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FILED

WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2007

2007 APR 11 10 06
OFFICE OF THE CLERK OF THE WEST VIRGINIA
LEGISLATURE
SECRETARY OF STATE

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COMMITTEE SUBSTITUTE
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Senate Bill No. 68

(SENATORS TOMBLIN, MR. PRESIDENT, AND CARUTH,
BY REQUEST OF THE EXECUTIVE)

[Passed March 10, 2007; in effect ninety days from passage.]

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(SENATORS TOMBLIN, MR. PRESIDENT, AND CARUTH,
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[Passed March 10, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §22A-1-15 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §22A-2-4a; to amend and reenact §22A-2-5 of said code; to amend and reenact §22A-

7-5 of said code; to amend said code by adding thereto a new section, designated §22A-7-7; and to amend said code by adding thereto a new article, designated §22A-11-1, §22A-11-2, §22A-11-3 and §22A-11-4, all relating generally to coal mine health and safety; authorizing Director of the Office of Miners' Health, Safety and Training, upon a finding of imminent danger, to issue closure orders for mines under certain circumstances; prohibiting the use of a belt conveyor entry as an intake air course and providing exceptions thereto; providing requirements for the design, construction and inspection of seals and the atmospheric monitoring of sealed areas; prohibiting use of certain seals and providing for requirements for remediation of existing seals under certain circumstances; prohibiting the use of bottom mining and providing exceptions thereto; requiring continuing education for underground mine foremen-fire bosses and setting course requirements; continuing the Mine Safety Technology Task Force; legislative findings; establishing powers and duties of task force; reimbursement; and task force consultation in approval of safety devices.

Be it enacted by the Legislature of West Virginia:

That §22A-1-15 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that said code be amended by adding thereto a new section, designated §22A-2-4a; that §22A-2-5 of said code be amended and reenacted; that §22A-7-5 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §22A-7-7; and that said code be amended by adding thereto a new article, designated §22A-11-1, §22A-11-2, §22A-11-3 and §22A-11-4, all to read as follows:

**ARTICLE 1. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING;
ADMINISTRATION; ENFORCEMENT.**

§22A-1-15. Findings, orders and notices.

1 (a) If upon any inspection of a coal mine an authorized
2 representative of the director finds that an imminent
3 danger exists, the representative shall determine the
4 area throughout which the danger exists and shall
5 immediately issue an order requiring the operator of the
6 mine or the operator's agent to cause immediately all
7 persons, except those referred to in subdivisions (1), (2),
8 (3) and (4), subsection (e) of this section, to be
9 withdrawn from and to be prohibited from entering the
10 area until an authorized representative of the director
11 determines that the imminent danger no longer exists.

12 (b) If upon any inspection of a coal mine an authorized
13 representative of the director finds that there has been
14 a violation of the law, but the violation has not created
15 an imminent danger, he or she shall issue a notice to the
16 operator or the operator's agent fixing a reasonable
17 time for the abatement of the violation. If upon the
18 expiration of the period of time, as originally fixed or
19 subsequently extended, an authorized representative of
20 the director finds that the violation has not been totally
21 abated, and if the director also finds that the period of
22 time should not be further extended, the director shall
23 find the extent of the area affected by the violation and
24 shall promptly issue an order requiring the operator of
25 the mine or the operator's agent to cause immediately
26 all persons, except those referred to in subdivisions (1),
27 (2), (3) and (4), subsection (e) of this section, to be
28 withdrawn from and to be prohibited from entering the
29 area until an authorized representative of the director
30 determines that the violation has been abated.

31 (c) If upon any inspection of a coal mine an authorized
32 representative of the director finds that an imminent
33 danger exists in an area of the mine, in addition to
34 issuing an order pursuant to subsection (a) of this
35 section, the director shall review the compliance record
36 of the mine.

