WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4525

(By Delegates Caputo, Miley, Hunt, Butcher, Craig, Boggs, Mahan, Kominar, Vamer, Hamilton and White)

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Passed March 13, 2010

In Effect Ninety Days From Passage
AN ACT to amend and reenact §22A-1-21 of the Code of West Virginia, 1931, as amended; to amend and reenact §22A-2A-301, §22A-2A-304 and §22A-2A-310 of said code; to amend and reenact §22A-6-3, §22A-6-4, §22A-6-6 and §22A-6-7 of said code; to amend and reenact §22A-7-4 and §22A-7-6 of said code; and to amend and reenact §22A-11-2 and §22A-11-3 of said code, all relating to board’s under the jurisdiction of the Office of Miners’ Health, Safety and Training; removing boards from under the jurisdiction of the Office of Miners’ Health, Safety and Training; changing board membership; changing voting procedures; permitting a clarifying resolution; requiring the Health and Safety Administrator to provide administrative assistance; permitting the Health and Safety Administrator to expend funds for certain purposes; adding to the boards’ powers; changing voting procedure; clarifying voting procedures; clarifying reporting requirements; establishing reporting time lines; and permitting appropriations from general revenue.
Be it enacted by the Legislature of West Virginia:

That §22A-1-21 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §22A-2A-301, §22A-2A-304 and §22A-2A-310 of said code be amended and reenacted; that §22A-6-3, §22A-6-4, §22A-6-6 and §22A-6-7 of said code be amended and reenacted; that §22A-7-4 and §22A-7-6 of said code be amended and reenacted; and that §22A-11-2 and §22A-11-3 of said code be amended and reenacted, all to read as follows:

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


(a)(1) Any operator of a coal mine in which a violation occurs of any health or safety rule or who violates any other provisions of this chapter shall be assessed a civil penalty by the director under subdivision (3) of this subsection, which shall be not more than $3,000, for each violation, unless the director determines that it is appropriate to impose a special assessment for said violation, pursuant to the provisions of subdivision (2), subsection (b) of this section. Each violation constitutes a separate offense. In determining the amount of the penalty, the director shall consider the operator’s history of previous violations, whether the operator was negligent, the appropriateness of the penalty to the size of the business of the operator charged, the gravity of the violation and the demonstrated good faith of the operator charged in attempting to achieve rapid compliance after notification of a violation.

(2) Revisions to the assessment of civil penalties shall be proposed as legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this code.
(3) Any miner who knowingly violates any health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter is subject to a civil penalty assessed by the director under subdivision (4) of this subsection which shall not be more than $250 for each occurrence of the violation.

(4) A civil penalty under subdivision (1) or (2) of subsection (a) of this section or subdivision (1) or (2) of subsection (b) of this section shall be assessed by the director only after the person charged with a violation under this chapter or rule promulgated pursuant to this chapter has been given an opportunity for a public hearing and the director has determined, by a decision incorporating the director’s findings of fact in the decision, that a violation did occur and the amount of the penalty which is warranted and incorporating, when appropriate, an order in the decision requiring that the penalty be paid. Any hearing under this section shall be of record.

(5) If the person against whom a civil penalty is assessed fails to pay the penalty within the time prescribed in the order, the director may file a petition for enforcement of the order in any appropriate circuit court. The petition shall designate the person against whom the order is sought to be enforced as the respondent. A copy of the petition shall immediately be sent by certified mail, return receipt requested, to the respondent and to the representative of the miners at the affected mine or the operator, as the case may be. The director shall certify and file in the court the record upon which the order sought to be enforced was issued. The court has jurisdiction to enter a judgment enforcing, modifying and enforcing as modified, or setting aside, in whole or in part, the order and decision of the director or it may remand the proceedings to the director for any further action it may direct. The court shall consider and determine
of the respondent, those issues of fact which are in dispute shall be submitted to a jury. On the basis of the jury’s findings the court shall determine the amount of the penalty to be imposed. Subject to the direction and control of the Attorney General, attorneys appointed for the director may appear for and represent the director in any action to enforce an order assessing civil penalties under this subdivision.

(b) (1) Any operator who knowingly violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under section fifteen of this article, or any order incorporated in a final decision issued under this article, except an order incorporated in a decision under subsection (a) of this section or subsection (b), section twenty-two of this article, shall be assessed a civil penalty by the director under subdivision (5), subsection (a) of this section of not more than $5,000 and for a second or subsequent violation assessed a civil penalty of not more than $10,000, unless the director determines that it is appropriate to impose a special assessment for said violation, pursuant to the provisions of subdivision (2) of this subsection.

