

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Originating

Senate Bill 687

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FERNs, GAUNCH, MULLINS, FACEMIRE, JEFFRIES, OJEDA
AND WOELFEL

[Originating in the Committee on Energy, Industry and
Mining; Reported on March 25, 2017]

1 A BILL to amend and reenact §22-3-11, §22-3-13a and §22-3-23 of the Code of West Virginia,
2 1931, as amended; to amend and reenact §22-6-24 of said code; to amend and reenact
3 §22-11-7b of said code; to amend and reenact §22A-1-2 and §22A-1-5 of said code; to
4 amend and reenact §22A-2-59 of said code; to amend said code by adding thereto a new
5 section, designated §22A-2A-1001; to amend and reenact §22A-6-3, §22A-6-4 and §22A-
6 6-6 of said code; to amend and reenact §22A-7-2, §22A-7-3, §22A-7-5, §22A-7-5a and
7 §22A-7-7 of said code; to amend and reenact §22A-9-1 of said code; to amend and
8 reenact §22A-11-1, §22A-11-2, §22A-11-3 and §22A-11-4 of said code; to amend said
9 code by adding thereto a new section, designated §22A-11-5, all relating generally to coal
10 mining, coal mining safety and environmental protection; providing that moneys be paid
11 from special reclamation water trust fund to assure a reliable source of capital and
12 operating expenses for the treatment of discharges from forfeited sites; modifying
13 notification requirements for preblast surveys for surface mining operations and certain
14 other blasting activities; removing minimum bond requirements related to certain
15 reclamation work; providing for changes to the method of plugging abandoned gas wells
16 where a coal operator intends to mine through the well; removing certain criteria from
17 evaluation for the narrative water quality standard; authorizing the elimination of the Board
18 of Miner Training, Education and Certification, the Mine Inspectors' Examining Board, and
19 the Mine Safety Technology Task Force, and the transfer of duties from those boards and
20 task force to the Board of Coal Mine Health and Safety; providing that an automated
21 external defibrillator unit be required first-aid equipment located in certain areas of an
22 underground coal mine; directing that the Office of Miners' Health, Safety and Training
23 revise state rules related to diesel equipment operating in underground mines; and
24 requiring rulemaking.

Be it enacted by the Legislature of West Virginia:

1 That §22-3-11, §22-3-13a and §22-3-23 of the Code of West Virginia, 1931, as amended,
2 be amended and reenacted; that §22-6-24 of said code be amended and reenacted; that §22-11-
3 7b of said code be amended and reenacted; that §22A-1-2 and §22A-1-5 of said code be
4 amended and reenacted; that §22A-2-59 of said code be amended and reenacted; that said code
5 be amended by adding thereto a new section, designated §22A-2A-1001; that §22A-6-3, §22A-
6 6-4 and §22A-6-6 of said code be amended and reenacted; that §22A-7-2, §22A-7-3, §22A-7-5,
7 §22A-7-5a and §22A-7-7 of said code be amended and reenacted; that §22A-9-1 of said code be
8 amended and reenacted; that §22A-11-1, §22A-11-2, §22A-11-3 and §22A-11-4 of said code be
9 amended and reenacted; and that said code be amended by adding thereto a new section,
10 designated §22A-11-5, all to read as follows:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.

1 (a) After a surface mining permit application has been approved pursuant to this article,
2 but before a permit has been issued, each operator shall furnish a penal bond, on a form to be
3 prescribed and furnished by the secretary, payable to the state of West Virginia and conditioned
4 upon the operator faithfully performing all of the requirements of this article and of the permit. The
5 penal amount of the bond shall be not less than \$1,000 nor more than \$5,000 for each acre or
6 fraction of an acre: *Provided*, That the minimum amount of bond furnished for any type of
7 reclamation bonding shall be \$10,000. The bond shall cover: (1) The entire permit area; or (2)
8 that increment of land within the permit area upon which the operator will initiate and conduct
9 surface mining and reclamation operations within the initial term of the permit. If the operator
10 chooses to use incremental bonding, as succeeding increments of surface mining and
11 reclamation operations are to be initiated and conducted within the permit area, the operator shall

12 file with the secretary an additional bond or bonds to cover the increments in accordance with this
13 section: *Provided, however*, That once the operator has chosen to proceed with bonding either
14 the entire permit area or with incremental bonding, the operator shall continue bonding in that
15 manner for the term of the permit.

16 (b) The period of liability for bond coverage begins with issuance of a permit and continues
17 for the full term of the permit plus any additional period necessary to achieve compliance with the
18 requirements in the reclamation plan of the permit.

19 (c)(1) The form of the bond shall be approved by the secretary and may include, at the
20 option of the operator, surety bonding, collateral bonding (including cash and securities),
21 establishment of an escrow account, self bonding or a combination of these methods. If collateral
22 bonding is used, the operator may elect to deposit cash or collateral securities or certificates as
23 follows: Bonds of the United States or its possessions of the Federal Land Bank or of the
24 Homeowners' Loan Corporation; full faith and credit general obligation bonds of the State of West
25 Virginia or other states and of any county, district or municipality of the state of West Virginia or
26 other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of
27 the department. The cash deposit or market value of the securities or certificates shall be equal
28 to or greater than the penal sum of the bond. The secretary shall, upon receipt of any deposit of
29 cash, securities or certificates, promptly place the same with the Treasurer of the state of West
30 Virginia whose duty it is to receive and hold the deposit in the name of the state in trust for the
31 purpose for which the deposit is made when the permit is issued. The operator making the deposit
32 is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the
33 secretary, the whole or any portion of any cash, securities or certificates so deposited, upon
34 depositing with him or her in lieu thereof cash or other securities or certificates of the classes
35 specified in this subsection having value equal to or greater than the sum of the bond.

36 (2) The secretary may approve an alternative bonding system if it will: (A) Reasonably
37 assure that sufficient funds will be available to complete the reclamation, restoration and

38 abatement provisions for all permit areas which may be in default at any time; and (B) provide a
39 substantial economic incentive for the permittee to comply with all reclamation provisions.

40 (d) The secretary may accept the bond of the applicant itself without separate surety when
41 the applicant demonstrates to the satisfaction of the secretary the existence of a suitable agent
42 to receive service of process and a history of financial solvency and continuous operation
43 sufficient for authorization to self insure.

44 (e) It is unlawful for the owner of surface or mineral rights to interfere with the present
45 operator in the discharge of the operator's obligations to the state for the reclamation of lands
46 disturbed by the operator.

47 (f) All bond releases shall be accomplished in accordance with the provisions of section
48 twenty-three of this article.

49 (g)(1) The Special Reclamation Fund previously created is continued. The Special
50 Reclamation Water Trust Fund is created within the state treasury into and from which moneys
51 shall be paid for the purpose of assuring a reliable source of capital ~~to reclaim and restore water~~
52 ~~treatment systems on forfeited sites~~ and operating expenses for the treatment of water discharges
53 from forfeited sites where the secretary has obtained or applied for an NPDES permit as of the
54 effective date of this article. The moneys accrued in both funds, any interest earned thereon and
55 yield from investments by the State Treasurer or West Virginia Investment Management Board
56 are reserved solely and exclusively for the purposes set forth in this section and section
57 seventeen, article one of this chapter.

58 (2) The funds shall be administered by the secretary who is authorized to expend the
59 moneys in both funds for the reclamation and rehabilitation of lands which were subjected to
60 permitted surface mining operations and abandoned after August 3, 1977, where the amount of
61 the bond posted and forfeited on the land is less than the actual cost of reclamation, and where
62 the land is not eligible for abandoned mine land reclamation funds under article two of this chapter.
63 ~~The secretary shall develop a long range planning process for selection and prioritization of sites~~

64 ~~to be reclaimed so as to avoid inordinate short term obligations of the assets in both funds of such~~
65 ~~magnitude that the solvency of either is jeopardized. The secretary may use both funds for the~~
66 ~~purpose of designing, constructing and maintaining water treatment systems when they are~~
67 ~~required for a complete reclamation of the affected lands described in this subsection. The~~
68 secretary may also expend an amount not to exceed ten percent of the total annual assets in both
69 funds to implement and administer the provisions of this article and, as they apply to the Surface
70 Mine Board, articles one and four, chapter twenty-two-b of this code.

71 (2) (3)(A) A tax credit shall be granted against the tax imposed by subsection (i) of this
72 section to any mine operator who performs reclamation or remediation at a bond forfeiture site
73 which otherwise would have been reclaimed using funds from the Special Reclamation Fund or
74 Special Reclamation Water Trust Fund. The credit authorized pursuant to this subdivision is
75 retroactive and may be claimed for reclamation or remediation performed on or after January 1,
76 2012: *Provided*, That for reclamation or remediation performed prior to July 13, 2013, no tax credit
77 may be granted unless a written application for the tax credit was submitted to the Tax
78 Commissioner prior to September 1, 2014. The amount of credit shall be determined as provided
79 in this section.

80 (B) The amount of a reclamation tax credit granted under this subsection shall be equal to
81 the amount that the Tax Commissioner determines, based on the project costs, as shown in the
82 records of the secretary, that would have been spent from the Special Reclamation Fund or
83 Special Reclamation Water Trust Fund to accomplish the reclamation or remediation performed
84 by the mine operator, including expenditures for water treatment.

85 (C) To claim the credit, the mine operator shall, from time to time, file with the Tax
86 Commissioner a written application seeking the amount of the credit earned. Within thirty days of
87 receipt of the application, the Tax Commissioner shall issue a certification of the amount of tax
88 credit, if any, to be allocated to the eligible taxpayer. Should the amount of the credit certified be
89 less than the amount applied for, the Tax Commissioner shall set forth in writing the reason for

90 the difference. Should no certification be issued within the thirty-day period, the application will be
91 deemed certified. Any decision by the Tax Commissioner is appealable pursuant to the provisions
92 of the West Virginia Tax Procedure and Administration Act set forth in article ten, chapter eleven
93 of the code. Applications for certification of the proposed tax credit shall contain the information
94 and be in the detail and form as required by the Tax Commissioner.