37 (1) A review of the compliance record conducted in
38 accordance with this subsection shall, at a minimum,
39 include a review of the following:

40 (A) Any closure order issued pursuant to subsection
41 (a) of this section;

42 (B) Any closure order issued pursuant to subsection
43 (b) of this section;

44 (C) Any enforcement measures taken pursuant to this
45 chapter, other than those authorized under subsections
46 (a) and (b) of this section;

47 (D) Any evidence of the operator's lack of good faith
48 in abating violations at the mine;

49 (E) Any accident, injury or illness record that
50 demonstrates a serious safety or health management
51 problem at the mine;

52 (F) The number of employees at the mine, the size,
53 layout and physical features of the mine and the length
54 of time the mine has been in operation; and

55 (G) Any mitigating circumstances.

56 (2) If, after review of the mine's compliance record, the

57 director determines that the mine has a history of
58 repeated significant and substantial violations of a
59 particular standard caused by unwarrantable failure to
60 comply or a history of repeated significant and
61 substantial violations of standards related to the same
62 hazard caused by unwarrantable failure to comply and
63 the history or histories demonstrate the operator's
64 disregard for the health and safety of miners, the
65 director shall issue a closure order for the entire mine
66 and shall immediately issue an order requiring the
67 operator of the mine or the operator's agent to cause
68 immediately all persons, except those referred to in
69 subdivisions (1), (2), (3) and (4), subsection (e) of this
70 section, to be withdrawn from and to be prohibited
71 from entering the mine until a thorough inspection of
72 the mine has been conducted by the office and the
73 director determines that the operator has abated all
74 violations related to the imminent danger and any
75 violations unearthed in the course of the inspection.

76 (d) All employees on the inside and outside of a mine
77 who are idled as a result of the posting of a withdrawal
78 order by a mine inspector shall be compensated by the
79 operator at their regular rates of pay for the period they
80 are idled, but not more than the balance of the shift. If
81 the order is not terminated prior to the next working
82 shift, all the employees on that shift who are idled by
83 the order are entitled to full compensation by the
84 operator at their regular rates of pay for the period they
85 are idled, but for not more than four hours of the shift.

86 (e) The following persons are not required to be
87 withdrawn from or prohibited from entering any area of
88 the coal mine subject to an order issued under this
89 section:

90 (1) Any person whose presence in the area is
91 necessary, in the judgment of the operator or an
92 authorized representative of the director, to eliminate
93 the condition described in the order;

94 (2) Any public official whose official duties require
95 him or her to enter the area;

96 (3) Any representative of the miners in the mine who
97 is, in the judgment of the operator or an authorized
98 representative of the director, qualified to make coal
99 mine examinations or who is accompanied by such a
100 person and whose presence in the area is necessary for
101 the investigation of the conditions described in the
102 order; and

103 (4) Any consultant to any of the persons set forth in
104 this subsection.

105 (f) Notices and orders issued pursuant to this section
106 shall contain a detailed description of the conditions or
107 practices which cause and constitute an imminent
108 danger or a violation of any mandatory health or safety
109 standard and, where appropriate, a description of the
110 area of the coal mine from which persons must be
111 withdrawn and prohibited from entering.

112 (g) Each notice or order issued under this section shall
113 be given promptly to the operator of the coal mine or
114 the operator's agent by an authorized representative of
115 the director issuing the notice or order and all the
116 notices and orders shall be in writing and shall be
117 signed by the representative and posted on the bulletin
118 board at the mine.

119 (h) A notice or order issued pursuant to this section
120 may be modified or terminated by an authorized
121 representative of the director.

122 (i) Each finding, order and notice made under this
123 section shall promptly be given to the operator of the
124 mine to which it pertains by the person making the
125 finding, order or notice.

126 (j) *Definitions.* -- For the purposes of this section only,
127 the following terms have the following meanings:

128 (1) "Unwarrantable failure" means aggravated
129 conduct, constituting more than ordinary negligence, by
130 a mine operator in relation to a violation of this chapter
131 of the code; and

132 (2) "Significant and substantial violation" shall have
133 the same meaning as that established in 6 FMSHRC 1
134 (1984).

ARTICLE 2. UNDERGROUND MINES.

§22A-2-4a. Use of belt air.

1 (a) *Definitions.* — For purposes of this section, "belt
2 air" means the use of a belt conveyor entry as an intake
3 air course to ventilate the working sections of a mine or
4 areas where mechanized mining equipment is being
5 installed or removed.

