WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011

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ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 2955

(By Delegates Caputo and Barker)

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Passed March 12, 2011

In Effect Ninety Days From Passage
AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13BB-1, §11-13BB-2, §11-13BB-3, §11-13BB-4, §11-13BB-5, §11-13BB-6, §11-13BB-7, §11-13BB-8, §11-13BB-9, §11-13BB-10, §11-13BB-11, §11-13BB-12 and §11-13BB-13; to amend and reenact §22-3-7, §22-3-8 and §22-3-19 of said code; to amend and reenact §22A-1-4 of said code; and to amend and reenact §22A-11-3 of said code, all relating to environmental resources; to providing a tax credit for purchase of innovative mine safety technology; legislative findings and purpose; definitions; requirements for list of approved innovative mine safety technology; amount of tax credit allowed; criteria for qualified investment; forfeiture of unused tax credits; treatment for transfer of certified eligible safety property to successors; setting forth requirements for identification of investment credit
property; prescribing treatment for failure to keep records of
certified eligible safety property; specifying tax credit review
and accountability requirements; specifying requirement for
disclosure of tax credits; authorizing rules; surface coal mining
and reclamation act; and fees assessed to coal mining operators
by the Division of Mining and Reclamation; amending the
duties of the Director of the West Virginia Office of Miners’
Health, Safety and Training; and amending the duties of the
Mine Safety Technology Task Force.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended
by adding thereto a new article, designated§11-13BB-1, §11-13BB-
2, §11-13BB-3, §11-13BB-4, §11-13BB-5, §11-13BB-6, §11-13BB-
7, §11-13BB-8, §11-13BB-9, §11-13BB-10, §11-13BB-11, §11-
13BB-12, §11-13BB-13 and §11-13BB-14; that §22-3-7, §22-3-8
and §22-3-19 of said code be amended and reenacted; that §22A-1-4
of said code be amended and reenacted; and that §22A-11-3 of said
code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 13BB. WEST VIRGINIA INNOVATIVE MINE
SAFETY TECHNOLOGY TAX
CREDIT ACT.

§11-13BB-1. Short title.

1 This article may be cited as the “West Virginia
2 Innovative Mine Safety Technology Tax Credit Act”.

§11-13BB-2. Legislative findings and purpose.

1 The Legislature finds that the encouragement of new
2 investment in innovative coal mine safety technology in this
state is in the public interest and promotes the general welfare of the people of this state.


(a) Any term used in this article has the meaning ascribed by this section, unless a different meaning is clearly required by the context of its use or by definition in this article.

(b) For purposes of this article, the term:

(1) "Certified eligible safety property" means eligible safety property in which an eligible taxpayer has made qualified investment for which credit has been certified under this article.

(2) "Coal mining company" means:

(A) Any person subject to tax imposed on the severance of coal by section three, article thirteen-a of this chapter, or

(B) Any person working as a contract miner of coal, which mines coal in this state, under contract with a person subject to tax imposed on the severance of coal by section three, article thirteen-a of this chapter.

(3) "Director" means the Director of the Office of Miners’ Health, Safety and Training or West Virginia Office of Miners’ Health, Safety and Training established under article one, chapter twenty two-a of this code.

(4) "Eligible safety property" means safety technology equipment, that at the time of acquisition, is on the list of approved innovative mine safety technology.

(5) "Eligible taxpayer" means a coal mining company which purchases eligible safety property.
(6) "List of approved innovative mine safety technology" means the list required to be compiled and maintained by the Mine Safety Technology Task Force and approved and published by the director under this article.

(7) "Office of Miners’ Health, Safety and Training” or “West Virginia Office of Miners’ Health, Safety and Training” means the Office of Miners’ Health, Safety and Training established under article one, chapter twenty two-a of this code.

(8) “Person” includes any corporation, limited liability company, or partnership.

(9) "Qualified investment” means the eligible taxpayer’s investment in eligible safety property pursuant to a qualified purchase as qualified and limited by section six of this article.

(10) “Qualified purchase” means and includes only acquisitions of eligible safety property for use in this state.

(A) A lease of eligible safety property may constitute a qualified purchase if the lease was entered into and became effective at a time when the equipment is on the list of approved innovative mine safety technology, and if the primary term of the lease for the eligible safety property is five years or more. Leases having a primary term of less than five years do not qualify.

