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
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.

(a) The division of highways shall establish all legal vehicle weight limits for all public highways including roads within the coal resource transportation road system. Public highways shall be designated as coal resource transportation roads by the commissioner of the division of highways pursuant to this article. Only state-maintained roads and public highways found in the following areas: Boone; Fayette; Lincoln; Logan; McDowell; Mercer; Mingo; Raleigh; Wayne and Wyoming counties; in Braxton county, Braxton county route 19/29 from Mine 5 haulroad to intersection of county route 36/1, county route 36/1 to intersection of county route 36 and county route 36 to the Webster County line (Webster County route 9); in Ohio County, county route 1 from the intersection of county route 7 to intersection of Riley Delaplaine Road; in Greenbrier County, routes west of Sam Black Church and southwest to the Summers County line; in Clay County, routes 4 and 16; in Nicholas County, routes 1/11, 16, 19, 19/2, 19/40, 20, 39, 41, 55 abd 82; in Webster County, routes 9, 9/1, 9/2, 20, 32 and 82; and all state-maintained roads and public highways found in Washington, Malden, Louden and Cabin Creek districts, Kanawha County, are eligible to qualify as part of the coal resource transportation road system. The division shall post signs on roads informing the public of the designation and shall
also list a toll-free telephone line for public reporting of poor
driving or law violations by special permit operators. The
division shall provide periodic reports to the commercial motor
vehicle weight and safety enforcement advisory committee as
established in section two, article one-a, chapter twenty-four-a
of this code relating to the study of coal resource transportation
roads. The periodic reports shall include the following at a
minimum: (1) Citations issued for violations of this chapter; (2)
disposition of the violations; (3) road conditions and mainte-
nance; and (4) the amount of undue road damage attributable to
coal resource transportation road system permit use.

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

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

(2) The commission shall establish and maintain a toll-free
telephone line for public reporting of poor driving or law
violations by special permit operators. In addition, the commis-
sion shall require all vehicles operating under a permit issued
pursuant to the provisions of this article to clearly display on
the vehicle the toll-free telephone number.
(3) The commission shall implement a study of commercial vehicle safety-related issues, including using higher education institutions and other research organizations. The commission shall provide periodic reports to the commercial motor vehicle weight and safety enforcement advisory committee as established in section two, article one-a, chapter twenty-four-a of this code relating to the study of motor vehicle weight and safety enforcement.

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

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

(c) Notwithstanding the provisions of section three, article one, chapter twenty-nine-a of this code, the commission and the division shall each propose legislative rules for promulgation in accordance with the provisions of article three of said chapter to carry out their duties and responsibilities pursuant to the provisions of this article.
(d) Notwithstanding any provisions of this code to the contrary, the division may propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code which would provide a process for approval by the commissioner of the division of a special crossing permit and renewals thereof. Special crossing permits authorized by this subsection would authorize the holder of the permit to operate or move a vehicle or combination of vehicles which exceed the maximum weight allowance specified in this chapter or are otherwise not in conformity with the provisions of this chapter on limited sections of public highways under specific circumstances specified in the permit: Provided, That no special crossing permit may allow the operation or movement of any vehicle or combination of vehicles on a public highway for more than one-half of a mile: Provided, however, That no special crossing permit may allow the operation or movement of any vehicle or combination of vehicles on a public highway if the commissioner of the division of highways determines there is an existing alternate off-road route available. Each special crossing permit shall contain the specific section or mileage of the public highway where operation is authorized. Special crossing permits may not exceed a three-year period and may be renewed upon approval by the commissioner of the division of highways as specified in legislative rule. The commissioner of the division may provide for fees for the processing of applications for special crossing permits. As a condition of approval of a special crossing permit, an applicant shall agree to pay for all actual expenditures incurred by the department of transportation for the upgrading or repair of the public highway, including traffic control devices, for which the applicant seeks the special crossing permit. In addition, all holders of special crossing permits shall pay for the restoration of the public highway to its original condition after the permit has expired. The initial rule filed by the division pursuant to this subsection shall be filed as an emergency rule.
§17C-17A-12. Designating special coal resource transportation roads, highways and bridges.