6 (b) Upon the effective date of the enactment of this
7 section, belt air may not be used to ventilate the
8 working sections of a mine or areas where mechanized
9 mining equipment is being installed or removed:
10 *Provided*, That if an alternative method of ventilation

11 will at all times guarantee no less than the same
12 measure of protection afforded the miners of an
13 underground mine by the foregoing or if the application
14 of the foregoing to an underground mine will result in
15 a diminution of safety to the miners in the mine, the
16 director may approve the interim use of belt air
17 pursuant to the following:

18 (1) For those operators using belt air pursuant to a
19 ventilation plan approved by the director in accordance
20 with the provisions of section two of this article prior to
21 the effective date of the enactment of this section, the
22 director shall cause an inspection to be made of the
23 mine ventilation system and ventilation equipment. The
24 director may allow the continued use of belt air in that
25 mine if he or she determines that: (i) The use meets the
26 minimum requirements of 30 CFR 75.350(b); and (ii) the
27 use, as set forth in the ventilation plan and as inspected,
28 will at all times guarantee no less than the same
29 measure of protection afforded the miners of the mine
30 if belt air were not used, or that the prohibition of the
31 use of belt air in the mine will result in a diminution of
32 safety to the miners in the mine.

33 (2) For those operators submitting on or after the
34 effective date of the enactment of this section, a
35 ventilation plan proposing the use of belt air to the
36 director pursuant to section two of this article, the
37 director shall immediately upon receipt of the plan give
38 notice of the plan to the representative of the miners in
39 that mine and cause any investigation to be made that
40 the director considers appropriate: *Provided*, That the
41 investigation shall include a review of any comments on
42 the plan submitted by the representative of miners in
43 the mine. Upon receiving the report of the investigation,

44 the director shall make findings of fact and issue a
45 written decision, incorporating in the decision his or her
46 findings and an order approving or denying the use of
47 belt air pursuant to the terms of the ventilation plan. To
48 approve the use of belt air pursuant to a ventilation
49 plan, the director shall, at a minimum, determine that:
50 (i) The operator's proposed use of belt air meets the
51 minimum requirements of 30 CFR 75.350(b); and (ii)
52 approval of the proposed use of belt air will at all times
53 guarantee no less than the same measure of protection
54 afforded the miners of the mine if belt air were not used,
55 or that the prohibition of the use of belt air in the mine
56 will result in a diminution of safety to the miners in the
57 mine.

58 (3) The interim use of belt air shall be accurately
59 reflected in operator's plan of ventilation, as approved
60 by the director in accordance with the provisions of
61 section two of this article.

62 (c) Upon completion of the independent scientific and
63 engineering review concerning the use of belt air and
64 the composition and fire retardant properties of belt
65 materials in underground coal mining by the technical
66 study panel created pursuant to the provisions of 30 U.
67 S. C. §963 and the Secretary of the United States
68 Department of Labor's corresponding report to
69 Congress pursuant to the review, the Board of Coal
70 Mine Health and Safety shall, within thirty days of the
71 Secretary of Labor's report to Congress, provide the
72 Governor with its recommendations, if any, for the
73 enactment, repeal or amendment of any statute or rule
74 which would enhance the safe ventilation of
75 underground mines and the health and safety of miners:
76 *Provided*, That at least sixty days after the Secretary of

77 Labor's report to Congress, the Board of Coal Mine
78 Health, Safety and Training shall promulgate
79 emergency rules regulating the use of belt air in light of
80 that report: *Provided, however,* That the provisions of
81 subsections (a) and (b) of this section shall expire and
82 no longer have any force and effect upon the filing of
83 such emergency rules.

§22A-2-5. Unused and abandoned parts of mine.

1 (a) In any mine, all workings which are abandoned
2 after the first day of July, one thousand nine hundred
3 seventy-one, shall be sealed or ventilated. If the
4 workings are sealed, the sealing shall be done with
5 incombustible material in a manner prescribed by the
6 director and one or more of the seals of every sealed
7 area shall be fitted with a pipe and cap or valve to
8 permit the sampling of gases and measuring of
9 hydrostatic pressure behind the seals. For the purpose
10 of this section, working within a panel shall not be
11 considered to be abandoned until the panel is
12 abandoned.