(B) “Qualified purchase” does not include:

(i) Purchases or leases of realty or any cost for, or related to, the construction of any building, facility or structure attached to realty;

(ii) Purchases or leases of any property not exclusively used in West Virginia;
(iii) Repair costs including materials used in the repair, unless for federal income tax purposes, the cost of the repair must be capitalized and not expensed;

(iv) Motor vehicles licensed by the Department of Motor Vehicles;

(v) Clothing;

(vi) Airplanes;

(vii) Off-premises transportation equipment;

(viii) Leases of tangible personal property having a primary term of less than five years shall not qualify;

(ix) Property that is used outside this state; and

(x) Property that is acquired incident to the purchase of the stock or assets of an industrial taxpayer, which property was or had been used by the seller in his or her industrial business in this state, or in which investment was previously the basis of a credit against tax taken under any other article of this chapter.

(C) Acquisitions, including leases, of eligible safety property may constitute qualified purchases for purposes of this article only if:

(i) The property is not acquired from a person whose relationship to the person acquiring it would result in the disallowance of deductions under Section 267 or 707(b) of the United States Internal Revenue Code of 1986, as amended;

(ii) The property is not acquired from a related person or by one component member of a controlled group from
another component member of the same controlled group.

The Tax Commissioner may waive this requirement if the property was acquired from a related party for its then fair market value; and

(iii) The basis of the property for federal income tax purposes, in the hands of the person acquiring it, is not determined, in whole or in part, by reference to the federal adjusted basis of the property in the hands of the person from whom it was acquired; or under Section 1014(e) of the United States Internal Revenue Code of 1986, as amended.

(11) "Safety technology" means depreciable tangible personal property and equipment, other than clothing, principally designed to directly minimize workplace injuries and fatalities in coal mines.

(12) "Taxpayer" means any person subject to any of the taxes imposed by article thirteen-a, twenty-three or twenty-four of this chapter.

§11-13BB-4. List of approved innovative mine safety technology.

(a) List of approved innovative mine safety technology. -- The Mine Safety Technology Task Force, established in section two, article eleven, chapter twenty-two-a of this code, shall annually compile a proposed list of approved innovative mine safety technologies as required by subsection (f), section three, article eleven, chapter twenty-two-a of this code. The list shall be transmitted to the director for approval. The director has thirty days to approve or amend the list. At the expiration of thirty days, the director shall publish the list of approved innovative mine safety technologies. The list shall describe and specifically identify safety equipment for use in West Virginia coal mines which,
in the fiscal year when the equipment is added to the list, is
not required by the Mine Safety and Health Administration
of the United States Department of Labor or the West
Virginia Office Of Miners’ Health, Safety And Training or
any other state or federal agency, to be used in a coal mine or
on a mine site or on any other industrial site. Safety
equipment shall remain on the list from year to year until the
director removes it from the list. The Office of Miners’
Health, Safety and Training may establish by legislative rule
or interpretive rule a shorter time period for issuance of and
updating of the list of approved innovative mine safety
technologies.

(b) It is the intent of the Legislature that the list of
approved innovative mine safety technologies include only
safety equipment that is depreciable tangible personal
property for federal income tax purposes, which is so new to
the industry and so innovative in concept, design, operation
or performance that, in the fiscal year when it is added to the
list of approved innovative mine safety technologies, the
equipment has not yet been adopted by the Federal Mine
Safety and Health Administration or the West Virginia Office
of Miners Health, Safety and Training or any other state or
federal agency as required equipment to be used in a coal
mine or on a mine site or on any other industrial site.

(c) *Delisting.* -- (1) If any item of equipment or any line
of equipment or class of equipment is listed on the list of
approved innovative mine safety technologies in any fiscal
year, but then is subsequently adopted by the Federal Mine
Safety and Health Administration or the West Virginia Office
of Mine Safety or any other state or federal agency as
required equipment to be used in a coal mine or on a mine
site or on any other industrial site, the equipment shall be
removed from the list of approved innovative mine safety
technologies compiled and issued for the next succeeding
periodic issuance thereafter of the list of approved innovative mine safety technologies.