(2) In lieu of imposing a civil penalty pursuant to the provisions of subsection (a) of this section or subdivision (1) of this subsection, the director may impose a special assessment if an operator violates a health or safety provision of this chapter or health or safety rule promulgated pursuant to this chapter and the violation is of serious nature and involves one or more of the following by the operator:

(A) Violations involving fatalities and serious injuries;
(B) Failure or refusal to comply with any order issued under section fifteen of this article;

(C) Operation of a mine in the face of a closure order;

(D) Violations involving an imminent danger;

(E) Violations involving an extraordinarily high degree of negligence or gravity or other unique aggravating circumstances; or

(F) A discrimination violation under section twenty-two of this article.

In situations in which the director determines that there are factors present which would make it appropriate to impose a special assessment, the director shall assess a civil penalty of at least $5,000 and of not more than $10,000.

(c) Whenever a corporate operator knowingly violates a health or safety provision of this chapter or health or safety rules promulgated pursuant to this chapter, or knowingly violates or fails or refuses to comply with any order issued under this law or any order incorporated in a final decision issued under this law, except an order incorporated in a decision issued under subsection (a) of this section or subsection (b), section twenty-two of this article, any director, officer or agent of the corporation who knowingly authorized, ordered or carried out the violation, failure or refusal is subject to the same civil penalties that may be imposed upon a person under subsections (a) and (b) of this section.

(d) Whoever knowingly makes any false statement, representation or certification in any application, record, report, plan or other document filed or required to be
maintained pursuant to this law or any order or decision
issued under this law is guilty of a misdemeanor and, upon
conviction thereof, shall be fined not more than $5,000 or
imprisoned in the jail not more than six months, or both fined
and imprisoned. The conviction of any person under this
subsection shall result in the revocation of any certifications
held by the person under this chapter which certified or
authorized the person to direct other persons in coal mining
by operation of law and bars that person from being issued
any license under this chapter, except a miner’s certification,
for a period of not less than one year or for a longer period as
may be determined by the director.

(e) Whoever willfully distributes, sells, offers for sale,
introduces or delivers in commerce any equipment for use in
a coal mine, including, but not limited to, components and
accessories of the equipment, who willfully misrepresents the
equipment as complying with the provisions of this law, or
with any specification or rule of the director applicable to the
equipment, and which does not comply with the law,
specification or rule, is guilty of a misdemeanor and, upon
conviction thereof, is subject to the same fine and
imprisonment that may be imposed upon a person under
subsection (d) of this section.

(f) There is continued in the Treasury of the State of West
Virginia a Special Health, Safety and Training Fund. All
civil penalty assessments collected under this section shall be
collected by the director and deposited with the Treasurer of
the State of West Virginia to the credit of the Special Health,
Safety and Training Fund. The fund shall be used by the
director who is authorized to expend the moneys in the fund
for the administration of this chapter.

ARTICLE 2A. USE OF DIESEL-POWERED EQUIPMENT
IN UNDERGROUND COAL MINES.
PART 3. WEST VIRGINIA DIESEL EQUIPMENT COMMISSION.


The West Virginia Diesel Equipment Commission, consisting of six members, is continued, and commencing July 1, 2010, is a separate independent commission within the Department of Commerce.


(a) Prior to the appointment of a person to the commission, the Governor shall request the nomination of a candidate for the appointment. If the position is to be filled by a person who can reasonably be expected to represent the viewpoint or interests of underground coal operators in this state, the Governor shall request the nomination from the major trade association representing underground coal operators in this state. If the position is to be filled by a person who can reasonably be expected to represent the viewpoint or interests of working miners in this state, the Governor shall request the nomination from the highest ranking officer of the major employee organization representing coal miners in this state. The Director of the Office of Miner’s Health, Safety and Training or his or her designee and the Health Safety Administrator shall serve as a nonvoting ex officio member.

(b) The Governor shall appoint a member to serve for the term for which the person was nominated, and until his or her successor has been nominated and appointed: Provided, That if a successor is not appointed within one hundred twenty days after the expiration of a member’s term, a vacancy is deemed to exist. The Governor may reject a nomination and decline to appoint a nominee only if the person does not have
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24 the qualifications, integrity and responsibility necessary to
25 enable the person to perform his or her duties as a member of
26 the commission.

27 (c) Appointments to fill vacancies on the commission
28 shall be for the unexpired term of the member to be replaced.