13 (b) Air that has passed through an abandoned area or
14 an area which is inaccessible or unsafe for inspection
15 shall not be used to ventilate any working place in any
16 working mine, unless permission is granted by the
17 director with unanimous agreement of the technical and
18 mine safety review committee. Air that has been used to
19 ventilate seals shall not be used to ventilate any
20 working place in any working mine. Air which has been
21 used to ventilate an area from which the pillars have
22 been removed shall not be used to ventilate any working
23 place in a mine, except that the air, if it does not contain
24 0.25 volume percent or more of methane, may be used to

25 ventilate enough advancing working places immediately
26 adjacent to the line of retreat to maintain an orderly
27 sequence of pillar recovery on a set of entries. Before
28 sealed areas, temporary or permanent, are reopened, the
29 director shall be notified.

30 (c) On or after the effective date of the amendment
31 and reenactment of this section during the regular
32 session of the Legislature in two thousand seven, a
33 professional engineer registered with the Board of
34 Registration for Professional Engineers pursuant to
35 article thirteen, chapter thirty of this code shall certify
36 the design of all new seals as meeting the criteria
37 established by the director. Every seal design shall have
38 the professional engineer's certificate and signature, in
39 addition to his or her seal, in the following form:

40 "I the undersigned, do hereby certify that this seal
41 design is, to the best of my knowledge, in accordance
42 with all applicable requirements under state and federal
43 law, rules and regulations.

44 _____ P.E."

45 (d) On or after the effective date of the amendment
46 and reenactment of this section during the regular
47 session of the Legislature in two thousand seven, the
48 director shall approve the construction of all new seals
49 in accordance with rules authorized in this section. The
50 construction shall also be:

51 (1) Certified by the mine foreman-fire boss of the mine
52 as being in accordance with the design certified by a
53 professional engineer pursuant to subsection (c) of this
54 section; and

55 (2)(A) Constructed of solid concrete blocks and in
56 accordance with the other provisions of 30 CFR
57 75.335(a)(1); or

58 (B) Constructed in a manner that the director has
59 approved as having the capability to withstand pressure
60 equal to or greater than a seal constructed in
61 accordance with the provisions of 30 CFR 75.335(a)(1).

62 (e) On or after the effective date of the amendment
63 and reenactment of this section during the regular
64 session of the Legislature in two thousand seven, the
65 operator shall inspect the physical condition of all seals
66 and measure the atmosphere behind all seals in
67 accordance with protocols developed by the Board of
68 Coal Mine Health and Safety, pursuant to rules
69 authorized in this section and consistent with a mine-
70 specific atmospheric measurement plan submitted to
71 and approved by the director. The atmospheric
72 measurements shall include, but not be limited to, the
73 methane and oxygen concentrations and the barometric
74 pressure. The atmospheric measurements also shall be
75 recorded with ink or indelible pencil in a book kept for
76 that purpose on the surface at a location designated by
77 the operator. The protocols shall specify appropriate
78 methods for inspecting the physical condition of seals,
79 measuring the mine atmosphere in sealed workings, and
80 inerting the mine atmosphere behind the seals, where
81 appropriate.

82 (f)(1) In all mines containing workings sealed using
83 seals constructed in accordance with the provisions of
84 30 CFR 75.335(a)(2) which are constructed: (A) Of
85 cementitious foam blocks; or (B) with methods or
86 materials that the Board of Coal Mine, Health and

87 Safety determines do not provide an adequate level of
88 protection to miners, the operator shall, pursuant to a
89 plan submitted to and approved by the director,
90 remediate the seals by either enhancing the seals or
91 constructing new seals in place of or immediately outby
92 the seals. After being remediated, all seals must have
93 the capability to withstand pressure equal to or greater
94 than a seal constructed in accordance with the
95 provisions of 30 CFR 75.335(a)(1). The design,
96 development, submission and implementation of the
97 remediation plan is the responsibility of the operator of
98 each mine. Pursuant to rules authorized in this section,
99 the Board of Coal Mine Health and Safety shall specify
100 appropriate methods of enhancing the seals.