95 (h) The Tax Commissioner may promulgate rules for legislative approval pursuant to the
96 provisions of article three, chapter twenty-nine-a of this code to carry out the purposes of this
97 subdivision two, subsection (g) of this section.

98 (i)(1) Rate, deposits and review.

99 (A) For tax periods commencing on and after July 1, 2009, every person conducting coal
100 surface mining shall remit a special reclamation tax of fourteen and four-tenths cents per ton of
101 clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the
102 Special Reclamation Fund and the Special Reclamation Water Trust Fund.

103 (B) For tax periods commencing on and after July 1, 2012, the rate of tax specified in
104 paragraph (A) of this subdivision is discontinued and is replaced by the rate of tax specified in this
105 paragraph. For tax periods commencing on and after July 1, 2012, every person conducting coal
106 surface mining shall remit a special reclamation tax of twenty-seven and nine-tenths cents per
107 ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in
108 the Special Reclamation Fund and the Special Reclamation Water Trust Fund. Of that amount,
109 fifteen cents per ton of clean coal mined shall be deposited into the Special Reclamation Water
110 Trust Fund.

111 (C) The tax shall be levied upon each ton of clean coal severed or clean coal obtained
112 from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a
113 combination of coal and waste material as part of a fuel supply.

114 (D) Beginning with the tax period commencing on July 1, 2009, and every two years
115 thereafter, the special reclamation tax shall be reviewed by the Legislature to determine whether

116 the tax should be continued: *Provided*, That the tax may not be reduced until the Special
117 Reclamation Fund and Special Reclamation Water Trust Fund have sufficient moneys to meet
118 the reclamation responsibilities of the state established in this section.

119 (2) In managing the special reclamation program, the secretary shall: (A) Pursue cost-
120 effective alternative water treatment strategies; and (B) conduct formal actuarial studies every two
121 years and conduct informal reviews annually on the Special Reclamation Fund and Special
122 Reclamation Water Trust Fund.

123 (3) Prior to December 31, 2008, the secretary shall:

124 (A) Determine the feasibility of creating an alternate program, on a voluntary basis, for
125 financially sound operators by which those operators pay an increased tax into the Special
126 Reclamation Fund in exchange for a maximum per-acre bond that is less than the maximum
127 established in subsection (a) of this section;

128 (B) Determine the feasibility of creating an incremental bonding program by which
129 operators can post a reclamation bond for those areas actually disturbed within a permit area, but
130 for less than all of the proposed disturbance and obtain incremental release of portions of that
131 bond as reclamation advances so that the released bond can be applied to approved future
132 disturbance; and

133 (C) Determine the feasibility for sites requiring water reclamation by creating a separate
134 water reclamation security account or bond for the costs so that the existing reclamation bond in
135 place may be released to the extent it exceeds the costs of water reclamation.

136 (4) If the secretary determines that the alternative program, the incremental bonding
137 program or the water reclamation account or bonding programs reasonably assure that sufficient
138 funds will be available to complete the reclamation of a forfeited site and that the Special
139 Reclamation Fund will remain fiscally stable, the secretary is authorized to propose legislative
140 rules in accordance with article three, chapter twenty-nine-a of this code to implement an alternate

141 program, a water reclamation account or bonding program or other funding mechanisms or a
142 combination thereof.

143 (j) This special reclamation tax shall be collected by the Tax Commissioner in the same
144 manner, at the same time and upon the same tonnage as the minimum severance tax imposed
145 by article twelve-b, chapter eleven of this code is collected: *Provided*, That under no circumstance
146 shall the special reclamation tax be construed to be an increase in either the minimum severance
147 tax imposed by said article or the severance tax imposed by article thirteen of said chapter.

148 (k) Every person liable for payment of the special reclamation tax shall pay the amount
149 due without notice or demand for payment.

150 (l) The Tax Commissioner shall provide to the secretary a quarterly listing of all persons
151 known to be delinquent in payment of the special reclamation tax. The secretary may take the
152 delinquencies into account in making determinations on the issuance, renewal or revision of any
153 permit.

154 (m) The Tax Commissioner shall deposit the moneys collected with the Treasurer of the
155 State of West Virginia to the credit of the Special Reclamation Fund and Special Reclamation
156 Water Trust Fund.

157 (n) At the beginning of each quarter, the secretary shall advise the Tax Commissioner and
158 the Governor of the assets, excluding payments, expenditures and liabilities, in both funds.

159 (o) To the extent that this section modifies any powers, duties, functions and
160 responsibilities of the department that may require approval of one or more federal agencies or
161 officials in order to avoid disruption of the federal-state relationship involved in the implementation
162 of the federal Surface Mining Control and Reclamation Act, 30 U. S. C. §1270 by the state, the
163 modifications will become effective upon the approval of the modifications by the appropriate
164 federal agency or official.

§22-3-13a. Preblast survey requirements.

1 (a) At least thirty days prior to commencing blasting, as defined in section twenty-two-a of
2 this article, an operator or an operator's designee shall make the following notifications in writing

3 to all owners and occupants of man-made dwellings or structures that the operator or operator's
4 designee will perform preblast surveys in accordance with subsection (f) (e) of this section:

5 (1) For surface mining operations ~~that are less than two hundred acres in a single~~
6 ~~permitted area or less than three hundred acres of contiguous or nearly contiguous area of two~~
7 ~~or more permitted areas~~ the required notifications shall be to all owners and occupants of man-
8 made dwellings or structures within ~~five tenths of a mile~~ one-half mile of the permitted area or
9 areas; and

10 ~~(2) For all other surface mining operations, the required notifications shall be to all owners~~
11 ~~and occupants of man-made dwellings or structures within five tenths of a mile of the permitted~~
12 ~~area or areas or seven tenths of a mile of the proposed blasting site, whichever is greater; and~~

13 ~~(3)~~ (2) For blasting associated with permitted surface disturbance of underground mines
14 and blasting associated with specified construction, including but not limited to, haul roads, shafts,
15 and/or drainage structures, the operator may send a written request to the secretary asking that
16 the required notifications shall be limited to all owners and occupants of man-made dwellings or
17 structures within ~~five tenths of a mile~~ one-half mile of the ~~permitted surface area or areas~~ proposed
18 blasting area.

19 ~~(b) Any operator identified in subdivision (2), subsection (a) of this section that has already~~
20 ~~completed preblast surveys for man-made dwellings or structures within five tenths of a mile of~~
21 ~~the permit area and has commenced operations by the effective date of this section shall notify in~~
22 ~~writing all additional owners and occupants of man-made dwellings or structures within seven~~
23 ~~tenths of a mile of the proposed blasting site. Except for those dwellings or structures for which~~
24 ~~the operator secures a written waiver or executes an affidavit in accordance with the requirements~~
25 ~~of subsection (c) of this section, the operator or the operator's designee must perform the~~
26 ~~additional preblast surveys in accordance with subsection (f) of this section~~

27 ~~(c)~~(b) An occupant or owner of a man-made dwelling or structure within the areas
28 described in subdivision (1) or (2), subsection (a) of this section may waive the right to a preblast

29 survey in writing. ~~If a dwelling is occupied by a person other than the owner, both the owner and~~
30 ~~the occupant must waive the right to a preblast survey in writing.~~ If an occupant or owner of a
31 man-made dwelling or structure refuses to allow the operator or the operator's designee access
32 to the dwelling or structure and refuses to waive in writing the right to a preblast survey or to the
33 extent that access to any portion of the structure, underground water supply or well is impossible
34 or impractical under the circumstances, the preblast survey shall indicate that access was
35 refused, impossible or impractical. The operator or the operator's designee shall execute a sworn
36 affidavit explaining the reasons and circumstances surrounding the refusals. ~~The Division of~~
37 ~~Mining and Reclamation~~ secretary may not determine the preblast survey to be incomplete
38 because it indicates that access to a particular structure, underground water supply or well was
39 refused, impossible or impractical. The operator shall send copies of all written waivers and
40 affidavits executed pursuant to this subsection to the ~~Division of Mining and Reclamation~~
41 secretary.

42 ~~(d)(c)~~ If a preblast survey was waived by the owner and was within the requisite area and
43 the property was sold, the new owner may request a preblast survey from the operator.

44 ~~(e)(d)~~ An owner within the requisite area may request, from the operator, a preblast survey
45 on structures constructed after the original preblast survey.

46 ~~(f)(e)~~ The preblast survey shall include:

47 (1) The names, addresses or description of structure location and telephone numbers of
48 the owner and the residents of the structure being surveyed and the structure number from the
49 permit blasting map;

50 (2) The current home insurer of the owner and the residents of the structure;

51 (3) The names, addresses and telephone numbers of the surface mining operator and the
52 permit number;

53 (4) The current general liability insurer of the surface mining operator;

54 (5) The name, address and telephone number of the person or firm performing the preblast
55 survey;

56 (6) The current general liability insurer of the person or firm performing the preblast survey;

57 (7) The date of the preblast survey and the date it was mailed or delivered to the ~~Division~~
58 ~~of Mining and Reclamation~~ secretary;

59 (8) A general description of the structure and its appurtenances, including, but not limited
60 to: (A) The number of stories; (B) the construction materials for the frame and the exterior and
61 interior finish; (C) the type of construction including any unusual or substandard construction; and
62 (D) the approximate age of the structure;

63 (9) A general description of the survey methods and the direction of progression of the
64 survey, including a key to abbreviations used;

65 (10) Written documentation and drawings, videos or photographs of the preblast defects
66 and other physical conditions of all structures, appurtenances and water sources which could be
67 affected by blasting;

68 (11) Written documentation and drawings, videos or photographs of the exterior and
69 interior of the structure to indicate preblast defects and condition;

70 (12) Written documentation and drawings, videos or photographs of the exterior and
71 interior of any appurtenance of the structure to indicate preblast defects and condition;

72 (13) Sufficient exterior and interior photographs or videos, using a variety of angles, of the
73 structure and its appurtenances to indicate preblast defects and the condition of the structure and
74 appurtenances;

75 (14) Written documentation and drawings, videos or photographs of any unusual or
76 substandard construction technique and materials used on the structure or its appurtenances or
77 both structure and appurtenances;

78 (15) Written documentation relating to the type of water supply, including a description of
79 the type of system and treatment being used, an analysis of untreated water supplies, a water

80 analysis of water supplies other than public utilities and information relating to the quantity and
81 quality of water;

82 (16) When the water supply is a well, written documentation, where available, relating to
83 the type of well; the well log; the depth, age and type of casing or lining; the static water level;
84 flow data; the pump capacity; the drilling contractor; and the source or sources of the
85 documentation;

86 (17) A description of any portion of the structure and appurtenances not documented or
87 photographed and the reasons;

88 (18) The signature of the person performing the survey; and

89 (19) Any other information required by the secretary which additional information shall be
90 established by rule in accordance with article three, chapter twenty-nine-a of this code.