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

1 (a) After the promulgation of the initial rules, the
2 commission shall have as its primary duties the
3 implementation of this article and the evaluation and
4 adoption of state of the art technology and methods, reflected
5 in engines and engine components, emission control
6 equipment and procedures, that when applied to diesel-
7 powered underground mining machinery shall reasonably
8 reduce or eliminate diesel exhaust emissions and enhance
9 protections of the health and safety of miners. The
10 technology and methods adopted by the commission shall
11 have been demonstrated to be reliable. In making a decision
12 to adopt new technology and methods, the commission shall
13 consider the highest achievable measures of protection for
14 miners’ health and safety through available technology,
15 engineering controls and performance requirements and shall
16 further consider the cost, availability, adaptability and
17 suitability of any available technology, engineering controls
18 and performance requirements as they relate to the use of
19 diesel equipment in underground coal mines. Any state of
20 the art technology or methods adopted by the commission
21 shall not reduce or compromise the level of health and safety
22 protection of miners.

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

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

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

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

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

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

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

(d) In performing its functions, the commission shall have access to the services of the Board of Coal Mine Health and Safety. The board shall provide administrative support and assistance pursuant to section six, article six of this chapter, to enable the commission to carry out its duties.

(e) Any action taken by the commission to either approve or reject the use of an alternative technology or method, or establish conditions under subsection (c) of this section, shall be final and binding and not subject to further review except where a decision by the commission may be deemed to be an abuse of discretion or contrary to law. If any party affected by a decision of the commission believes that the decision is an abuse of discretion or contrary to law, that party may file a petition for review with the circuit court of Kanawha County in accordance with the provisions of the administrative procedures act relating to judicial review of governmental determinations. The court, in finding that any decision made by the commission is an abuse of discretion or
contrary to law, shall vacate and, if appropriate, remand the case.

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

(g) Appropriations for the funding of the commission and to effectuate the purposes of this article shall be made to a budget account hereby established for that purpose in the General Revenue Fund. Expenditures from this fund are provided for in section six, article six of this chapter.

(h) The commission may issue a clarifying resolution about the initial rules and other matters consistent with the powers and duties of the commission under this article. A unanimous vote is required for any clarifying resolution by the commission.

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

§22A-6-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.

(a) The Board of Coal Mine Health and Safety is continued, and commencing July 1, 2010, is a separate independent board within the Department of Commerce. The board consists of six voting members and one ex officio, nonvoting member who are residents of this state, and who are appointed as follows:

(1) The Governor shall appoint, by and with the advice and consent of the Senate, three members to represent the viewpoint of those operators in this state. When such members are to be appointed, the Governor shall request
from the major trade association representing operators in this state a list of three nominees for each such position on the board. All such nominees shall be persons with special experience and competence in health and safety. There shall be submitted with such list a summary of the qualifications of each nominee. If the full lists of nominees are submitted in accordance with the provisions of this subdivision, the Governor shall make the appointments from the persons so nominated. For purposes of this subdivision, the major trade association representing operators in this state is that association which represents operators accounting for over one half of the coal produced in mines in this state in the year prior to the year in which the appointment is to be made.

(2) The Governor shall appoint, by and with the advice and consent of the Senate, three members who can reasonably be expected to represent the viewpoint of the working miners of this state. When members are to be appointed, the Governor shall request from the major employee organization representing coal miners within this state a list of three nominees for each position on the board. The highest ranking official within the major employee organization representing coal miners within this state shall submit a list of three nominees for each such position on the board. The nominees shall have a background in health and safety. The Governor shall make the appointments from the requested list of nominees.

(3) All appointments made by the Governor under the provisions of subdivisions (1) and (2) of this subsection shall be with the advice and consent of the Senate; and

(4) The Director of the Office of Miner’s Health, Safety and Training or his or her designee shall serve as an ex officio, nonvoting member.
(b) Members serving on the board on July 1, 2010, may continue to serve until the expiration of their terms. The term is three years. Members are eligible for reappointment.

(c) The Governor shall appoint, subject to the approval of a majority of the members of the board appointed under subdivisions (1) and (2), subsection (a) of this section, a Health and Safety Administrator in accordance with the provisions of section six of this article, who shall certify all official records of the board. The Health and Safety Administrator shall be a full-time officer of the Board of Coal Mine Health and Safety with the duties provided for in section six of this article. The Health and Safety Administrator shall have such education and experience as the Governor deems necessary to properly investigate areas of concern to the board in the development of rules governing mine health and safety. The Governor shall appoint as Health and Safety Administrator a person who has an independent and impartial viewpoint on issues involving mine safety. The Health and Safety Administrator shall be a person who has not been during the two years immediately preceding appointment, and is not during his or her term, an officer, trustee, director, substantial shareholder, contractor, consultant or employee of any coal operator, or an employee or officer of an employee organization or a spouse of any such person. The Health and Safety Administrator shall have the expertise to draft proposed rules and shall prepare such rules as are required by this code and on such other areas as will improve coal mine health and safety.