(2) If it is determined by the director that any item of equipment or any line of equipment or class of equipment that is listed on the list of approved innovative mine safety technology has ceased to be innovative in concept, design, operation or performance, or is ineffective, or has failed to meet the expectations of the Mine Safety Technology Task Force, or has failed to prove its value in directly minimizing workplace injuries and fatalities in coal mines, the equipment shall be removed from the list of approved innovative mine safety technologies that is compiled and issued for the next succeeding periodic issuance of the list of approved innovative mine safety technologies after the determination has been reached.

(3) However, any eligible taxpayer who invested in the equipment as certified eligible safety property during the time the equipment was lawfully listed on the list of approved innovative mine safety technologies, shall not forfeit the credit authorized by this article as a result of the delisting of the equipment under either subdivision (1) or subdivision (2) of this subsection, so long as the requirements of this article are otherwise fulfilled by the taxpayer for entitlement to the credit.

§11-13BB-5. Amount of credit allowed.

(a) Credit allowed -- For tax years beginning after December 31, 2011, there is allowed to eligible taxpayers a credit against the taxes imposed by articles twenty-three and twenty-four of this chapter. The amount of credit shall be determined as provided in this section.

(b) Amount of credit allowable. -- The amount of allowable credit under this article is equal to fifty percent of
the qualified investment as determined in section six of this article, and shall reduce the business franchise tax imposed under article twenty-three of this chapter and the corporation net income tax imposed under article twenty-four of this chapter, in that order, subject to the following conditions and limitations:

(1) The amount of credit allowable is applied over a five-year period, at the rate of one-fifth thereof per taxable year, beginning with the taxable year in which the eligible safety property is first placed in service or use in this state.

(2) Business franchise tax. -- The credit is applied to reduce the business franchise tax imposed under article twenty-three of this chapter determined after application of the credits against tax provided in section seventeen, article twenty-three of this chapter, but before application of any other allowable credits against tax. The amount of annual credit allowed will not reduce the business franchise tax, imposed under article twenty-three of this chapter, below fifty percent of the amount which would be imposed for the taxable year in the absence of this credit against tax.

(3) Corporation net income tax. -- After application of subdivision (2) of this subsection, any unused credit is next applied to reduce the corporation net income tax imposed under article twenty-four of this chapter determined before application of any other allowable credits against tax. The amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed for the taxable year in the absence of this credit against tax.

(4) Pass-through entities. -- (A) If the eligible taxpayer is a limited liability company, small business corporation or
a partnership, then any unused credit after application of subdivisions (2) and (3) of this subsection is allowed as a credit against the taxes imposed by article twenty-four of this chapter on owners of the eligible taxpayer on the conduit income directly derived from the eligible taxpayer by its owners. Only those portions of the tax imposed by article twenty-four of this chapter that are imposed on income directly derived by the owner from the eligible taxpayer are subject to offset by this credit.

(B) The amount of annual credit allowed will not reduce corporation net income tax, imposed under article twenty-four of this chapter, below fifty percent of the amount which would be imposed on the conduit income directly derived from the eligible taxpayer by each owner for such taxable year in the absence of this credit against the taxes.

(5) Small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate any unused credit (after application of subdivisions (2) and (3) of this subsection) among their members in the same manner as profits and losses are allocated for the taxable year; and

(6) No credit is allowed under this article against any tax imposed by article twenty-one of this chapter.

(c) No carryover to a subsequent taxable year or carryback to a prior taxable year is allowed for the amount of any unused portion of any annual credit allowance. Any unused credit is forfeited.

(d) No tax credit is allowed or may be applied under this article until the taxpayer seeking to claim the tax credit has:
(1) Filed, with the Office of Miners' Health, Safety and Training, a written application for certification of the proposed tax credit; and

(2) Received, from the Office of Miners' Health, Safety and Training, certification of the amount of tax credit to be allocated to the eligible taxpayer.

c) No more than $2 million of the tax credits allowed under this article shall be allocated by the Office of Miners' Health, Safety and Training during any fiscal year. The Office of Miners' Health, Safety and Training shall allocate the tax credits in the order the applications therefor are received.

(f) The total amount of tax credit that may be used in any taxable year by any eligible taxpayer in combination with the owners of the eligible taxpayer under this article may not exceed $100,000.