91 ~~(g) (f) Except for additional preblast surveys prepared within one hundred twenty days of~~
92 ~~the effective date of this section, pursuant to subsection (b) of this section, the The preblast survey~~
93 ~~shall be submitted to the Division of Mining and Reclamation secretary at least fifteen days prior~~
94 ~~to the commencement of any production blasting. The Division of Mining and Reclamation~~
95 ~~secretary shall review each preblast survey as to form and completeness only and notify the~~
96 ~~operator of any deficiencies: *Provided*, That once all required surveys have been reviewed and~~
97 ~~accepted by the Division of Mining and Reclamation secretary, blasting may commence sooner~~
98 ~~than fifteen days after submittal. The Division of Mining and Reclamation secretary shall provide~~
99 ~~a copy of the preblast survey to the owner or occupant.~~

100 ~~(h) The surface mining operator shall file notice of the preblast survey or the waiver in the~~
101 ~~office of the county clerk of the county commission of the county where the man-made dwelling~~
102 ~~or structure is located to notify the public that a preblast survey has been conducted or waived.~~
103 ~~The notice shall be on a form prescribed by the Division of Mining and Reclamation~~

104 (†) (g) The secretary shall propose rules for legislative approval in accordance with article
105 three, chapter twenty-nine-a of this code dealing with preblast survey requirements and setting
106 the qualifications for individuals and firms performing preblast surveys.

107 (†) (h) The provisions of this section do not apply to the extraction of minerals by
108 underground mining methods.

**§22-3-23. Release of bond or deposits; application; notice; duties of secretary; public
hearings; final maps on grade release.**

1 (a) The permittee may file a request with the secretary for the release of a bond or deposit.
2 The permittee shall publish an advertisement regarding the request for release in the same
3 manner as is required of advertisements for permit applications. A copy of the advertisement shall
4 be submitted to the secretary as part of any bond release application and shall contain a
5 notification of the precise location of the land affected, the number of acres, the permit and the
6 date approved, the amount of the bond filed and the portion sought to be released, the type and
7 appropriate dates of reclamation work performed and a description of the results achieved as they
8 relate to the permittee's approved reclamation plan. In addition, as part of any bond release
9 application, the permittee shall submit copies of letters which the permittee has sent to adjoining
10 property owners, local government bodies, planning agencies, sewage and water treatment
11 authorities or water companies in the locality in which the surface mining operation is located,
12 notifying them of the permittee's intention to seek release from the bond. Any request for grade
13 release shall also be accompanied by final maps.

14 (b) Upon receipt of the application for bond release, the secretary, within thirty days, taking
15 into consideration existing weather conditions, shall conduct an inspection and evaluation of the
16 reclamation work involved. The evaluation shall consider, among other things, the degree of
17 difficulty to complete any remaining reclamation, whether pollution of surface and subsurface
18 water is occurring, the probability of continuance or future occurrence of the pollution and the
19 estimated cost of abating the pollution. The secretary shall notify the permittee in writing of his or

20 her decision to release or not to release all or part of the bond or deposit within sixty days from
21 the date of the initial publication of the advertisement if no public hearing is requested. If a public
22 hearing is held, the secretary's decision shall be issued within thirty days thereafter.

23 (c) If the secretary is satisfied that reclamation covered by the bond or deposit or portion
24 thereof has been accomplished as required by this article, he or she may release the bond or
25 deposit, in whole or in part, according to the following schedule:

26 ~~(1) For all operations except those with an approved variance from approximate original~~
27 ~~contour:~~

28 ~~(A) (1) When the operator completes the backfilling, regrading and drainage control of a~~
29 ~~bonded area in accordance with the operator's approved reclamation plan, the release of sixty~~
30 ~~percent of the bond or collateral for the applicable bonded area. *Provided, That a minimum bond*~~
31 ~~of \$10,000 shall be retained after grade release;~~

32 ~~(B) Two years after the last augmented seeding, fertilizing, irrigation or other work to~~
33 ~~ensure compliance with subdivision (19), subsection (b), section thirteen of this article, the release~~
34 ~~of an additional twenty five percent of the bond or collateral for the applicable bonded area:~~
35 ~~*Provided, That a minimum bond of \$10,000 shall be retained after the release provided for in this*~~
36 ~~subdivision; and~~

37 (2) After revegetation has been established on the regraded mined lands in accordance
38 with the approved reclamation plan. When determining the amount of bond to be released after
39 successful revegetation has been established, the secretary shall retain that amount of bond for
40 the revegetated area which would be sufficient for a third party to cover the cost of reestablishing
41 revegetation and for the period specified for operator responsibility in section thirteen of this
42 article. No part of the bond or deposit shall be released under this subsection so long as the lands
43 to which the release would be applicable are contributing suspended solids to streamflow or runoff
44 outside the permit area in excess of the requirements set by subdivision (10), subsection (b),
45 section thirteen of this article or until soil productivity for prime farm lands has returned to

46 equivalent levels of yield as nonmined land of the same soil type in the surrounding area under
47 equivalent management practices as determined from the soil survey performed pursuant to
48 subdivision (15), subsection (a), section nine of this article. Where a silt dam is to be retained as
49 a permanent impoundment pursuant to subdivision (8), subsection (b), section thirteen of this
50 article, the portion of bond may be released under this subdivision so long as provisions for sound
51 future maintenance by the operator or the landowner have been made with the secretary.

52 ~~(C) When the operator has completed successfully all surface mining and reclamation~~
53 ~~activities, the release of the remaining portion of the bond, but not before the expiration of the~~
54 ~~period specified in subdivision (20), subsection (b), section thirteen of this article: *Provided*, That~~
55 ~~the revegetation has been established on the regraded mined lands in accordance with the~~
56 ~~approved reclamation plan: *Provided, however*,~~

57 (3) When the operator has completed successfully all surface coal mining and reclamation
58 activities, the release of the remaining portion of the bond, but not before the expiration of the
59 period specified for operator responsibility in section thirteen of this article: *Provided*, That no
60 bond shall be fully released until all reclamation requirements of this article are fully met: *Provided*,
61 *however*, That the release may be made where the quality of the untreated post-mining water
62 discharged is better than or equal to the premining water quality discharged from the mining site
63 where expressly authorized by legislative rule promulgated pursuant to section three, article one
64 of this chapter.

65 ~~(2) For operations with an approved variance from approximate original contour:~~

66 ~~(A) When the operator completes the backfilling, regrading and drainage control of a~~
67 ~~bonded area in accordance with the operator's approved reclamation plan, the release of fifty~~
68 ~~percent of the bond or collateral for the applicable bonded area: *Provided*, That a minimum bond~~
69 ~~of \$10,000 shall be retained after grade release;~~

70 ~~(B) Two years after the last augmented seeding, fertilizing, irrigation or other work to~~
71 ~~ensure compliance with subdivision (19), subsection (b), section thirteen of this article, the release~~

72 ~~of an additional ten percent of the bond or collateral for the applicable bonded area: *Provided,*~~
73 ~~That a minimum bond of \$10,000 shall be retained after the release provided for in this~~
74 ~~subdivision; and~~

75 ~~(C) When the operator has completed successfully all surface mining and reclamation~~
76 ~~activities, the release of the remaining portion of the bond, but not before the expiration of the~~
77 ~~period specified in subdivision (20), subsection (b), section thirteen of this article: *Provided,* That~~
78 ~~the revegetation has been established on the regraded mined lands in accordance with the~~
79 ~~approved reclamation plan and if applicable the necessary post-mining infrastructure is~~
80 ~~established and any necessary financing is completed: *Provided, however,* That the release may~~
81 ~~be made where the quality of the untreated post-mining water discharged is better than or equal~~
82 ~~to the premining water quality discharged from the mining site where expressly authorized by~~
83 ~~legislative rule promulgated pursuant to section three, article one of this chapter.~~

84 ~~No part of the bond or deposit may be released under this subsection so long as the lands~~
85 ~~to which the release would be applicable are contributing additional suspended solids to~~
86 ~~streamflow or runoff outside the permit area in excess of the requirements set by section thirteen~~
87 ~~of this article, or until soil productivity for prime farmlands has returned to equivalent levels of yield~~
88 ~~as nonmined land of the same soil type in the surrounding area under equivalent management~~
89 ~~practices as determined from the soil survey performed pursuant to section nine of this article.~~
90 ~~Where a sediment dam is to be retained as a permanent impoundment pursuant to section~~
91 ~~thirteen of this article, or where a road or minor deviation is to be retained for sound future~~
92 ~~maintenance of the operation, the portion of the bond may be released under this subsection so~~
93 ~~long as provisions for sound future maintenance by the operator or the landowner have been~~
94 ~~made with the secretary.~~

95 ~~Notwithstanding the bond release scheduling provisions of subdivisions (1) and (2) of this~~
96 ~~subsection, if the operator completes the backfilling and reclamation in accordance with an~~
97 ~~approved post-mining land use plan that has been approved by the Department of Environmental~~

98 ~~Protection and accepted by a local or regional economic development or planning agency for the~~
99 ~~county or region in which the operation is located, provisions for sound future maintenance are~~
100 ~~assured by the local or regional economic development or planning agency, and the quality of~~
101 ~~any untreated post-mining water discharge complies with applicable water quality criteria for bond~~
102 ~~release, the secretary may release the entire amount of the bond or deposit. The secretary shall~~
103 ~~propose rules for legislative approval in accordance with the provisions of article three, chapter~~
104 ~~twenty nine a of this code to govern a bond release pursuant to the terms of this paragraph.~~

105 (d) If the secretary disapproves the application for release of the bond or portion thereof,
106 the secretary shall notify the permittee, in writing, stating the reasons for disapproval and
107 recommending corrective actions necessary to secure the release and notifying the operator of
108 the right to a hearing.

