization representing
29 natural resource transportation drivers, to be appointed by the
30 governor.

31 (c) Members shall serve for terms of three years. No
32 member may be appointed to serve more than two consecutive
33 terms.

34 (d) The committee shall annually nominate from its
35 members a chair, who shall hold office for one year.

36 (e) The committee shall hold at least four meetings each
37 year or more often as may, in the discretion of the chair, be
38 necessary to effectuate the purposes of this article.

39 (f) The public members of the committee may receive
40 compensation for attendance at official meetings, not to exceed
41 the amount paid to members of the Legislature for their interim
42 duties as recommended by the citizens legislative compensation
43 commission and authorized by law.

44 (g) Committee members may be reimbursed for actual and
45 necessary expenses incurred for each day or portion of a day
46 engaged in the discharge of committee duties in a manner

47 consistent with guidelines of the travel management office of
48 the department of administration.

49 (h) On or before the first day of January, two thousand four,
50 and each subsequent year thereafter, the committee shall submit
51 to the governor and to the Legislature a report of its recommen-
52 dations for improving the effectiveness of the commercial
53 vehicle weight and safety enforcement program.

54 (i) The commercial vehicle weight and safety enforcement
55 advisory committee shall continue to exist until the first day of
56 July, two thousand seven, pursuant to the provisions of article
57 ten, chapter four of this code, unless sooner terminated,
58 continued or reestablished pursuant to the provisions of that
59 article.

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

Randy Whit
Chairman Senate Committee

D. Rich Bury
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Daniel Edwards
Clerk of the Senate

Bruce W. Boy
Clerk of the House of Delegates

Carl Roy Tomblin
President of the Senate

[Signature]
Speaker of the House of Delegates

The within is approved this the 3rd day of May 2005.

[Signature]
Governor

PRESENTED TO THE
GOVERNOR

MAY 2 2005

Time 10:35 AM