(g) Applications for certification of the proposed tax credit shall contain such information and be in such detail and in such form as required by the Office of Miners' Health, Safety and Training.

(h) The Tax Commissioner may prescribe the forms and schedules as necessary or appropriate for effective, efficient and lawful administration of this article.

(i) Notwithstanding the provisions of section five-d, article ten of this chapter, and notwithstanding any other provision of this code, the Tax Commissioner and Office of Miners' Health, Safety and Training may exchange tax information and other information as determined by the Tax Commissioner to be useful and necessary for the effective oversight and administration of the credit authorized pursuant to this article.
§11-13BB-6. Qualified investment.

(a) General. -- The qualified investment is one hundred percent of the cost for eligible safety property pursuant to a qualified purchase, which is placed in service or use in this state by the eligible taxpayer during the tax year.

(b) Placed in service or use. -- For purposes of the credit allowed by this article, property is considered placed in service or use in the earlier of the following taxable years:

(1) The taxable year in which, under the taxpayer’s depreciation practice, the period for federal income tax depreciation with respect to the property begins; or

(2) The taxable year in which the property is placed in a condition or state of readiness and availability for a specifically assigned function.

(c) Cost. -- For purposes of this article, the cost for eligible safety property pursuant to a qualified purchase is determined under the following rules:

(1) Trade-ins. -- Cost for eligible safety property will not include the value of property given in trade or exchange for eligible safety property pursuant to a qualified purchase;

(2) Damaged, destroyed or stolen property. -- If eligible safety property is damaged or destroyed by fire, flood, storm or other casualty, or is stolen, then the cost for replacement of the eligible safety property, will not include any insurance proceeds received in compensation for the loss;

(3) Rental property. -- The cost for eligible safety property acquired by lease for a term of at least five years or
longer is one hundred percent of the rent reserved for the
primary term of the lease, not to exceed ten years; and

(4) Property purchased for multiple use. -- Any cost of
acquisition of property that is not principally and directly
used to minimize workplace injuries and fatalities in a coal
mine does not qualify as qualified investment for purposes of
this article.

§11-13BB-7. Forfeiture of unused tax credits.

Disposition of property or cessation of use. -- If during
any taxable year, property with respect to which a tax credit
has been allowed under this article:

(1) Is disposed of prior to the end of the fourth tax year
subsequent to the end of the tax year in which the property
was placed in service or use; or

(2) Ceases to be used in a coal mine of the eligible
taxpayer in this state prior to the end of the fourth tax year
subsequent to the end of the tax year in which the property
was placed in service or use, then the unused portion of the
credit allowed for such property is forfeited for the tax year
in which the disposition or cessation of use occurred and all
ensuing years.

§11-13BB-8. Transfer of certified eligible safety property to
successors.

(a) Mere change in form of business. -- Certified eligible
safety property may not be treated as disposed of under
section seven of this article, by reason of a mere change in
the form of conducting the business as long as the certified
eligible safety property is retained in a business in this state
for use in a coal mine in West Virginia, and the taxpayer
retains a controlling interest in the successor business. In this event, the successor business is allowed to claim the amount of credit still available with respect to the certified eligible safety property transferred, and the taxpayer (transferor) may not be required to forfeit the credit for the years remaining at the time of transfer in the original five year credit period.

(b) **Transfer or sale to successor.** -- Certified eligible safety property will not be treated as disposed of under section seven of this article by reason of any transfer or sale to a successor business which continues to use the certified eligible safety property in a coal mine in West Virginia. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article in the original five year credit period for each subsequent taxable year, and the transferor shall not be required to forfeit the credit for subsequent years. Upon transfer or sale, the successor shall acquire the amount of credit that remains available under this article for each taxable year subsequent to the taxable year of the transferor during which the transfer occurred and, for the year of transfer, an amount of annual credit for the year in the same proportion as the number of days remaining in the transferor's taxable year bears to the total number of days in the taxable year and the transferor shall not be required to redetermine the amount of credit allowed in earlier years.

§11-13BB-9. **Identification of investment credit property.**

Every taxpayer who claims credit under this article shall maintain sufficient records to establish the following facts for each item of certified eligible safety property:

1. Its identity;
2. Its actual or reasonably determined cost;
§11-13B8-10. Failure to keep records of certified eligible safety property.