(d) The board shall meet at least once during each calendar month, or more often as may be necessary, and at other times upon the call of the chair, or upon the request of any three members of the board. Under the direction of the board, the Health and Safety Administrator shall prepare an agenda for each board meeting giving priority to the
promulgation of rules as may be required from time to time by this code, and as may be required to improve coal mine health and safety. The Health and Safety Administrator shall provide each member of the board with notice of the meeting and the agenda as far in advance of the meeting as practical, but in any event, at least five days prior thereto. No meeting of the board shall be conducted unless said notice and agenda are given to the board members at least five days in advance, as provided herein, except in cases of emergency, as declared by the director, in which event members shall be notified of the board meeting and the agenda: Provided, That upon agreement of a majority of the quorum present, any scheduled meeting may be ordered recessed to another day certain without further notice of additional agenda.

When proposed rules are to be finally adopted by the board, copies of such proposed rules shall be delivered to members not less than five days before the meeting at which such action is to be taken. If not so delivered, any final adoption or rejection of rules shall be considered on the second day of a meeting of the board held on two consecutive days, except that by the concurrence of at least four members of the board, the board may suspend this rule of procedure and proceed immediately to the consideration of final adoption or rejection of rules. When a member fails to appear at three consecutive meetings of the board or at one half of the meetings held during a one-year period, the Health and Safety Administrator shall notify the member and the Governor of such fact. Such member shall be removed by the Governor unless good cause for absences is shown.

(e) Whenever a vacancy on the board occurs, nominations and appointments shall be made in the manner prescribed in this section: Provided, That in the case of an appointment to fill a vacancy, nominations of three persons for each such vacancy shall be requested by and submitted to
the Governor within thirty days after the vacancy occurs by
the major trade association or major employee organization,
if any, which nominated the person whose seat on the board
is vacant. The vacancy shall be filled by the Governor within
thirty days of his or her receipt of the list of nominations.

(f) A quorum of the board is four members which shall
include at least two members representing the viewpoint of
operators and at least two members representing the
viewpoint of the working miners, and the board may act
officially by a majority of those members who are present,
except that no vote of the board may be taken unless all six
voting members are present.

§22A-6-4. Board powers and duties.

(a) The board shall adopt as standard rules the “coal mine
health and safety provisions of this chapter”. Such standard
rules and any other rules shall be adopted by the board
without regard to the provisions of chapter twenty-nine-a of
this code. The Board of Coal Mine Health and Safety shall
devote its time toward promulgating rules in those areas
specifically directed by this chapter and those necessary to
prevent fatal accidents and injuries.

(b) The board shall review such standard rules and, when
deemed appropriate to improve or enhance coal mine health
and safety, revise the same or develop and promulgate new
rules dealing with coal mine health and safety.

(c) The board shall develop, promulgate and revise, as
may be appropriate, rules as are necessary and proper to
effectuate the purposes of article two of this chapter and to
prevent the circumvention and evasion thereof, all without
regard to the provisions of chapter twenty-nine-a of this code:
(1) Upon consideration of the latest available scientific data in the field, the technical feasibility of standards, and experience gained under this and other safety statutes, such rules may expand protections afforded by this chapter notwithstanding specific language therein, and such rules may deal with subject areas not covered by this chapter to the end of affording the maximum possible protection to the health and safety of miners.

(2) No rules promulgated by the board shall reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by this chapter.

(3) Any miner or representative of any miner, or any coal operator has the power to petition the circuit court of Kanawha County for a determination as to whether any rule promulgated or revised reduces the protection afforded miners below that provided by this chapter, or is otherwise contrary to law: Provided, That any rule properly promulgated by the board pursuant to the terms and conditions of this chapter creates a rebuttable presumption that said rule does not reduce the protection afforded miners below that provided by this chapter.

(4) The director shall cause proposed rules and a notice thereof to be posted as provided in section eighteen, article one of this chapter. The director shall deliver a copy of such proposed rules and accompanying notice to each operator affected. A copy of such proposed rules shall be provided to any individual by the director’s request. The notice of proposed rules shall contain a summary in plain language explaining the effect of the proposed rules.

(5) The board shall afford interested persons a period of not less than thirty days after releasing proposed rules to
submit written data or comments. The board may, upon the expiration of such period and after consideration of all relevant matters presented, promulgate such rules with such modifications as it may deem appropriate.