109 (e) When any application for total or partial bond release is filed with the secretary, he or
110 she shall notify the municipality in which a surface-mining operation is located by registered or
111 certified mail at least thirty days prior to the release of all or a portion of the bond.

112 (f) Any person with a valid legal interest which is or may be adversely affected by release
113 of the bond or the responsible officer or head of any federal, state or local governmental agency
114 which has jurisdiction by law or special expertise with respect to any environmental, social or
115 economic impact involved in the operation, or is authorized to develop and enforce environmental
116 standards with respect to the operations, has the right to file written objections to the proposed
117 bond release and request a hearing with the secretary within thirty days after the last publication
118 of the permittee's advertisement. If written objections are filed and a hearing requested, the
119 secretary shall inform all of the interested parties of the time and place of the hearing and shall
120 hold a public hearing in the locality of the surface-mining operation proposed for bond release
121 within three weeks after the close of the public comment period. The date, time and location of
122 the public hearing shall also be advertised by the secretary in a newspaper of general circulation
123 in the same locality.

124 (g) Without prejudice to the rights of the objectors, the applicant, or the responsibilities of
125 the secretary pursuant to this section, the secretary may hold an informal conference to resolve
126 any written objections and satisfy the hearing requirements of this section thereby.

127 (h) For the purpose of the hearing, the secretary has the authority and is hereby
128 empowered to administer oaths, subpoena witnesses and written or printed materials, compel the
129 attendance of witnesses, or production of materials, and take evidence, including, but not limited
130 to, inspections of the land affected and other surface-mining operations carried on by the applicant
131 in the general vicinity. A verbatim record of each public hearing required by this section shall be
132 made and a transcript made available on the motion of any party or by order of the secretary at
133 the cost of the person requesting the transcript.

134 (i) The secretary shall propose rules for legislative approval during the 2018 regular
135 session of the Legislature in accordance with the provisions of article three, chapter twenty-nine-
136 a of the code and revisions to the Legislative Rule entitled West Virginia Surface Mining
137 Reclamation Rule, Title 38, Series 2 of the West Virginia Code of State Rules, to implement the
138 revisions to this article made during the 2017 legislative session. The secretary shall specifically
139 consider the adoption of corresponding federal standards codified at 30 C. F. R. 700 et. seq.

**ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION;
ENFORCEMENT.**

§22-6-24. Methods of plugging well.

1 Upon the abandonment or cessation of the operation of any well drilled for natural gas or
2 petroleum, or drilled or converted for the introduction of pressure, whether liquid or gas, or for the
3 introduction of liquid for the purposes provided for in section twenty-five of this article or for the
4 disposal of pollutants or the effluent therefrom the well operator, at the time of such abandonment
5 or cessation, shall fill and plug the well in the following manner:

6 (a) Where the well does not penetrate workable coal beds, it shall either be filled with mud,
7 clay or other nonporous material from the bottom of the well to a point twenty feet above the top
8 of its lowest oil, gas or water-bearing stratum; or a permanent bridge shall be anchored thirty feet
9 below its lowest oil, gas or water-bearing stratum, and from such bridge it shall be filled with mud,
10 clay or other nonporous material to a point twenty feet above such stratum; at this point there
11 shall be placed a plug of cement or other suitable material which will completely seal the hole.
12 Between this sealing plug and a point twenty feet above the next higher oil, gas or water-bearing
13 stratum, the hole shall be filled, in the manner just described; and at such point there shall be
14 placed another plug of cement or other suitable material which will completely seal the hole. In
15 like manner the hole shall be filled and plugged, with reference to each of its oil, gas or water-
16 bearing strata. However, whenever such strata are not widely separated and are free from water,
17 they may be grouped and treated as a single sand, gas or petroleum horizon, and the aforesaid
18 filling and plugging be performed as though there were but one horizon. After the plugging of all
19 oil, gas or water-bearing strata, as aforesaid, a ~~final~~ cement plug shall be placed approximately
20 ten feet below the bottom of the largest casing in the well; from this point to the surface the well
21 shall be filled with mud, clay or other nonporous material, except that a final cement plug shall be
22 installed from a point one hundred feet below the surface to the surface. In case any of the oil or
23 gas-bearing strata in a well shall have been shot, thereby creating cavities which cannot readily
24 be filled in the manner above described, the well operator shall follow either of the following
25 methods:

26 (1) Should the stratum which has been shot be the lowest one in the well, there shall be
27 placed, at the nearest suitable point, but not less than twenty feet above the stratum, a plug of
28 cement or other suitable material which will completely seal the hole. In the event, however, that
29 the shooting has been done above one or more oil or gas-bearing strata in the well, plugging in
30 the manner specified shall be done at the nearest suitable point, but not less than twenty feet
31 below and above the stratum shot; or

32 (2) When such cavity shall be in the lowest oil or gas-bearing stratum in the well, a liner
33 shall be placed which shall extend from below the stratum to a suitable point, but not less than
34 twenty feet above the stratum in which shooting has been done. In the event, however, that the
35 shooting has been done above one or more oil or gas-bearing strata in the well, the liner shall be
36 so placed that it will extend not less than twenty feet above, nor less than twenty feet below, the
37 stratum in which shooting has been done. Following the placing of the liner in the manner here
38 specified it shall be compactly filled with cement, mud, clay or other nonporous sealing material.

39 (b) Where the well penetrates one or more workable coal beds and a coal protection string
40 of casing has been circulated and cemented into the surface, the well shall be filled and securely
41 plugged in the manner provided in subdivision (a) of this section, except that expanding cement
42 shall be used instead of regular hydraulic cement, to a point approximately one hundred feet
43 below the bottom of the coal protection string of casing. From the point the well shall be plugged
44 according to the provisions in paragraph (1) or (2) below:

45 (1) A two hundred foot plug of expanding cement shall be placed in the well. From this
46 point, the well shall be filled with mud, clay or other nonporous material to a point one hundred
47 feet below the surface and a plug of cement shall be placed from the point one hundred feet below
48 the surface to the surface with a monument installed therein extending thirty inches above ground
49 level.

50 (2) A one hundred foot plug of expanding cement shall then be placed in the well so that
51 the top of such plug is located at a point just below the coal protection string of casing. After such
52 plug has been securely placed in the well, the coal protection string of casing shall be emptied of
53 liquid from the surface to a point one hundred feet below the lowest workable coal bed or to the
54 bottom of the coal protection string of casing, whichever is shallower. A vent or other device
55 approved by the ~~director~~ secretary shall then be installed on the top of the coal protection string
56 of casing in such a manner that will prevent liquids and solids from entering the well but will permit
57 ready access to the full internal diameter of the coal protection string of casing when required.

58 The coal protection string of casing and the vent or other device approved by the ~~director~~ secretary
59 shall extend, when finally in place, a distance of not less than thirty inches above ground level
60 and shall be permanently marked with the well number assigned by the ~~director~~ secretary;

61 (c) Where the well penetrates one or more workable coal beds and a coal protection string
62 of casing has not been circulated and cemented ~~in to~~ into the surface, the well shall be filled and
63 securely plugged in the manner provided in subsection (a) of this section to a point fifty feet below
64 the lowest workable coal bed. Thereafter, a plug of cement shall be placed in the well at a point
65 not less than forty feet below the lowest workable coal bed. After the cement plug has been
66 securely placed in the well, the well shall be filled with cement to a point twenty feet above the
67 lowest workable coal bed. From this point the well shall be filled with mud, clay or other nonporous
68 material to a point forty feet beneath the next overlying workable coal bed, if such there be, and
69 the well shall then be filled with cement from this point to a point twenty feet above such workable
70 coal bed, and similarly, in case there are more overlying workable coal beds. After the filling and
71 plugging of the well to a point above the highest workable coal bed, filling and plugging of the well
72 shall continue in the manner provided in subsection (a) of this section to a point ~~ifty~~ one hundred
73 feet below the surface, and a plug of cement shall be installed from the point ~~ifty~~ one hundred
74 feet below the surface to the surface with a monument installed therein extending thirty inches
75 above ground level;

76 (d)(1) Where the well penetrates one or more workable coal beds and a coal protection
77 string of casing has not been circulated and cemented into the surface, a coal operator or coal
78 seam owner may request that the well be plugged in the manner provided in subdivision (3) of
79 this subsection rather than by the method provided in subsection (c) of this section. Such request
80 (forms for which shall be provided by the ~~director~~ secretary) must be filed in writing with the
81 ~~director~~ secretary prior to the scheduled plugging of the well, and must include the number of the
82 well to be plugged and the name and address of the well operator. At the time such request is

83 filed with the ~~director~~ secretary, a copy of such request must also be mailed by registered or
84 certified mail to the well operator named in the request.