A taxpayer who does not keep the records required for certified eligible safety property and the credit authorized under this article, is subject to the following rules:

(1) A taxpayer is treated as having disposed of, during the taxable year, any certified eligible safety property which the taxpayer cannot establish was still on hand and used in a coal mine in this state at the end of that year; and

(2) If a taxpayer cannot establish when certified eligible safety property reported for purposes of claiming this credit returned during the taxable year was placed in service, the taxpayer is treated as having placed it in service in the most recent prior year in which similar property was placed in service, unless the taxpayer can establish that the property placed in service in the most recent year is still on hand and used in a coal mine in this state at the end of that year. In that event, the taxpayer will be treated as having placed the returned property in service in the next most recent year.

§11-13BB-11. Tax credit review and accountability.

(a) Beginning on August 1, 2012, and August 1 of every year thereafter, the Tax Commissioner shall submit to the
Governor, the President of the Senate and the Speaker of the House of Delegates a tax credit review and accountability report evaluating the cost of the credit allowed under this article during the most recent period for which information is available. The criteria to be evaluated includes, but is not limited to, for each year:

(1) The numbers of taxpayers claiming the credit; and

(2) The cost of the credit.

(b) Taxpayers claiming the credit shall provide whatever information the Tax Commissioner requires to prepare the report: *Provided, That* the information is subject to the confidentiality and disclosure provisions of sections five-d and five-s, article ten of this chapter. If, in any reporting period under this section, fewer than ten eligible taxpayers have taken or applied for the credit authorized under this article, then no report shall be filed for that reporting period under this section.


Notwithstanding section five-d, article ten of this chapter or any other provision in this code to the contrary, the Tax Commissioner shall annually publish in the State Register the name and address of every eligible taxpayer and the amount of any tax credit asserted under this article.


The Tax Commissioner and the Office of Miners’ Health, Safety and Training may each promulgate rules in accordance with article three, chapter twenty-nine-a of this code to carry out the policy and purposes of this article, to provide any necessary clarification of the provisions of this article and to
efficiently provide for the general administration of this article.


The tax credit authorized in this article shall terminate December 31, 2014.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-7. Notice of intention to prospect, requirements therefor; bonding; secretary’s authority to deny or limit; postponement of reclamation; prohibited acts; exceptions.

(a) Any person intending to prospect for coal in an area not covered by a surface-mining permit, in order to determine the location, quantity or quality of a natural coal deposit, making feasibility studies or for any other purpose, shall file with the secretary, at least fifteen days prior to commencement of any disturbance associated with prospecting, a notice of intention to prospect, which notice shall include a description of the prospecting area, the period of supposed prospecting and any other information as required by rules promulgated pursuant to this section: Provided, That prior to the commencement of prospecting, the secretary may issue an order denying or limiting permission to prospect where the secretary finds that prospecting operations will damage or destroy a unique natural area, or will cause serious harm to water quality, or that the operator has failed to satisfactorily reclaim other prospecting sites, or that there has been an abuse of prospecting by previous prospecting operations in the area.
(b) Notice of intention to prospect shall be made in writing on forms prescribed by the secretary and shall be signed and verified by the applicant. The notice shall be accompanied by: (1) A United States Geological Survey topographic map showing by proper marking the crop line and the name, where known, of the seam or seams to be prospected; (2) a filing fee of $2000; and (3) a bond, or cash, or collateral securities or certificates of the same type and form and in the same manner as provided in section eleven of this article, in the amount of five hundred dollars per acre or fraction thereof for the total estimated disturbed area. If a bond is used, it shall be payable to the State of West Virginia and conditioned that the operator faithfully perform the requirements of this article as they relate to backfilling and revegetation of the disturbed area.

(c) Any person prospecting under the provisions of this section shall ensure that the prospecting operation is conducted in accordance with the performance standards in section thirteen of this article for all lands disturbed in explorations, including excavations, roads, drill holes, and the removal of necessary facilities and equipment.

(d) Information submitted to the secretary pursuant to this section as confidential, concerning trade secrets or privileged commercial or financial information, which relates to the competitive rights of the person or entity intended to prospect the described area, is not available for public examination.