(6) On or before the last day of any period fixed for the submission of written data or comments under subdivision (5) of this section, any interested person may file with the board written objections to a proposed rule, stating the grounds therefor and requesting a public hearing on such objections. As soon as practicable after the period for filing such objections has expired, the board shall release a notice specifying the proposed rules to which objections have been filed and a hearing requested.

(7) Promptly after any such notice is released by the board under subdivision (6) of this section, the board shall issue notice of, and hold a public hearing for the purpose of receiving relevant evidence. Within sixty days after completion of the hearings, the board shall make findings of fact which shall be public, and may promulgate such rules with such modifications as it deems appropriate. In the event the board determines that a proposed rule should not be promulgated or should be modified, it shall within a reasonable time publish the reasons for its determination.

(8) All rules promulgated by the board shall be published in the state register and continue in effect until modified or superseded in accordance with the provisions of this chapter.

(d) To carry out its duties and responsibilities, the board is authorized to employ such personnel, including legal counsel, experts and consultants, as it deems necessary. In addition, the board, within the appropriations provided for by the Legislature, may conduct or contract for research and studies and is entitled to the use of the services, facilities and
personnel of any agency, institution, school, college or university of this state.

(e) The director shall within sixty days of a coal mining fatality or fatalities provide the board with all available reports regarding such fatality or fatalities.

The board shall review all reports and any recommended rules submitted by the director, receive any additional information, and may, on its own initiative, ascertain the cause or causes of such coal mining fatality or fatalities. Within ninety days of the receipt of the Federal Mine Safety and Health Administration’s fatal accident report and the director’s report and recommended rules, the board shall review and consider the presentation of said report and rules and, if a majority of all voting board members determines that additional rules can assist in the prevention of the specific type of fatality, the board shall either accept and promulgate the director’s recommended rules, amend the director’s recommended rules or draft new rules, as are necessary to prevent the recurrence of such fatality. If the board chooses to amend the director’s recommended rules or draft its own rules, a vote is required within one hundred twenty days as to whether to promulgate the amended rule or the rule drafted by the board: Provided, That the board may, by majority vote, find that exceptional circumstances exist and the deadline cannot be met: Provided, however, That under no circumstances shall such deadline be extended by more than a total of ninety days. A majority vote of the board is required to promulgate any such rule.

The board shall annually, not later than July 1, review the major causes of coal mining injuries during the previous calendar year, reviewing the causes in detail, and shall promulgate such rules as may be necessary to prevent the recurrence of such injuries.
Further, the board shall, on or before January 10, of each year, submit a report to the Governor, President of the Senate and Speaker of the House, which report shall include, but is not limited to:

(1) The number of fatalities during the previous calendar year, the apparent reason for each fatality as determined by the office of miners' health, safety and training and the action, if any, taken by the board to prevent such fatality;

(2) Any rules promulgated by the board during the last year;

(3) What rules the board intends to promulgate during the current calendar year;

(4) Any problem the board is having in its effort to promulgate rules to enhance health and safety in the mining industry;

(5) Recommendations, if any, for the enactment, repeal or amendment of any statute which would cause the enhancement of health and safety in the mining industry;

(6) Any other information the board deems appropriate;

(7) In addition to the report by the board, as herein contained, each individual member of said board has right to submit a separate report, setting forth any views contrary to the report of the board, and the separate report, if any, shall be appended to the report of the board and be considered a part thereof.

§22A-6-6. Health and Safety Administrator; qualifications; duties; employees; compensation.
(a) The Governor shall appoint the Health and Safety Administrator of the board for a term of employment of one year. The Health and Safety Administrator shall be entitled to have his or her contract of employment renewed on an annual basis except where such renewal is denied for cause: Provided, That the Governor has the power at any time to remove the Health and Safety Administrator for misfeasance, malfeasance or nonfeasance: Provided, however, That the board has the power to remove the Health and Safety Administrator without cause upon the concurrence of five members of the board.

(b) The Health and Safety Administrator shall work at the direction of the board, independently of the director of the office of miners' health, safety and training and has such authority and shall perform such duties as may be required or necessary to effectuate this article.

(c) In addition to the Health and Safety Administrator, there shall be such other employees hired by the Health and Safety Administrator as the board determines to be necessary. The health and safety administrator shall provide supervision and direction to the other employees of the board in the performance of their duties.

(d) The employees of the board shall be compensated at rates determined by the board. The salary of the Health and Safety Administrator shall be fixed by the Governor: Provided, That the salary of the Health and Safety Administrator shall not be reduced during his or her annual term of employment or upon the renewal of his or her contract for an additional term. Such salary shall be fixed for any renewed term at least ninety days before the commencement thereof.