85 (2) Upon receipt of such request, the ~~director~~ secretary shall issue an order staying the
86 plugging of the well and shall promptly determine the cost of plugging the well in the manner
87 provided in subdivision (3) of this subsection and the cost of plugging the well in the manner
88 provided in subsection (c) of this section. In making such determination, the ~~director~~ secretary
89 shall take into consideration any agreement previously made between the well operator and the
90 coal operator or coal seam owner making the request. If the ~~director~~ secretary determines that
91 the cost of plugging the well in the manner provided in subsection (c) of this section exceeds the
92 cost of plugging the well in the manner provided in subdivision (3) of this subsection, the ~~director~~
93 secretary shall grant the request of the coal operator or owner and shall issue an order requiring
94 the well operator to plug the well in the manner provided in subdivision (3) of this subsection. If
95 the ~~director~~ secretary determines that the cost of plugging the well in the manner provided in
96 subsection (c) of this section is less than the cost of plugging the well in the manner provided in
97 subdivision (3) of this subsection, the ~~director~~ secretary shall request payment into escrow of the
98 difference between the determined costs by the coal operator or coal seam owner making the
99 request. Upon receipt of satisfactory notice of such payment, or upon receipt of notice that the
100 well operator has waived such payment, the ~~director~~ secretary shall grant the request of the coal
101 operator or coal seam owner and shall issue an order requiring the well operator to plug the well
102 in the manner provided in subdivision (3) of this subsection. If satisfactory notice of payment into
103 escrow, or notice that the well operator has waived such payment, is not received by the ~~director~~
104 secretary within fifteen days after the request for payment into escrow, the ~~director~~ secretary shall
105 issue an order permitting the plugging of the well in the manner provided in subsection (c) of this
106 section. Copies of all orders issued by the ~~director~~ secretary shall be sent by registered or certified
107 mail to the coal operator or coal seam owner making the request and to the well operator. When
108 the escrow agent has received certification from the ~~director~~ secretary of the satisfactory

109 completion of the plugging work and the reimbursable extra cost thereof (that is, the difference
110 between the ~~director's~~ secretary's determination of plugging cost in the manner provided in
111 subsection (c) of this section and the well operator's actual plugging cost in the manner provided
112 in subdivision (3) of this subsection), the escrow agent shall pay the reimbursable sum to the well
113 operator or the well operator's nominee from the payment into escrow to the extent available. The
114 amount by which the payment into escrow exceeds the reimbursable sum plus the escrow agent's
115 fee, if any, shall be repaid to the coal owner. If the amount paid to the well operator or the well
116 operator's nominee is less than the actual reimbursable sum, the escrow agent shall inform the
117 coal owner, who shall pay the deficiency to the well operator or the well operator's nominee within
118 thirty days. If the coal operator breaches this duty to pay the deficiency, the well operator shall
119 have a right of action and be entitled to recover damages as if for wrongful conversion of
120 personality, and reasonable attorney fees.

121 (3) Where a request of a coal operator or coal seam owner filed pursuant to subdivision
122 (1) of this subsection has been granted by the ~~director~~ secretary, the well shall be plugged in the
123 manner provided in subsection (a) of this section, except that expanding cement shall be used
124 instead of regular hydraulic cement, to a point approximately two hundred feet below the lowest
125 workable coal bed. A one hundred foot plug of expanding cement shall then be placed in the well
126 beginning at the point approximately two hundred feet below the lowest workable coal bed and
127 extending to a point approximately one hundred feet below the lowest workable coal bed. A string
128 of casing with an outside diameter no less than four and one-half inches shall then be run into the
129 well to a point approximately one hundred feet below the lowest workable coal bed and such
130 string of casing shall be circulated and cemented ~~in to~~ into the surface. The casing shall then be
131 emptied of liquid from a point approximately one hundred feet below the lowest workable coal bed
132 to the surface, and a vent or other device approved by the ~~director~~ secretary shall be installed on
133 the top of the string of casing in such a manner that it will prevent liquids and solids from entering
134 the well but will permit ready access to the full internal diameter of the coal protection string of

135 casing when required. The string of casing and the vent or other device approved by the ~~director~~
136 secretary shall extend, when finally in place, a distance of no less than thirty inches above ground
137 level and shall be permanently marked with the well number assigned by the ~~director~~secretary.
138 Notwithstanding the foregoing provisions of this subdivision, if under particular circumstances a
139 different method of plugging is required to obtain the approval of another governmental agency
140 for the safe mining through of said well, the ~~director~~ secretary may approve such different method
141 of plugging if ~~the director~~ he or she finds the same to be as safe for mining through and otherwise
142 adequate to prevent gas or other fluid migration from the oil and gas reservoirs as the method
143 above specified.

144 (e) Notwithstanding anything in this section to the contrary, where the well to be plugged
145 is an abandoned well that has no known responsible party and the well operator is also a coal
146 operator that intends to mine through the well, the well shall, at a minimum, be plugged as
147 provided in subdivisions (1) and (2) of this subsection.

148 (1) The well will be cleaned out and prepared for plugging or replugging as follows:

149 (A) If the total depth of the well is less than four thousand feet, the operator shall
150 completely clean out the well from the surface to at least two hundred feet below the base of the
151 lowest workable coal bed, but the secretary may require cleaning to a greater depth due to
152 excessive pressure within the well. If the total depth of the well is four thousand feet or greater,
153 the operator shall completely clean out the well from the surface to at least four hundred feet
154 below the base of the lowest workable coal bed. The operator shall provide to the secretary all
155 information it possesses concerning the geological nature of the strata and the pressure of the
156 well, and shall remove all material from the entire diameter of the well, wall to wall;

157 (B) The operator shall prepare down-hole logs for each well. The logs shall consist of a
158 caliper survey and log(s) suitable for determining the top, bottom, and thickness of all coal seams
159 and potential hydrocarbon-producing strata, as well as the location for a bridge plug. The
160 secretary may approve the use of a down-hole camera survey in lieu of down-hole logs. In

161 addition, the owner shall maintain a journal that describes the depth of each material encountered;
162 the nature of each material encountered; the bit size and type used to drill each portion of the
163 hole; the length and type of each material used to plug the well; the length of casing(s) removed,
164 perforated or ripped, or left in place; any sections where casing was cut or milled; and any other
165 pertinent information concerning cleaning and sealing the well. The operator shall maintain all
166 invoices, work orders, and other records relating to all work on the well as part of the journal and
167 provide to the secretary upon request;

168 (C) When cleaning, the operator shall make a diligent effort to remove all the casing in the
169 well. If it is not possible to remove all the casing, then the operator shall take appropriate steps to
170 ensure that the annulus between the casing and between the casings and the well walls are filled
171 with expanding cement, with a minimum five tenths of one percent expansion upon setting, and
172 contain no voids. If the casing cannot be removed, it must be cut or milled at all workable coal
173 bed levels. Any casing which remains shall be perforated or ripped. If the total depth of the well
174 is less than four thousand feet, perforations or rips are required every fifty feet from two hundred
175 feet below the base of the lowest mineable coal bed up to one hundred feet above the uppermost
176 workable coal bed. If the total depth of the well is four thousand feet or greater, perforations or
177 rips are required every fifty feet from four hundred feet below the base of the lowest workable coal
178 bed up to one hundred feet above the uppermost workable coal bed. If the operator, using a
179 casing bond log, demonstrates to the satisfaction of the secretary that all annuli in the well are
180 already adequately sealed with cement, then the operator shall not be required to perforate or rip
181 the casing. When multiple casing and tubing strings are present in the workable coal bed, any
182 casing which remains shall be ripped or perforated and filled with expanding cement in
183 accordance with this paragraph. The operator shall maintain a casing bond log for each casing
184 and tubing string if used in lieu of ripping or perforating multiple strings;

185 (D) If the secretary concludes that the completely cleaned well emits excessive amounts
186 of gas, the operator must place a mechanical bridge plug in the well. If the total depth of the well

187 is less than four thousand feet, the mechanical bridge plug shall be placed in a competent stratum
188 at least two hundred feet below the base of the lowest workable coal bed, but above the top of
189 the uppermost hydrocarbon-producing stratum. If the total depth of the well is four thousand feet
190 or greater, the mechanical bridge plug shall be placed in a competent stratum at least four
191 hundred feet below the base of the lowest mineable coal bed, but above the top of the uppermost
192 hydrocarbon-producing stratum: *Provided*, That the secretary may require a greater distance to
193 set the mechanical bridge plug, regardless of the total depth of the well, based upon excessive
194 pressure within the well. The operator shall provide the secretary with all information the operator
195 possesses concerning the geologic nature of the strata and pressure of the well. If it is not possible
196 to set a mechanical bridge plug, an appropriately sized packer may be used; and

197 (E) If the upper-most hydrocarbon-producing stratum is within three hundred feet of the
198 base of the lowest workable coal bed, the operator shall properly place mechanical bridge plugs
199 as described in paragraph (D) of this subdivision to isolate the hydrocarbon-producing stratum
200 from the expanding cement plug. Nevertheless, if the total depth of the well is less than four
201 thousand feet, the operator shall place a minimum of two hundred feet of expanding cement below
202 the lowest workable coal bed. If the total depth of the well is four thousand feet or greater, the
203 operator shall place a minimum of four hundred feet of expanding cement below the lowest
204 mineable coal bed: *Provided*, That the secretary may require a greater distance to set the
205 mechanical bridge plug, regardless of the total depth of the well, based upon excessive pressure
206 within the well.

207 (2) After the well is completely cleaned pursuant to subdivision one of this subsection, the
208 operator shall plug or replug the well to the surface as follows:

209 If the total depth of the well is less than four thousand feet, the operator shall pump
210 expanding cement slurry down the well to form a plug which runs from at least two hundred feet
211 below the base of the lowest workable coal bed to the surface. If the total depth of the well is four
212 thousand feet or greater, the operator shall pump expanding cement slurry down the well to form

213 a plug which runs from at least four hundred feet below the base of the lowest workable coal bed
214 to the surface: *Provided*, That the secretary may, regardless of the total depth of the well, require
215 a lower depth based upon excessive pressure within the well. The expanding cement slurry will
216 be placed in the well under a pressure of at least two hundred pounds per square inch. Portland
217 cement shall be used to fill the area from one hundred feet above the top of the uppermost
218 workable coal seam to the surface: *Provided*, That the secretary may require a higher distance
219 based upon excessive pressure within the well.