(e) Any person who conducts any prospecting activities which substantially disturb the natural land surface in violation of this section or rules issued pursuant thereto is subject to the provisions of sections sixteen and seventeen of this article.

(f) An operator may not remove more than two hundred fifty tons of coal without the specific written approval of the
secretary. Such approval shall be requested by the operator on forms prescribed by the secretary. The secretary shall promulgate rules governing such operations and setting forth information required in the application for approval. Each such application shall be accompanied by a $2000 filing fee.

(g) The bond accompanying said notice of intention to prospect shall be released by the secretary when the operator demonstrates that a permanent species of vegetative cover is established.

(h) If an operator desires to mine the area currently being prospected, and has requested and received an appropriate surface mine application (S.M.A.) number, the secretary may permit the postponement of the reclamation of the area prospected. Any part of a prospecting operation, where reclamation has not been postponed as provided above, shall be reclaimed within a period of three months from disturbance.

(i) For the purpose of this section, the word “prospect” or “prospecting” does not include core drilling related solely to taxation or highway construction.

§22-3-8. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

(a) No person may engage in surface mining operations unless he or she has first obtained a permit from the secretary in accordance with the following:

(1) All permits issued pursuant to the requirements of this article shall be issued for a term not to exceed five years: Provided, That if the applicant demonstrates that a specified
longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment and the opening of the operation, and if the application is full and complete for the specified longer term, the secretary may extend a permit for a longer term: Provided, however, That subject to the prior approval of the secretary, with the approval being subject to the provisions of subsection (c), section eighteen of this article, a successor in interest to a permittee who applies for a new permit, or transfer of a permit, within thirty days of succeeding to the interest and who is able to obtain the bond coverage of the original permittee, may continue surface mining and reclamation operations according to the approved mining and reclamation plan of the original permittee until the successor’s permit application or application for transfer is granted or denied.

(2) Proof of insurance is required on an annual basis.

(3) A permit terminates if the permittee has not commenced the surface mining operations covered by the permit within three years of the date the permit was issued: Provided, That the secretary may grant reasonable extensions of time upon a timely showing that the extensions are necessary by reason of litigation precluding commencement, or threatening substantial economic loss to the permittee, or by reason of conditions beyond the control and without the fault or negligence of the permittee: Provided, however, That with respect to coal to be mined for use in a synthetic fuel facility or specific major electric-generating facility, the permittee shall be considered to have commenced surface mining operations at the time the construction of the synthetic fuel or generating facility is initiated.

(4) Each application for a new surface mining permit filed pursuant to this article shall be accompanied by a fee of $3,500. All permit fees and renewal fees provided in this
section or elsewhere in this article shall be collected by the
secretary and deposited with the Treasurer of the State of
West Virginia to the credit of the Operating Permit Fees Fund
and shall be used, upon requisition of the secretary, for the
administration of this article.

(5) Prior to the issuance of any permit, the secretary shall
ascertain from the Commissioner of the Division of Labor
whether the applicant is in compliance with section fourteen,
article five, chapter twenty-one of this code. Upon issuance
of the permit, the secretary shall forward a copy to the
Commissioner of the Division of Labor, who shall assure
continued compliance under the permit.

(6) (A) Prior to the issuance of any permit the secretary
shall ascertain from the Executive Director of Workforce
West Virginia and the Insurance Commissioner whether the
applicant is in compliance with the provisions of section six-
c, article two, chapter twenty-one-a of this code and section
five, article two, chapter twenty-three of this code with regard
to any required subscription to the Unemployment
Compensation Fund or to the Workers’ Compensation Fund,
the payment of premiums and other charges to the fund, the
timely filing of payroll reports and the maintenance of
adequate deposits. If the applicant is delinquent or defaulted,
or has been terminated by the executive director or the
Insurance Commissioner, the permit may not be issued until
the applicant returns to compliance or is restored by the
executive director or the Insurance Commissioner under a
reinstatement agreement: Provided, That in all inquiries the
Executive Director of Workforce West Virginia and the
Insurance Commissioner shall make response to the
Department of Environmental Protection within fifteen
calendar days; otherwise, failure to respond timely is
considered to indicate the applicant is in compliance and the
failure will not be used to preclude issuance of the permit.
(B) It is a requirement of this article that each operator maintain continued compliance with the provisions of section five, article two, chapter twenty-three of this code and section six-c, article two, chapter twenty-one-a of this code and provide proof of compliance to the secretary on a quarterly basis.