(c) (l) Appropriations for the salaries of the Health and Safety Administrator and any other employees of the board
and for necessary office and operating expenses shall be made to a budget account established for those purposes in the General Revenue Fund. Such account shall be separate from any accounts or appropriations for the Office of Miners’ Health, Safety and Training.

(2) Expenditures from the funds established in section three hundred ten, article two-A; section seven, article six; section four, article seven; section three, article eleven of this chapter shall be by the Health and Safety Administrator for administrative and operating expenses, such operating expenses include mine health and safety, research, education and training programs as determined by the entities.

(f) The Health and Safety Administrator shall review all coal mining fatalities and major causes of injuries as mandated by section four of this article. An analysis of such fatalities and major causes of injuries shall be prepared for consideration by the board within ninety days of the occurrence of the accident.

(g) At the direction of the board, the administrator shall also conduct an annual study of occupational health issues relating to employment in and around coal mines of this state and submit a report to the board with findings and proposals to address the issues raised in such study. The administrator is responsible for preparing the annual reports required by subsection (e), section four of this article and section nine of this article.

(h) The administrator shall provide administrative assistance to the West Virginia Diesel Commission, The State Coal Mine Safety and Technical Review Committee, Board of Coal Mine Health and Safety, Board of Miner Training, Education and Certification, and the Mine Safety Technology Task Force, and serve as the legislative liaison.
for budgetary issues. The Administrator shall serve as an ex
officio, nonvoting member on the West Virginia Diesel
Commission, The State Coal Mine Safety and Technical
Review Committee, Board of Miner Training, Education and
Certification, and the Mine Safety Technology Task Force.

(i) The administrator shall submit to each board or
commission for its approval, the proposed budget of the
board or commission before submitting it to the Secretary of
Revenue.

§22A-6-7. Coal Mine Safety and Technical Review Committee;
membership; method of nomination and appointment; meetings; quorum; powers and
duties of the committee; powers and duties of the
Board of Coal Mine Health and Safety.

(a) The State Coal Mine Safety and Technical Review
Committee is continued, and commencing July 1, 2010, is a
separate independent committee within the Department of
Commerce. The purposes of this committee are to:

(1) Assist the Board of Coal Mine Health and Safety in
the development of technical data relating to mine safety
issues, including related mining technology;

(2) Provide suggestions and technical data to the board
and propose rules with general mining industry application;

(3) Accept and consider petitions submitted by individual
mine operators or miners seeking site-specific rule making
pertaining to individual mines and make recommendations to
the board concerning such rule making; and

(4) Provide a forum for the resolution of technical issues
encountered by the board, safety education and coal
advocacy programs.
(b) The committee shall consist of two members who shall be residents of this state, and who shall be appointed as hereinafter specified in this section:

(1) The Governor shall appoint one member to represent the viewpoint of the coal operators in this state from a list containing one or more nominees submitted by the major trade association representing coal operators in this state within thirty days of submission of such nominee or nominees.

(2) The Governor shall appoint one member to represent the viewpoint of the working miners of this state from a list containing one or more nominees submitted by the highest ranking official within the major employee organization representing coal mines within this state within thirty days of submission of the nominee or the nominees.

(3) The members appointed in accordance with the provisions of subdivisions (1) and (2) of this subsection shall be initially appointed to serve a term of three years. The members serving on the effective date of this article may continue to serve until their terms expire.

(4) The members appointed in accordance with the provisions of subdivisions (1) and (2) of this subsection may be, but are not required to be, members of the Board of Coal Mine Health and Safety, and shall be compensated on a per diem basis in the same amount as provided in section ten of this article, plus all reasonable expenses.

(c) The committee shall meet at least once during each calendar month, or more often as may be necessary.

(d) A quorum of the committee shall require both members, and the committee may only act officially by a quorum.
(e) The committee may review any matter relative to mine safety and mining technology, and may pursue development and resolution of issues related thereto. The committee may make recommendations to the board for the promulgation of rules with general mining industry application. Upon receipt of a unanimous recommendation for rule making from the committee and only thereon, the board may adopt or reject such rule, without modification except as approved by the committee: Provided, That any adopted rule shall not reduce or compromise the level of safety or protection below the level of safety or protection afforded by applicable statutes and rules. When so promulgated, such rules shall be effective, notwithstanding the provisions of applicable statutes.