220 ~~(e)~~ (f) Any person may apply to the secretary for an order to clean out and replug a
221 previously plugged well in a manner which will permit the safe mining through of such well. Such
222 application shall be filed with the secretary and shall contain the well number, a general
223 description of the well location, the name and address of the owner of the surface land upon which
224 the well is located, a copy of or record reference to a deed, lease or other document which entitles
225 the applicant to enter upon the surface land, a description of the methods by which the well was
226 previously plugged, and a description of the method by which such applicant proposes to clean
227 out and replug the well. At the time an application is filed with the secretary, a copy shall be mailed
228 by registered or certified mail to the owner or owners of the land, and the oil and gas lessee of
229 record, if any, of the site upon which the well is located. If no objection to the replugging of the
230 well is filed by any such landowner or oil and gas lessee within thirty days after the filing of the
231 application, and if the secretary determines that the method proposed for replugging the well will
232 permit the safe mining through of such well, the secretary shall grant the application by an order
233 authorizing the replugging of the well. Such order shall specify the method by which the well shall
234 be replugged, and copies thereof shall be mailed by certified or registered mail to the applicant
235 and to the owner or owners of the land, and the oil and gas lessee, if any, of the site upon which
236 such well is located. If any such landowner or oil and gas lessee objects to the replugging of the
237 well, the ~~director~~ secretary shall notify the applicant of such objection. Thereafter, the director
238 shall schedule a hearing to consider the objection, which hearing shall be held after notice by

239 registered or certified mail to the objectors and the applicant. After consideration of the evidence
240 presented at the hearing, the secretary shall issue an order authorizing the replugging of the well
241 if the secretary determines that replugging of the well will permit the safe mining through of such
242 well. Such order shall specify the manner in which the well shall be replugged and copies thereof
243 shall be sent by registered or certified mail to the applicant and objectors. The secretary shall
244 issue an order rejecting the application if the secretary determines that the proposed method for
245 replugging the well will not permit the safe mining through of such well.

246 (f) (g) All persons adversely affected, by a determination or order of the ~~director~~ secretary
247 issued pursuant to the provisions of this section shall be entitled to judicial review in accordance
248 with the provisions of articles five and six, chapter twenty-nine-a of this code.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7b. Water quality standards; implementation of antidegradation procedures; procedure to determine compliance with the biologic component of the narrative water quality standard.

1 (a) All authority to promulgate rules and implement water quality standards is vested in
2 the Secretary of the Department of Environmental Protection.

3 (b) All meetings with the secretary or any employee of the department and any interested
4 party which are convened for the purpose of making a decision or deliberating toward a decision
5 as to the form and substance of the rule governing water quality standards or variances thereto
6 shall be held in accordance with the provisions of article nine-a, chapter six of this code. When
7 the secretary is considering the form and substance of the rules governing water quality
8 standards, the following are not meetings pursuant to article nine-a, chapter six of this code: (i)
9 Consultations between the department's employees or its consultants, contractors or agents; (ii)
10 consultations with other state or federal agencies and the department's employees or its
11 consultants, contractors or agents; or (iii) consultations between the secretary, the department's
12 employees or its consultants, contractors or agents with any interested party for the purpose of

13 collecting facts and explaining state and federal requirements relating to a site specific change or
14 variance.

15 (c) In order to carry out the purposes of this chapter, the secretary shall promulgate
16 legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this
17 code setting standards of water quality applicable to both the surface waters and groundwaters
18 of this state. Standards of quality with respect to surface waters shall protect the public health and
19 welfare, wildlife, fish and aquatic life and the present and prospective future uses of the water for
20 domestic, agricultural, industrial, recreational, scenic and other legitimate beneficial uses thereof.
21 The water quality standards of the secretary may not specify the design of equipment, type of
22 construction or particular method which a person shall use to reduce the discharge of a pollutant.

23 (d) The secretary shall establish the antidegradation implementation procedures as
24 required by 40 C. F. R. 131.12(a) which apply to regulated activities that have the potential to
25 affect water quality. The secretary shall propose for legislative approval, pursuant to article three,
26 chapter twenty-nine-a of the code, legislative rules to establish implementation procedures which
27 include specifics of the review depending upon the existing uses of the water body segment that
28 would be affected, the level of protection or "tier" assigned to the applicable water body segment,
29 the nature of the activity and the extent to which existing water quality would be degraded. Any
30 final classification determination of a water as a Tier 2.5 water (Water of Special Concern) does
31 not become effective until that determination is approved by the Legislature through the legislative
32 rule-making process as provided in article three, chapter twenty-nine-a of the code.

33 (e) All remaining variances shall be applied for and considered by the secretary and any
34 variance granted shall be consistent with 33 U. S. C. Section 1311(p) of the Federal Water Control
35 Act. At a minimum, when considering an application for a remaining variance the secretary shall
36 consider the data and information submitted by the applicant for the variance; and comments
37 received at a public comment period and public hearing. The secretary may not grant a variance
38 without requiring the applicant to improve the instream water quality as much as is reasonably

39 possible by applying best available technology economically achievable using best professional
40 judgment. Any such requirement will be included as a permit condition. The secretary may not
41 grant a variance without a demonstration by the applicant that the coal remining operation will
42 result in the potential for improved instream water quality as a result of the remining operation.
43 The secretary may not grant a variance where he or she determines that degradation of the
44 instream water quality will result from the remining operation.

45 (f) The secretary shall propose rules measuring compliance with the ~~biologic~~-aquatic
46 life component of West Virginia's narrative water quality standard requires evaluation of the
47 holistic health of the aquatic ecosystem and a determination that the stream: ~~(i) Supports a~~
48 ~~balanced aquatic community that is diverse in species composition;~~ ~~(ii) (i)~~ contains appropriate
49 trophic levels of fish, in streams that have flows sufficient to support fish populations; and ~~(iii) (ii)~~
50 the aquatic community is composed of benthic invertebrate assemblages sufficient to perform the
51 biological functions necessary to support fish communities within the assessed reach, or, if the
52 assessed reach has insufficient flows to support a fish community, in those downstream reaches
53 where fish are present. The secretary shall propose rules for legislative approval in accordance
54 with the provisions of article three, chapter twenty-nine-a of this code that implement the
55 provisions of this subsection. Rules promulgated pursuant to this subsection may not establish
56 measurements for biologic components of West Virginia's narrative water quality standards that
57 would establish standards less protective than ~~requirements~~ legislatively-approved rules that ~~exist~~
58 existed at the time of enactment of the amendments to this subsection by the Legislature during
59 the 2012 regular session.

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

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

§22A-1-2. Definitions.

1 Unless the context in which used clearly requires a different meaning, the following
2 definitions apply to this chapter:

3 (a) *General.* —

4 (1) Accident: The term “accident” means any mine explosion, mine ignition, mine fire, or
5 mine inundation, or injury to, or death of any person.

6 (2) Agent: The term “agent” means any person charged with responsibility for the
7 operation of all or a part of a mine or the supervision of the miners in a mine.

8 (3) Approved: The term “approved” means in strict compliance with mining law, or, in the
9 absence of law, accepted by a recognized standardizing body or organization whose approval is
10 generally recognized as authoritative on the subject.

11 (4) Face equipment: The term “face equipment” means mobile or portable mining
12 machinery having electric motors or accessory equipment normally installed or operated in by the
13 last open crosscut in an entry or room.

14 (5) Imminent danger: The term “imminent danger” means the existence of any condition
15 or practice in a coal mine which could reasonably be expected to cause death or serious physical
16 harm before such condition or practice can be abated.

17 (6) Mine: The term “mine” includes the shafts, slopes, drifts or inclines connected with, or
18 intended in the future to be connected with, excavations penetrating coal seams or strata, which
19 excavations are ventilated by one general air current or divisions thereof, and connected by one
20 general system of mine haulage over which coal may be delivered to one or more points outside
21 the mine, and the surface structures or equipment connected or associated therewith which
22 contribute directly or indirectly to the mining, preparation or handling of coal, or construction
23 thereof.

24 (7) Miner: The term “miner” means any individual working in a coal mine.

25 (8) Operator: The term “operator” means any firm, corporation, partnership or individual
26 operating any coal mine, or part thereof, or engaged in the construction of any facility associated
27 with a coal mine.

28 (9) Permissible: The term “permissible” means any equipment, device or explosive that
29 has been approved as permissible by the Federal Mine Safety and Health administration and/or
30 the United States Bureau of Mines and meets all requirements, restrictions, exceptions, limitations
31 and conditions attached to such classification by that agency or the bureau.

32 (10) Person: The term “person” means any individual, partnership, association,
33 corporation, firm, subsidiary of a corporation or other organization.

34 (11) Work of preparing the coal: The term “work of preparing the coal” means the breaking,
35 crushing, sizing, cleaning, washing, drying, mixing, storing and loading of bituminous coal or
36 lignite and such other work of preparing such coal as is usually done by the operator of the coal
37 mine.

38 (b) *Office of Miners’ Health, Safety and Training.* —

39 (1) Board of appeals: The term “board of appeals” means as provided for in article five of
40 this chapter.

41 (2) Director: The term “director” means the Director of the Office of Miners’ Health, Safety
42 and Training provided for in section three of this article.

43 (3) Mine inspector: The term “mine inspector” means a state mine inspector provided for
44 in section eight of this article.

45 ~~(4) Mine Inspectors’ Examining Board: The term “Mine Inspectors’ Examining Board” shall~~
46 ~~mean the Mine Inspectors’ Examining Board provided for in article nine of this chapter.~~

47 ~~(5)~~ (4) Office: The term “office” means, when referring to a specific office, the Office of
48 Miners’ Health, Safety and Training provided for in this article. The term “office”, when used
49 generically, includes any office, board, agency, unit, organizational entity or component thereof.

50 (c) *Mine areas.* —

51 (1) Abandoned workings: The term “abandoned workings” means excavation, either caved
52 or sealed, that is deserted and in which further mining is not intended, or open workings which
53 are ventilated and not inspected regularly.

54 (2) Active workings: The term “active workings” means all places in a mine that are
55 ventilated and inspected regularly.

56 (3) Drift: The term “drift” means a horizontal or approximately horizontal opening through
57 the strata or in a coal seam and used for the same purposes as a shaft.