101 (2) Notwithstanding any provision of this code to the
102 contrary, if the director determines that any seal
103 described in subdivision (1) of this subsection is
104 incapable of being remediated in a safe and effective
105 manner, the mine foreman-fire boss shall, at least once
106 every twenty-four hours, inspect the physical condition
107 of the seal and measure the atmosphere behind the seal.
108 The daily inspections and measurements shall otherwise
109 be performed in accordance with the protocols and
110 atmospheric measurement plan established pursuant to
111 subsection (e) of this section.

112 (g) Upon the effective date of the amendment and
113 reenactment of this section during the regular session of
114 the Legislature in two thousand seven, second mining of
115 lower coal on retreat, also known as bottom mining,
116 shall not be permitted in workings that will be sealed
117 unless an operator has first submitted and received
118 approval by the director of a remediation plan that sets
119 forth measures that will be taken to mitigate the effects

120 of remnant ramps and other conditions created by
121 bottom mining on retreat which can increase the force
122 of explosions originating in and emanating out of
123 workings that have been bottom mined. The director
124 shall require that certification in a manner similar to
125 that set forth in subsection (c) of this section shall be
126 obtained by the operator from a professional engineer
127 and the mine foreman-fire boss for the plan design and
128 plan implementation, respectively.

129 (h) No later than sixty days after the effective date of
130 the amendment and reenactment of this section during
131 the regular session of the Legislature in two thousand
132 seven, the Board of Coal Mine Health and Safety shall
133 develop and promulgate rules pursuant to the
134 provisions of section four, article six of this chapter to
135 implement and enforce the provisions of this section.

136 (i) Upon the issuance of mandatory health and safety
137 standards relating to the sealing of abandoned areas in
138 underground coal mines by the Secretary of the United
139 States Department of Labor pursuant to 30 U. S. C. §
140 811, as amended by section ten of the federal Mine
141 Improvement and New Emergency Response Act of
142 2006, the director, working in consultation with the
143 Board of Coal Mine Health and Safety, shall, within
144 thirty days, provide the Governor with his or her
145 recommendations, if any, for the enactment, repeal or
146 amendment of any statute or rules which would
147 enhance the safe sealing of abandoned mine workings
148 and the health and safety of miners.

**ARTICLE 7. BOARD OF MINER TRAINING, EDUCATION AND
CERTIFICATION.**

§22A-7-5. Board powers and duties.

1 (a) The board shall establish criteria and standards for
2 a program of education, training and examination to be
3 required of all prospective miners and miners prior to
4 their certification in any of the various miner specialties
5 requiring certification under this article or any other
6 provision of this code. The specialties include, but are
7 not limited to, underground miner, surface miner,
8 apprentice, underground mine foreman-fire boss,
9 assistant underground mine foreman-fire boss,
10 shotfirer, mine electrician and belt examiner.
11 Notwithstanding the provisions of this section, the
12 director may by rule further subdivide the
13 classifications for certification.

14 (b) The board may require certification in other miner
15 occupational specialties: *Provided*, That no new
16 specialty may be created by the board unless
17 certification in a new specialty is made desirable by
18 action of the federal government requiring certification
19 in a specialty not enumerated in this code.

20 (c) The board may establish criteria and standards for
21 a program of preemployment education and training to
22 be required of miners working on the surface at
23 underground mines who are not certified under the
24 provisions of this article or any other provision of this
25 code.

26 (d) The board shall set minimum standards for a
27 program of continuing education and training of
28 certified persons and other miners on an annual basis:
29 *Provided*, That the standards shall be consistent with
30 the provisions of section seven of this article. Prior to
31 issuing the standards, the board shall conduct public
32 hearings at which the parties who may be affected by its

33 actions may be heard. The education and training shall
34 be provided in a manner determined by the director to
35 be sufficient to meet the standards established by the
36 board.

37 (e) The board may, in conjunction with any state, local
38 or federal agency or any other person or institution,
39 provide for the payment of a stipend to prospective
40 miners enrolled in one or more of the programs of miner
41 education, training and certification provided in this
42 article or any other provision of this code.