§22-3-19. Permit revision and renewal requirements; incidental boundary revisions; requirements for transfer; assignment and sale of permit rights; operator reassignment; and procedures to obtain inactive status.

(a) (1) Any valid permit issued pursuant to this article carries with it the right of successive renewal upon expiration with respect to areas within the boundaries of the existing permit. The holders of the permit may apply for renewal and the renewal shall be issued: Provided, That on application for renewal, the burden is on the opponents of renewal, unless it is established that and written findings by the secretary are made that: (A) The terms and conditions of the existing permit are not being satisfactorily met: Provided, however, That if the permittee is required to modify operations pursuant to mining or reclamation requirements which become applicable after the original date of permit issuance, the permittee shall be provided an opportunity to submit a schedule allowing a reasonable period to comply with such revised requirements; (B) the present surface-mining operation is not in compliance with the applicable environmental protection standards of this article; (C) the renewal requested substantially jeopardizes the operator's continuing responsibility on existing permit areas; (D) the operator has not provided evidence that the bond in effect for said operation will continue in effect for any renewal requested as required pursuant to sections eleven or twelve of this article; or (E) any additional revised or updated
information as required pursuant to rules promulgated by the
secretary has not been provided.

(2) If an application for renewal of a valid permit
includes a proposal to extend the surface-mining operation
beyond the boundaries authorized in the existing permit, that
portion of the application for renewal which addresses any
new land area is subject to the full standards of this article,
which includes, but is not limited to: (A) adequate bond; (B)
a map showing the disturbed area and facilities; and (C) a
reclamation plan.

(3) Any permit renewal shall be for a term not to exceed
the period of time for which the original permit was issued.
Application for permit renewal shall be made at least one
hundred twenty days prior to the expiration of the valid
permit.

(4) Any renewal application for an active permit shall be
on forms prescribed by the secretary and shall be
accompanied by a filing fee of $3,000. The application shall
contain such information as the secretary requires pursuant to
rule.

(b)(1) During the term of the permit, the permittee may
submit to the secretary an application for a revision of the
permit, together with a revised reclamation plan.

(2) An application for a significant revision of a permit is
subject to all requirements of this article and rules
promulgated pursuant thereto and shall be accompanied by a
filing fee of $2000.

(3) Any extension to an area already covered by the
permit, except incidental boundary revisions, shall be made
by application for another permit. If the permittee desires to
add the new area to his or her existing permit in order to have existing areas and new areas under one permit, the secretary may so amend the original permit: Provided, That the application for the new area is subject to all procedures and requirements applicable to applications for original permits under this article and a filing fee of $550.

(c) The secretary shall review outstanding permits of a five-year term before the end of the third year of the permit. Other permits shall be reviewed within the time established by rules. The secretary may require reasonable revision or modification of the permit following review: Provided, That such revision or modification shall be based upon written findings and shall be preceded by notice to the permittee of an opportunity for hearing.

(d) No transfer, assignment or sale of the rights granted under any permit issued pursuant to this article may be made without the prior written approval of the secretary, application for which shall be accompanied by a filing fee of $1,500 for transfer or $1,500 for assignment.

(e) Each request for inactive status shall be submitted on forms prescribed by the secretary, shall be accompanied by a filing fee of $2000, and shall be granted in accordance with the procedure established in the Surface Mining and Reclamation Rule.

CHAPTER 22A. MINERS' HEALTH, SAFETY AND TRAINING.

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

(a) The Director of the Office of Miners’ Health, Safety and Training is hereby empowered and it is his or her duty to administer and enforce such provisions of this chapter relating to health and safety inspections and enforcement and training in surface and underground coal mines, underground clay mines, open pit mines, cement manufacturing plants and underground limestone and sandstone mines.

(b) The Director of the Office of Miners’ Health, Safety and Training has full charge of the division. The director has the power and duty to:

1. Supervise and direct the execution and enforcement of the provisions of this article.

2. Employ such assistants, clerks, stenographers and other employees as may be necessary to fully and effectively carry out his or her responsibilities and fix their compensation, except as otherwise provided in this article.