58 (4) Excavations and workings: The term “excavations and workings” means any or all parts
59 of a mine excavated or being excavated, including shafts, slopes, drifts, tunnels, entries, rooms
60 and working places, whether abandoned or in use.

61 (5) Inactive workings: The term “inactive workings” includes all portions of a mine in which
62 operations have been suspended for an indefinite period, but have not been abandoned.

63 (6) Mechanical working section: The term “mechanical working section” means an area of
64 a mine: (A) In which coal is loaded mechanically; (B) which is comprised of a number of working
65 places that are generally contiguous; and (C) which is of such size to permit necessary
66 supervision during shift operation, including pre-shift and on-shift examinations and tests required
67 by law.

68 (7) Panel: The term “panel” means workings that are or have been developed off of
69 submain entries which do not exceed three thousand feet in length.

70 (8) Return air: The term “return air” means a volume of air that has passed through and
71 ventilated all the working places in a mine section.

72 (9) Shaft: The term “shaft” means a vertical opening through the strata that is or may be
73 used for the purpose of ventilation, drainage, and the hoisting and transportation of individuals
74 and material, in connection with the mining of coal.

75 (10) Slope: The term “slope” means a plane or incline roadway, usually driven to a coal
76 seam from the surface and used for the same purposes as a shaft.

77 (11) Working face: The term “working face” means any place in a coal mine in which work
78 of extracting coal from its natural deposit in the earth is performed during the mining cycle.

79 (12) Working place: The term “working place” means the area of a coal mine in by the last
80 open crosscut.

81 (13) Working section: The term “working section” means all areas of the coal mine from
82 the loading point of the section to and including the working faces.

83 (14) Working unit: The term “working unit” means an area of a mine in which coal is mined
84 with a set of production equipment; a conventional mining unit by a single loading machine; a
85 continuous mining unit by a single continuous mining machine, which is comprised of a number
86 of working places.

87 (d) *Mine personnel.* —

88 (1) Assistant mine foreman: The term “assistant mine foreman” means a certified person
89 designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of
90 the persons employed therein.

91 (2) Certified electrician: The term “certified electrician” means any person who is qualified
92 as a mine electrician and who has passed an examination given by the office, or has at least three
93 years of experience in performing electrical work underground in a coal mine, in the surface work
94 areas of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine
95 equipment manufacturing industry or in any other industry using or manufacturing similar
96 equipment, and has satisfactorily completed a coal mine electrical training program approved by
97 the office or any person who is qualified as a mine electrician in any state that recognizes certified
98 electricians licensed in West Virginia.

99 (3) Certified person: The term “certified person”, when used to designate the kind of person
100 to whom the performance of a duty in connection with the operation of a mine shall be assigned,
101 means a person who is qualified under the provisions of this law to perform such duty.

102 (4) Interested persons: The term “interested persons” includes the operator, members of
103 any mine safety committee at the mine affected and other duly authorized representatives of the
104 mine workers and the office.

105 (5) Mine foreman: The term “mine foreman” means the certified person whom the operator
106 or superintendent shall place in charge of the inside workings of the mine and of the persons
107 employed therein.

108 (6) Qualified person: The term “qualified person” means a person who has completed an
109 examination and is considered qualified on record by the office.

110 (7) Shot firer: The term “shot firer” means any person having had at least two years of
111 practical experience in coal mines, who has a knowledge of ventilation, mine roof and timbering,
112 and who has demonstrated his or her knowledge of mine gases, the use of a flame safety lamp,
113 and other approved detecting devices by examination and certification given him or her by the
114 office.

115 (8) Superintendent: The term “superintendent” means the person who has, on behalf of
116 the operator, immediate supervision of one or more mines.

117 (9) Supervisor: The term “supervisor” means a superintendent, mine foreman, assistant
118 mine foreman or any person specifically designated by the superintendent or mine foreman to
119 supervise work or employees and who is acting pursuant to such specific designation and
120 instructions.

121 (e) *Electrical.* —

122 (1) Armored cable: The term “armored cable” means a cable provided with a wrapping of
123 metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.

124 (2) Borehole cable: The term “borehole cable” means a cable designed for vertical
125 suspension in a borehole or shaft and used for power circuits in the mine.

126 (3) Branch circuit: The term “branch circuit” means any circuit, alternating current or direct
127 current, connected to and leading from the main power lines.

128 (4) Cable: The term “cable” means a standard conductor (single conductor cable) or a
129 combination of conductors insulated from one another (multiple conductor cable).

130 (5) Circuit breaker: The term “circuit breaker” means a device for interrupting a circuit
131 between separable contacts under normal or abnormal conditions.

132 (6) Delta connected: The term “delta connected” means a power system in which the
133 windings or transformers or a.c. generators are connected to form a triangular phase relationship,
134 and with phase conductors connected to each point of the triangle.

135 (7) Effectively grounded: The term “effectively grounded” is an expression which means
136 grounded through a grounding connection of sufficiently low impedance (inherent or intentionally
137 added or both) so that fault grounds which may occur cannot build up voltages in excess of limits
138 established for apparatus, circuits or systems so grounded.

139 (8) Flame-resistant cable, portable: The term “flame-resistant cable, portable” means a
140 portable flame-resistant cable that has passed the flame tests of the federal mine safety and
141 health administration.

142 (9) Ground or grounding conductor (mining): The term “ground or grounding conductor
143 (mining)”, also referred to as a safety ground conductor, safety ground and frame ground, means
144 a metallic conductor used to connect the metal frame or enclosure of any equipment, device or
145 wiring system with a mine track or other effective grounding medium.

146 (10) Grounded (earthed): The term “grounded (earthed)” means that the system, circuit or
147 apparatus referred to is provided with a ground.

148 (11) High voltage: The term “high voltage” means voltages of more than one thousand
149 volts.

150 (12) Lightning arrester: The term “lightning arrester” means a protective device for limiting
151 surge voltage on equipment by discharging or by passing surge current; it prevents continued
152 flow of follow current to ground and is capable of repeating these functions as specified.

153 (13) Low voltage: The term “low voltage” means up to and including six hundred sixty
154 volts.

155 (14) Medium voltage: The term “medium voltage” means voltages from six hundred sixty-
156 one to one thousand volts.

157 (15) Mine power center or distribution center: The term “mine power center or distribution
158 center” means a combined transformer or distribution unit, complete within a metal enclosure from
159 which one or more low-voltage power circuits are taken.

160 (16) Neutral (derived): The term “neutral (derived)” means a neutral point or connection
161 established by the addition of a “zig-zag” or grounding transformer to a normally underground
162 power system.

163 (17) Neutral point: The term “neutral point” means the connection point of transformer or
164 generator windings from which the voltage to ground is nominally zero, and is the point generally
165 used for system groundings in wye-connected a.c. power system.

166 (18) Portable (trailing) cable: The term “portable (trailing) cable” means a flexible cable or
167 cord used for connecting mobile, portable or stationary equipment in mines to a trolley system or
168 other external source of electric energy where permanent mine wiring is prohibited or is
169 impracticable.

170 (19) Wye-connected: The term “wye-connected” means a power system connection in
171 which one end of each phase windings or transformers or a.c. generators are connected together
172 to form a neutral point, and a neutral conductor may or may not be connected to the neutral point,
173 and the neutral point may or may not be grounded.

174 (20) Zig-zag transformer (grounding transformer): The term “zig-zag transformer
175 (grounding transformer)” means a transformer intended primarily to provide a neutral point for
176 grounding purposes.

§22A-1-5. Offices continued in the Office of Miners' Health, Safety and Training.

1 (a) There are hereby continued in the Office of Miners' Health, Safety and Training the
2 following offices:

3 (1) The Board of Coal Mine Health and Safety established pursuant to article six of this
4 chapter;

5 (2) The Coal Mine Safety and Technical Review Committee established pursuant to article
6 six of this chapter; and

7 ~~(3) The Board of Miner Training, Education and Certification established pursuant to article~~
8 ~~seven of this chapter;~~

9 ~~(4) The Mine Inspectors' Examining Board established pursuant to article nine of this~~
10 ~~chapter; and~~

11 ~~(5)~~ (3) The Board of Appeals provided for pursuant to the provisions of article five of this
12 chapter.

13 (b) Nothing in this article may authorize the director or the secretary of the Department of
14 Commerce, Labor and Environmental resources to alter, discontinue or abolish any office, board
15 or commission or the functions thereof, which are established by status.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-59. First-aid equipment.

1 (a) Each operator of an underground coal mine shall maintain a supply of first-aid
2 equipment at each of the following locations:

3 (1) At the mine dispatcher's office and on the surface in close proximity to the mine entry.

4 (2) At the bottom of each regularly traveled slope or shaft; however, where the bottom of
5 such slope or shaft is not more than one thousand feet from the surface, such first-aid supplies
6 may be maintained on the surface at the entrance of the mine.

7 (3) At a point in each working section not more than five hundred feet outby the active
8 working face or faces.

9 (b) The first-aid equipment required to be maintained shall include at least the following:

10 (1) One stretcher.

11 (2) One broken-back board.

12 (3) Twenty-four triangular bandages.

13 (4) Eight four-inch bandage compresses.

14 (5) Sixteen two-inch bandage compresses.

15 (6) Twelve one-inch adhesive compresses.

16 (7) One foille.

17 (8) Two cloth blankets.

18 (9) One rubber blanket.

19 (10) Two tourniquets.

20 (11) One one-ounce bottle of aromatic spirits of ammonia.

21 (12) Two inflatable plastic arm splints.

22 (13) Two inflatable plastic leg splints.

23 (14) Six small splints, metal or wooden.

24 (15) Two cold packs.

25 (16) One automated external defibrillator (AED) unit.

26 (c) All first-aid supplies required to be maintained under the section shall be stored in
27 suitable sanitary, dust-tight, moisture-proof containers and such supplies shall be accessible to
28 the miners.

29 (d) No first-aid material shall be removed or diverted without authorization, except in case
30 of accident in or about the mine.

31 (e) On all occasions when a person becomes sick or injured underground to the extent
32 that he or she must go to the surface, he or she shall be accompanied by one or more persons.