43 (f) The board may also, from time to time, conduct any
44 hearings and other oversight activities required to
45 ensure full implementation of programs established by
46 it.

47 (g) Nothing in this article empowers the board to
48 revoke or suspend any certificate issued by the director
49 of the Office of Miners' Health, Safety and Training.

50 (h) The board may, upon its own motion or whenever
51 requested to do so by the director, consider two
52 certificates issued by this state to be of equal value or
53 consider training provided or required by federal
54 agencies to be sufficient to meet training and education
55 requirements set by it, the director, or by the provisions
56 of this code.

**§22A-7-7. Continuing education requirements for
underground mine foreman-fire boss.**

1 (a) An existing underground mine foreman-fire boss
2 certified pursuant to this article shall complete the
3 continuing education requirements in this section

4 within two years from the effective date of this section
5 and every two years thereafter. An underground mine
6 foreman-fire boss certified pursuant to this article on or
7 after the effective date of this section shall complete the
8 continuing education requirements in this section
9 within two years of their certification and every two
10 years thereafter. The continuing education requirements
11 of this section may not be satisfied by the completion of
12 other training requirements mandated by the provisions
13 of this chapter.

14 (b) In order to receive continuing education credit
15 pursuant to this section, a mine foreman-fire boss shall
16 satisfactorily complete a mine foreman-fire boss
17 continuing education course approved by the board and
18 taught by a qualified instructor approved by the
19 director. The mine foreman-fire boss shall not suffer a
20 loss in pay while attending a continuing education
21 course. The mine foreman-fire boss shall submit
22 documentation to the office certified by the instructor
23 that indicates the required continuing education has
24 been completed prior to the deadlines set forth in this
25 subsection: *Provided*, That a mine foreman-fire boss
26 may submit documentation of continuing education
27 completed in another state for approval and acceptance
28 by the board.

29 (c) The mine foreman-fire boss shall complete at least
30 eight hours of continuing education every two years.

31 (d) The content of the continuing education course
32 shall include, but not be limited to:

33 (1) Selected provisions of this chapter and 30 U. S. C.
34 §801, *et seq.*;

35 (2) Selected provisions of the West Virginia and
36 federal underground coal mine health and safety rules
37 and regulations;

38 (3) The responsibilities of a mine foreman-fire boss;

39 (4) Selected policies and memoranda of the Office of
40 Miners' Health, Safety and Training, the Board of Coal
41 Mine Health and Safety and the Board of Miner
42 Training, Education and Certification;

43 (5) A review of fatality and accident trends in
44 underground coal mines; and

45 (6) Other subjects as determined by the Board of
46 Miner Training, Education and Certification.

47 (e) The board may approve alternative training
48 programs tailored to specific mines.

49 (f) Failure to complete the requirements of this section
50 shall result in suspension of a mine foreman-fire boss
51 certification pending completion of the continuing
52 education requirements. During the pendency of the
53 suspension, the individual may not perform statutory
54 duties assigned to a mine foreman-fire boss under West
55 Virginia law. The office shall send notice of any
56 suspension to the last address the certified mine
57 foreman-fire boss reported to the director. If the
58 requirements are not met within two years of the
59 suspension date, the director may file a petition with the
60 board of appeals pursuant to the procedures set forth in
61 section thirty-one, article one of this chapter and, upon
62 determining that the requirements have not been meet,
63 the board of appeals may revoke the mine foreman-fire

64 boss' certification, which shall not be renewed except
65 upon successful completion of the examination
66 prescribed by law for mine foremen-fire bosses or upon
67 completion of other training requirements established
68 by the board: *Provided*, That an individual having his or
69 her mine foreman-fire boss certification suspended
70 pursuant to this section who also holds a valid mine
71 foreman-fire boss certification from another state may
72 have the suspension lifted by completing training
73 requirements established by the board.

74 (g) The office shall make a program of instruction that
75 meets the requirements for continuing education set
76 forth in this section regularly available in regions of the
77 state, based on demand, for individuals possessing mine
78 foreman-fire boss certifications who are not serving in
79 a mine foreman-fire boss capacity: *Provided*, That the
80 office may collect a fee from program participants to
81 offset the cost of the program.