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

1. The current condition of the public roads, highways and bridges;
2. The estimated quantities of coal transported;
3. Any planned or necessary maintenance or improvement;
4. The number of truck loads of coal transported in an average day;
5. Any anticipated increase or decrease in the quantity of coal being transported; and
6. Other information determined by the commissioner to be relevant.

(b) Upon completion of the identification process, but in no event later than the first day of July, two thousand three, the commissioner shall designate by order an interim coal resource transportation road system consisting of those public roads, highways, bridges or segments thereof which may be used as special coal haulage roads consistent with the authority contained in this article. The commissioner shall establish a process for the receipt and evaluation of public comment on the
designations contained within the interim coal resource transportation road system, and designate weight limits and other conditions for use of the coal resource transportation road system as public interest so provides. The commissioner shall publish a directory, including supporting maps and other documents, of the interim coal resource transportation road system.

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

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

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

(f) The committee consists of the following members:

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

(2) The superintendent of the state police, or his or her designee;
(3) One member who is representative of the coal industry, to be appointed by the governor;

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

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

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

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

(i) The committee shall accept applications from any person for designation or decertification of public roads, highways and bridges, or segments thereof in any county in the state, which may be used as special coal haulage roads consistent with the authority contained in this article. The committee shall establish a process for the receipt and evaluation of public comment on the designations contained in applications: Provided, That, prior to any designation the committee shall first have held a public hearing in the county wherein the public road, highway or bridge is located; Provided, however, That, where a public road, highway or bridge is located in more than one county, the
hearing shall be conducted in the county containing the longest mileage under designation: *Provided further*, That prior to any public hearing the applicant shall cause notice of such public hearing or hearings by Class I legal advertisement.

(j) Once an application has been approved by the committee and the public road, highway or bridge has become part of the coal resource transportation road system, such route must be used for coal haulage pursuant to the provisions of this article within one year of its designation. In the event any public road, highway or bridge that is part of the coal resource transportation road system ceases to be used for coal haulage for a period of time exceeding one year, then such route may be decertified by the committee upon application by any person: *Provided*, That prior to any decertification the committee shall first have held a public hearing in the county wherein the public road, highway, or bridge is located: *Provided, however*, That where a public road, highway or bridge is located in more than one county, the hearing shall be conducted in the county containing the longest mileage under decertification: *Provided further*, That prior to any public hearing the applicant shall cause notice of such public hearing or hearings by Class I legal advertisement.

(k) Prior to rendering a final decision on any application for designation or decertification of a coal resource transportation road, the committee shall first report its findings and recommendations on each pending application to the Joint Committee on Government and Finance. The Joint Committee on Government and Finance may comment on the application which comments shall be considered by the committee. The committee may not make final any designation or decertification before thirty days after reporting its findings and recommendations on an application to the Joint Committee on Government and Finance.
(l) The coal resource transportation designation committee created in this section shall report its activities to the Secretary of Transportation who will provide the necessary staff to assist the committee in the discharge of its functions pursuant to this section.

CHAPTER 24A. COMMERCIAL MOTOR CARRIERS.

ARTICLE 1A. COMMERCIAL VEHICLE REGULATION.

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

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

(b) The committee consists of the following members:

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

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

(3) One member who is a state police officer, to be appointed by the superintendent of the state police;

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

(5) One member who is an employee of the development office, to be appointed by the governor;
(6) One member who is representative of the coal industry, to be appointed by the governor;

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

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

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

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

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

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

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

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

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

(g) Committee members may be reimbursed for actual and necessary expenses incurred for each day or portion of a day engaged in the discharge of committee duties in a manner
consistent with guidelines of the travel management office of the department of administration.

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

(i) The commercial vehicle weight and safety enforcement advisory committee shall continue to exist until the first day of July, two thousand seven, pursuant to the provisions of article ten, chapter four of this code, unless sooner terminated, continued or reestablished pursuant to the provisions of that article.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In 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 occurred this the 3rd day of May, 2005.

Governor
PRESENTED TO THE GOVERNOR

MAY 2 2005

Time 10:35 AM