(f)(1) Upon application of a coal mine operator, or on its own motion, the committee has the authority to accept requests for site-specific rule making on a mine-by-mine basis, and make unanimous recommendations to the board for site-specific rules thereon. The committee has authority to approve a request if it concludes that the request does not reduce or compromise the level of safety or protection afforded miners below the level of safety or protection afforded by any applicable statutes or rules. Upon receipt of a request for site-specific rule making, the committee may conduct an investigation of the conditions in the specific mine in question, which investigation shall include consultation with the mine operator and authorized representatives of the miners. Such authorized representatives of the miners shall include any person designated by the employees at the mine, persons employed by an employee organization representing one or more miners at the mine, or a person designated as a representative by one or more persons at the mine.

(2) If the committee determines to recommend a request made pursuant to subdivision (1) of this subsection, the
committee shall provide the results of its investigation to the Board of Coal Mine Health and Safety along with recommendations for the development of the site-specific rules applicable to the individual mine, which recommendations may include a written proposal containing draft rules.

(3) Within thirty days of receipt of the committee’s recommendation, the board shall adopt or reject, without modification, except as approved by the committee, the committee’s recommendation to promulgate site-specific rules applicable to an individual mine adopting such site-specific rules only if it determines that the application of the requested rule to such mine will not reduce or compromise the level of safety or protection afforded miners below that level of safety or protection afforded by any applicable statutes. When so promulgated, such rules shall be effective notwithstanding the provisions of applicable statutes.

(g) The board shall consider all rules proposed by the Coal Mine Safety and Technical Review Committee and adopt or reject, without modification, except as approved by the committee, such rules, dispensing with the preliminary procedures set forth in subdivisions (1) through (7), subsection (a), section five; and, in addition, with respect to site-specific rules also dispensing with the procedures set forth in subdivisions (4) through (8), subsection (c), section four of this article.

(h) In performing its functions, the committee has access to the services of the coal mine Health and Safety Administrator appointed under section six of this article. The director shall make clerical support and assistance available in order that the committee can carry out its duties. Upon the request of both members of the committee, the Health and Safety Administrator shall draft proposed rules and reports or make investigations.
(i) The powers and duties provided for in this section for the committee are not intended to replace or precondition the authority of the Board of Coal Mine Health and Safety to act in accordance with sections one through six and eight through ten of this article.

(j) Appropriations for the funding of the committee and to effectuate this section shall be made to a budget account hereby established for that purpose in the General Revenue Fund. Such account shall be separate from any accounts or appropriations for the office of miners’ health, safety and training.

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

§22A-7-4. Board of Miner Training, Education and Certification continued; membership; method of appointment; terms.

(a) The Board of Miner Training, Education and Certification is continued, and commencing July 1, 2010, is a separate independent board within the Department of Commerce. The board consists of six voting members and two ex officio, nonvoting members, who are selected in the following manner:

(1) One member shall be appointed by the Governor to represent the viewpoint of surface mine operators in this state. When such member is to be appointed, the Governor shall request from the major association representing surface coal operators in this state a list of three nominees to the board. The Governor shall select from said nominees one person to serve on the board. For purposes of this subsection, the major association representing the surface coal operators in this state is that association, if any, which represents...
(2) Two members shall be appointed by the Governor to represent the interests of the underground operators of this state. When said members are to be appointed, the Governor shall request from the major association representing the underground coal operators in this state a list of six nominees to the board. The Governor shall select from said nominees two persons to serve on the board. For purposes of this subsection, the major association representing the underground operators in this state is that association, if any, which represents underground operators accounting for over one half of the coal produced in underground mines in this state in the year prior to that year in which the appointments are made.

(3) Three members shall be appointed by the Governor who can reasonably be expected to represent the interests of the working miners in this state. If the major employee organization representing coal miners in this state is divided into administrative districts, the employee organization of each district shall, upon request by the Governor, submit a list of three nominees for membership on the board. If such major employee organization is not so divided into administrative districts, such employee organization shall, upon request by the Governor, submit a list of twelve nominees for membership on the board. The Governor shall make such appointments from the persons so nominated: Provided, That in the event nominations are made by administrative districts, not more than one member shall be appointed from the nominees of any one district unless there are less than three such districts in this state.
(4) The Director of the Office of Miner’s Health, Safety and Training or his or her designee, and the Health and Safety Administrator of the Board of Coal Mine Health and Safety shall serve as ex officio, nonvoting members.

(5) All appointments made by the Governor under this section shall be with the advice and consent of the Senate: Provided, That persons so appointed while the Senate of this state is not in session are permitted to serve up to one year in an acting capacity, or until the next session of the Legislature, whichever is less.