82 (h) The office shall make available to operators and
83 other interested parties a list of individuals whose mine
84 foreman-fire boss certification is in suspension or has
85 been revoked pursuant to this section.

ARTICLE 11. MINE SAFETY TECHNOLOGY.

§22A-11-1. Legislative findings, purposes and intent.

1 The Legislature hereby finds and declares:

2 (1) That the first priority and concern of all persons in
3 the coal mining industry must be the health and safety
4 of its most precious resource — the miner;

5 (2) That in furtherance of this priority, the provisions

6 of article two of this chapter are designed to protect the
7 health and safety of this state's coal miners by requiring
8 certain minimum standards for, among other things,
9 certain health and safety technology used by each
10 underground miner;

11 (3) That the proper implementation of this technology
12 in West Virginia's underground mines would benefit
13 from the specialized oversight of persons with
14 experience and competence in coal mining, coal mine
15 health and safety and the expanding role of technology;
16 and

17 (4) That, in furtherance of provisions of this section, it
18 is the intent of the Legislature to create a permanent
19 task force which, on a continuous basis, shall evaluate
20 and study issues relating to the commercial availability
21 and functional and operational capability of existing
22 and emerging technologies in coal mine health and
23 safety, as well as issues relating to the implementation,
24 compliance and enforcement of regulatory requirements
25 governing the technologies.

**§22A-11-2. Mine Safety Technology Task Force continued;
membership; method of nomination and
appointment.**

1 (a) The Mine Safety Technology Task Force, created
2 and existing under the authority of the director
3 pursuant to the provisions of section six, article one of
4 this chapter, is continued as provided by this article.

5 (b) The task force shall consist of nine members who
6 are appointed as specified in this section:

7 (1) The Governor shall appoint, by and with the advice
8 and consent of the Senate, three members to represent
9 the viewpoint of operators in this state. When these
10 members are to be appointed, the Governor shall
11 request from the major trade association representing
12 operators in this state a list of three nominees for each
13 position on the task force. All nominees shall be persons
14 with special experience and competence in coal mine
15 health and safety. There shall be submitted with the list,
16 a summary of the qualifications of each nominee. For
17 purposes of this subdivision, the major trade association
18 representing operators in this state is that association
19 which represents operators accounting for over one half
20 of the coal produced in mines in this state in the year
21 prior to the year in which the appointment is to be
22 made.

23 (2) The Governor shall appoint, by and with the advice
24 and consent of the Senate, three members who can
25 reasonably be expected to represent the viewpoint of
26 the working miners of this state. When members are to
27 be appointed, the Governor shall request from the major
28 employee organization representing coal miners within
29 this state a list of three nominees for each position on
30 the task force. The highest ranking official within the
31 major employee organization representing coal miners
32 within this state shall submit a list of three nominees for
33 each position on the board. The nominees shall have a
34 background in coal mine health and safety.

35 (3) The Governor shall appoint, by and with the advice
36 and consent of the Senate, one certified mine safety
37 professional from the College of Engineering and
38 Mineral Resources at West Virginia University;

39 (4) The Governor shall appoint, by and with the advice
40 and consent of the Senate, one attorney with experience
41 in issues relating to coal mine health and safety; and

42 (5) The ninth member of the task force is the director,
43 or his or her designee, who shall serve as chair of the
44 task force. The director shall furnish to the task force
45 any secretarial, clerical, technical, research and other
46 services that are necessary to the conduct of the
47 business of the task force.

48 (c) Each appointed member of the task force shall
49 serve at the will and pleasure of the Governor.

50 (d) Whenever a vacancy on the task force occurs,
51 nominations and appointments shall be made in the
52 manner prescribed in this section: *Provided*, That in the
53 case of an appointment to fill a vacancy, nominations of
54 three persons for each vacancy shall be requested by
55 and submitted to the Governor within thirty days after
56 the vacancy occurs by the major trade association or
57 major employee organization, if any, which nominated
58 the person whose seat on the task force is vacant.