3. Assign mine inspectors to divisions or districts in accordance with the provisions of section eight of this article as may be necessary to fully and effectively carry out the provisions of this law, including the training of inspectors for the specialized requirements of surface mining, shaft and slope sinking and surface installations and to supervise and direct such mine inspectors in the performance of their duties.

4. Suspend, for good cause, any such mine inspector without compensation for a period not exceeding thirty days in any calendar year.

5. Prepare report forms to be used by mine inspectors in making their findings, orders and notices, upon inspections made in accordance with this article.
(6) Hear and determine applications made by mine operators for the annulment or revision of orders made by mine inspectors, and to make inspections of mines, in accordance with the provisions of this article.

(7) Cause a properly indexed permanent and public record to be kept of all inspections made by himself or by mine inspectors.

(8) Make annually a full and complete written report of the administration of the office to the Governor and the Legislature of the state for the year ending June 30. The report shall include the number of visits and inspections of mines in the state by mine inspectors, the quantity of coal, coke and other minerals (excluding oil and gas) produced in the state, the number of individuals employed, number of mines in operation, statistics with regard to health and safety of persons working in the mines including the causes of injuries and deaths, improvements made, prosecutions, the total funds of the office from all sources identifying each source of such funds, the expenditures of the office, the surplus or deficit of the office at the beginning and end of the year, the amount of fines collected, the amount of fines imposed, the value of fines pending, the number and type of violations found, the amount of fines imposed, levied and turned over for collection, the total amount of fines levied but not paid during the prior year, the titles and salaries of all inspectors and other officials of the office, the number of inspections made by each inspector, the number and type of violations found by each inspector. However, no inspector may be identified by name in this report. Such reports shall be filed with the Governor and the Legislature on or before December 31 of the same year for which it was made, and shall upon proper authority be printed and distributed to interested persons.
27    (Enr. Com. Sub. for H.B. 2955

(9) Call or subpoena witnesses, for the purpose of conducting hearings into mine fires, mine explosions or any mine accident; to administer oaths and to require production of any books, papers, records or other documents relevant or material to any hearing, investigation or examination of any mine permitted by this chapter. Any witness so called or subpoenaed shall receive $40 per diem and shall receive mileage at the rate of $0.15 for each mile actually traveled, which shall be paid out of the State Treasury upon a requisition upon the State Auditor, properly certified by such witness.

(10) Institute civil actions for relief, including permanent or temporary injunctions, restraining orders, or any other appropriate action in the appropriate federal or state court whenever any operator or the operator’s agent violates or fails or refuses to comply with any lawful order, notice or decision issued by the director or his or her representative.

(11) Perform all other duties which are expressly imposed upon him or her by the provisions of this chapter.

(12) Impose reasonable fees upon applicants taking tests administered pursuant to the requirements of this chapter.

(13) Impose reasonable fees for the issuance of certifications required under this chapter.

(14) Prepare study guides and other forms of publications relating to mine safety and charge a reasonable fee for the sale of the publications.

(15) Make all records of the office open for inspection of interested persons and the public.

(c) The Director of the Office of Miners’ Health, Safety and Training, or his or her designee, upon receipt of the list
of approved innovative mine safety technologies from the Mine Safety Technology Task Force, has thirty days to approve or amend the list as provided in section four, article thirteen-bb, chapter eleven of this code. At the expiration of the time period, the director shall publish the list of approved innovative mine safety technologies as provided in section four, article thirteen-bb, chapter eleven of this code.

ARTICLE 11. MINE SAFETY TECHNOLOGY.


(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 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.

(g) The task force shall annually compile a proposed list of approved innovative mine safety technologies and transmit the list to the Director of the Office of Miners’ Health, Safety and Training as provided in section four, article thirteen-BB, chapter eleven of this code. The list shall be approved by unanimous vote of the task force.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Michael I. Orn
Vice Chairman, House Committee

Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

Seymour D. Sy
Clerk of the House of Delegates

David L. Thomas
Clerk of the Senate

Robert J. Toy
Speaker of the House of Delegates

Joe A. Fain
President of the Senate

The within is disapproved this the 18th day of March, 2011.

Earl Ray Tomblin
Governor
PRESENTED TO THE GOVERNOR

MAR 18 2011

Time 11:00 am