(b) The board shall be appointed by the Governor. Members serving on the effective date of this article may continue on the board until their terms expire. Appointed members serve for a term of three years. The board shall meet at the call of the chair, at the call of the director, or upon the request of any two members of the board: Provided, That no meeting of the board for any purpose shall be conducted unless the board members are notified at least five days in advance of a proposed meeting. In cases of an emergency, members may be notified of a board meeting by the most appropriate means of communication available.

(c) Whenever a vacancy on the board occurs, appointments shall be made in the manner prescribed in this section: Provided, That in the case of an appointment to fill a vacancy nominations shall be submitted to the Governor within thirty days after the vacancy occurs. The vacancy shall be filled by the Governor within thirty days of receipt of the list of nominations.

(d) Each appointed member of the board shall be paid the same compensation, and each member of the board shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the
citizens legislative compensation commission and authorized
by law for each day or portion thereof engaged in the
discharge of official duties. Any such amounts shall be paid
out of the State Treasury upon a requisition upon the State
Auditor, properly certified by such members of the board.

(e) A quorum of the board is four members, with two
representing the viewpoint of the operators and two
representing the viewpoint of the labor organization. The
board may act officially by a majority of those members who
are present. No vote of the board may be taken unless all six
voting members are present.

(f) In performing its functions, the board shall have
access to the services of the Board of Coal Mine Health and
Safety. The Board of Coal Mine Health and Safety shall
provide administrative support and assistance, pursuant to
section six, article six of this chapter, to enable the board to
carry out its duties.

(g) Appropriations to the board to effectuate the purposes
of this article shall be made to a budget account established
for that purpose.

§22A-7-6. Duties of the director and office.

The director shall propose rules for legislative approval,
pursuant to chapter twenty-nine-a of this code, that are
necessary to establish a program to implement the provisions
of this article. Such program shall include, but not be limited
to, implementation of a program of instruction in each of the
miner occupational specialties and the conduct of examinations
to test each applicant’s knowledge and understanding of the
training and instruction which he or she is required to have
prior to the receipt of a certificate.

The director is authorized and directed to utilize state
mine inspectors, mine safety instructors, the state mine
The director may, at any time, make such recommendations to the board as he or she may deem appropriate.

The director shall supply any information upon request of the board as long as the information is not in violation of any other laws.

The director is authorized and directed to utilize such state and federal moneys and personnel as may be available to the office for educational and training purposes in the implementation of the provisions of this article.

ARTICLE 11. MINE SAFETY TECHNOLOGY.


(a) The Mine Safety Technology Task Force is continued, and commencing July 1, 2010, is a separate independent task force within the Department of Commerce.

(b) The task force shall consist of seven voting members and two ex officio, nonvoting members who are appointed as specified in this section:

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

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

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

(4) The Health and Safety Administrator, pursuant to
section six, article six of this chapter, shall serve as a member
of the task force as an ex officio, nonvoting member; and

(5) The Director of the Office of Miner’s Health, Safety
and Training or his or her designee, shall serve as a ex
officio, nonvoting member.
(c) Each appointed member of the task force shall serve at the will and pleasure of the Governor.

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

(e) Each member of the task force shall be paid the expense reimbursement, as is paid to members of the Legislature for their interim duties as recommended by the Citizens Legislative Compensation Commission and authorized by law for each day or portion thereof engaged in the discharge of official duties. In the event the expenses are paid by a third party, the member shall not be reimbursed by the state. The reimbursement shall be paid out of the State Treasury upon a requisition upon the State Auditor, properly certified by the Office of Miners’ Health, Safety and Training. An employer shall not prohibit a member of the task force from exercising leave of absence from his or her place of employment in order to attend a meeting of the task force or a meeting of a subcommittee of the task force, or to prepare for a meeting of the task force, any contract of employment to the contrary notwithstanding.


(a) The task force shall provide technical and other assistance to the office related to the implementation of the new technological requirements set forth in the provisions of section fifty-five, article two, of this chapter, as amended and reenacted during the regular session of the Legislature in the
year 2006, and requirements for other mine safety technologies.

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

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

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

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

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

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

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

(2) Opportunities for improving the integration of technologies and procedures to increase the performance and survivability of coal mine health and safety systems;
(3) Emerging technological advances in coal mine health and safety; and

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

(d) On or before July 1 of each year, the task force shall submit a report to the Governor and the Board of Coal Mine Health and Safety that shall include, but not be limited to:

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

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

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

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

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

(f) Appropriations to the task force commission and to effectuate the purposes of this article shall be made to one or more budget accounts established for that purpose.
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 approved this the 1st day of April, 2010.

Governor
PRESENTED TO THE
GOVERNOR
MAR 8 2 2010
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