59 (e) Each member of the task force shall be paid the
60 expense reimbursement, as is paid to members of the
61 Legislature for their interim duties as recommended by
62 the citizens legislative compensation commission and
63 authorized by law for each day or portion thereof
64 engaged in the discharge of official duties. In the event
65 the expenses are paid by a third party, the member shall
66 not be reimbursed by the state. The reimbursement shall
67 be paid out of the state treasury upon a requisition upon
68 the state auditor, properly certified by the Office of
69 Miners' Health, Safety and Training. An employer shall

70 not prohibit a member of the task force from exercising
71 leave of absence from his or her place of employment in
72 order to attend a meeting of the task force or a meeting
73 of a subcommittee of the task force, or to prepare for a
74 meeting of the task force, any contract of employment
75 to the contrary notwithstanding.

§22A-11-3. Task force powers and duties.

1 (a) The task force shall provide technical and other
2 assistance to the office related to the implementation of
3 the new technological requirements set forth in the
4 provisions of section fifty-five, article two, of this
5 chapter, as amended and reenacted during the regular
6 session of the Legislature in the year two thousand six,
7 and requirements for other mine safety technologies.

8 (b) The task force, working in conjunction with the
9 director, shall continue to study issues regarding the
10 commercial availability, the functional and operational
11 capability and the implementation, compliance and
12 enforcement of the following protective equipment:

13 (1) Self-contained self-rescue devices, as provided in
14 subsection (f), section fifty-five, article two of this
15 chapter;

16 (2) Wireless emergency communication devices, as
17 provided in subsection (g), section fifty-five, article two
18 of this chapter;

19 (3) Wireless emergency tracking devices, as provided
20 in subsection (h), section fifty-five, article two of this
21 chapter; and

22 (4) Any other protective equipment required by this
23 chapter or rules promulgated in accordance with the
24 law that the director determines would benefit from the
25 expertise of the task force.

26 (c) The task force shall on a continuous basis study,
27 monitor and evaluate:

28 (1) The potential for enhancing coal mine health and
29 safety through the application of existing technologies
30 and techniques;

31 (2) Opportunities for improving the integration of
32 technologies and procedures to increase the
33 performance and survivability of coal mine health and
34 safety systems;

35 (3) Emerging technological advances in coal mine
36 health and safety; and

37 (4) Market forces impacting the development of new
38 technologies, including issues regarding the costs of
39 research and development, regulatory certification and
40 incentives designed to stimulate the marketplace.

41 (d) On or before the first day of July of each year, the
42 task force shall submit a report to the Governor and the
43 Board of Coal Mine Health and Safety that shall
44 include, but not be limited to:

45 (1) A comprehensive overview of issues regarding the
46 implementation of the new technological requirements
47 set forth in the provisions of section fifty-five, article
48 two, of this chapter, or rules promulgated in accordance
49 with the law;

50 (2) A summary of any emerging technological
51 advances that would improve coal mine health and
52 safety;

53 (3) Recommendations, if any, for the enactment, repeal
54 or amendment of any statute which would enhance
55 technological advancement in coal mine health and
56 safety; and

57 (4) Any other information the task force considers
58 appropriate.

59 (e) In performing its duties, the task force shall, where
60 possible, consult with, among others, mine engineering
61 and mine safety experts, radiocommunication and
62 telemetry experts and relevant state and federal
63 regulatory personnel.

§22A-11-4. Approval of devices.

1 . Prior to approving any protective equipment or device
2 that has been evaluated by the task force pursuant to
3 the provisions of subsection (b), section three of this
4 article, the director shall consult with the task force and
5 review any applicable written reports issued by the task
6 force and the findings set forth in the reports and shall
7 consider the findings in making any approval
8 determination.

Enr. Com. Sub. for Com. Sub. S. B. No. 68] 26

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

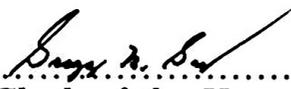

.....
Chairman Senate Committee


.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.


.....
Clerk of the Senate


.....
Clerk of the House of Delegates


.....
President of the Senate


.....
Speaker House of Delegates

The within *is approved* this
the *3rd* Day of *April*, 2007.


.....
Governor

PRESENTED TO THE
GOVERNOR

APR 02 2007

Time 10:15 AM