**ARTICLE 2A. USE OF DIESEL-POWERED EQUIPMENT IN UNDERGROUND COAL
MINES.**

PART X. EXISTING RULES TO BE REVISED.

§22A-2A-1001. Existing state rules to be revised.

1 (a) By August 31, 2017, the director shall revise state rules promulgated pursuant to the
2 authority of this chapter as follows:

3 (1) to reflect the abolishment of the West Virginia Diesel Equipment Commission and
4 transfer of duties and responsibilities to the director, pursuant to section 301 of this article;

5 (2) to reflect that a mine operator shall be permitted to replace a filter or catalyst of the
6 same make and model without contacting the Office of Miners' Health, Safety and Training;

7 (3) to reflect that ASE certified diesel mechanics shall make repairs and adjustments to
8 diesel fuel injection systems, engine timing or exhaust emissions control and conditioning
9 systems;

10 (4) to permit a mine operator to dispose of used intake air filters, exhaust diesel particulate
11 matter filters and engine oil filters in their original containers or other suitable enclosed containers
12 and to remove them from the underground mine to the surface no less than once in a twenty-four
13 hour period;

14 (5) to require that records of emissions tests, 200-hour maintenance tests and repairs shall
15 be countersigned once each week by the certified mine electrician or mine foreman, that
16 scheduled maintenance and an independent analysis of engine oil occur at two hundred hours of
17 engine operation, and that diagnostic testing of engine operation occur at two hundred hours;

18 (6) to remove the requirement that a portable carbon monoxide (CO) sampling device be
19 installed into the untreated exhaust gas coupling provided in the operator's cab;

20 (7) to modify the time and duration for which the CO sampler must be started to measure
21 and record CO levels from every minute for five minutes to every thirty seconds for ninety
22 seconds;

23 (8) to modify the alternative condition by which equipment fails under 196 C. S. R. §1-21,
24 to omit the reference to the average CO reading for untreated exhaust gas is greater than twice
25 the baseline; and

26 (9) to remove the requirement for eight hours of annual diesel equipment operator
27 refresher training separate from that required by MSHA regulations.

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

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

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

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

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

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

26 (4) The Director of the Office of Miners' Health, Safety and Training or his or her designee
27 shall serve as an *ex officio*, nonvoting member.

28 (b) Members serving on the board on ~~July 1, 2010~~ January 1, 2018, ~~may~~ shall continue to
29 serve until the expiration of their terms. The term is three years. Members are eligible for
30 reappointment.

31 (c) Commencing on July 1, 2017, the board shall assume all powers and responsibilities
32 of the Board of Miners' Training, Education and Certification established pursuant to article seven
33 of this chapter, the mine inspectors' examining board established pursuant to article nine of this
34 chapter, and the Mine Safety Technology Task Force established pursuant to article eleven of
35 this chapter.

36 ~~(e)~~ (d) The Governor shall appoint, subject to the approval of a majority of the members
37 of the board appointed under subdivisions (1) and (2), subsection (a) of this section, a Health and
38 Safety Administrator in accordance with the provisions of section six of this article, who shall
39 certify all official records of the board. The Health and Safety Administrator shall be a full-time
40 officer of the Board of Coal Mine Health and Safety with the duties provided for in section six of
41 this article. The Health and Safety Administrator shall have such education and experience as the

42 Governor deems necessary to properly investigate areas of concern to the board in the
43 development of rules governing mine health and safety. The Governor shall appoint as Health
44 and Safety Administrator a person who has an independent and impartial viewpoint on issues
45 involving mine safety. The Health and Safety Administrator shall be a person who has not been
46 during the two years immediately preceding appointment, and is not during his or her term, an
47 officer, trustee, director, substantial shareholder, contractor, consultant or employee of any coal
48 operator, or an employee or officer of an employee organization or a spouse of any such person.
49 The Health and Safety Administrator shall have the expertise to draft proposed rules and shall
50 prepare such rules as are required by this code and on such other areas as will improve coal mine
51 health and safety.

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

65 When proposed rules are to be finally adopted by the board, copies of such proposed
66 rules shall be delivered to members not less than five days before the meeting at which such
67 action is to be taken. If not so delivered, any final adoption or rejection of rules shall be considered

68 on the second day of a meeting of the board held on two consecutive days, except that by the
69 concurrence of at least four members of the board, the board may suspend this rule of procedure
70 and proceed immediately to the consideration of final adoption or rejection of rules. When a
71 member fails to appear at three consecutive meetings of the board or at one half of the meetings
72 held during a one-year period, the Health and Safety Administrator shall notify the member and
73 the Governor of such fact. Such member shall be removed by the Governor unless good cause
74 for absences is shown.

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

82 ~~(f)~~ (g) A quorum of the board is four members which shall include at least two members
83 representing the viewpoint of operators and at least two members representing the viewpoint of
84 the working miners, and the board may act officially by a majority of those members who are
85 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.

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

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

9 (c) The board shall develop, promulgate and revise, as may be appropriate, rules as are
10 necessary and proper to effectuate the purposes of article two of this chapter and to prevent the
11 circumvention and evasion thereof, all without regard to the provisions of chapter twenty-nine-a
12 of this code:

13 (1) Upon consideration of the latest available scientific data in the field, the technical
14 feasibility of standards, and experience gained under this and other safety statutes, such rules
15 may expand protections afforded by this chapter notwithstanding specific language therein, and
16 such rules may deal with subject areas not covered by this chapter to the end of affording the
17 maximum possible protection to the health and safety of miners.

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

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

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

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

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

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

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

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

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

57 The board shall review all reports and any recommended rules submitted by the director,
58 receive any additional information it requests, and may, on its own initiative, investigate the
59 circumstances surrounding a coal mining fatality or fatalities and ascertain the cause or causes
60 of such coal mining fatality or fatalities. In order to investigate a coal mining fatality or fatalities, a
61 majority of the board must vote in favor of commencing an investigation. Within ninety days of the
62 receipt of the Federal Mine Safety and Health Administration's fatal accident report and the
63 director's report and recommended rules, the board shall review and consider the presentation of
64 said report and rules and the results of its own investigation, if any, and, if a majority of all voting
65 board members determines that additional rules can assist in the prevention of the specific type
66 of fatality, the board shall either accept and promulgate the director's recommended rules, amend
67 the director's recommended rules or draft new rules as are necessary to prevent the recurrence
68 of such fatality. If the board chooses to amend the director's recommended rules or draft its own
69 rules, a vote is required within one hundred twenty days as to whether to promulgate the amended
70 rule or the rule drafted by the board: *Provided*, That the board may, by majority vote, find that
71 exceptional circumstances exist and the deadline cannot be met: *Provided, however*, That under
72 no circumstances shall such deadline be extended by more than a total of ninety days. A majority
73 vote of the board is required to promulgate any such rule.

74 The board shall annually, not later than July 1, review the major causes of coal mining
75 injuries during the previous calendar year, reviewing the causes in detail, and shall promulgate
76 such rules as may be necessary to prevent the recurrence of such injuries.

77 Further, the board shall, on or before January 10, of each year, submit a report to the
78 Governor, President of the Senate and Speaker of the House, which report shall include, but is
79 not limited to:

80 (1) The number of fatalities during the previous calendar year, the apparent reason for
81 each fatality as determined by the Office of Miners' Health, Safety and Training and the action, if
82 any, taken by the board to prevent such fatality;

- 83 (2) Any rules promulgated by the board during the last year;
- 84 (3) What rules the board intends to promulgate during the current calendar year;
- 85 (4) Any problem the board is having in its effort to promulgate rules to enhance health and
86 safety in the mining industry;
- 87 (5) Recommendations, if any, for the enactment, repeal or amendment of any statute
88 which would cause the enhancement of health and safety in the mining industry;
- 89 (6) Any other information the board deems appropriate;
- 90 (7) In addition to the report by the board, as herein contained, each individual member of
91 said board has right to submit a separate report, setting forth any views contrary to the report of
92 the board, and the separate report, if any, shall be appended to the report of the board and be
93 considered a part thereof.

**§22A-6-6. Health and Safety Administrator; qualifications; duties; employees;
compensation.**

- 1 (a) The Governor shall appoint the Health and Safety Administrator of the board for a term
2 of employment of one year, and the Health and Safety Administrator employed on January 1,
3 2018 shall complete a one year term unless he or she is determined to have committed
4 misfeasance, malfeasance or nonfeasance as referenced herein. The Health and Safety
5 Administrator shall be entitled to have his or her contract of employment renewed on an annual
6 basis except where such renewal is denied for cause: *Provided*, That the Governor has the power
7 at any time to remove the Health and Safety Administrator for misfeasance, malfeasance or
8 nonfeasance: *Provided, however*, That the board has the power to remove the Health and Safety
9 Administrator without cause upon the concurrence of five members of the board.
- 10 (b) The Health and Safety Administrator shall work at the direction of the board,
11 independently of the Director of the Office of Miners' Health, Safety and Training and has such
12 authority and shall perform such duties as may be required or necessary to effectuate this article.

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

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

22 (e) (1) Appropriations for the salaries of the Health and Safety Administrator and any other
23 employees of the board and for necessary office and operating expenses shall be made to a
24 budget account established for those purposes in the General Revenue Fund. Such account shall
25 be separate from any accounts or appropriations for the Office of Miners' Health, Safety and
26 Training.

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

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

36 (g) At the direction of the board, the administrator shall also conduct an annual study of
37 occupational health issues relating to employment in and around coal mines of this state and
38 submit a report to the board with findings and proposals to address the issues raised in such

39 study. The administrator is responsible for preparing the annual reports required by subsection
40 (e), section four of this article and section nine of this article.

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

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

50 (j) The administrator shall prepare and submit to the Director of the Office of Miners'
51 Health, Safety and Training, no less than on a quarterly basis, a report that summarizes the coal
52 mine health and safety standard rules under consideration by the Board of Coal Mine Health and
53 Safety, as well as the meetings and meeting agendas of the board.

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

§22A-7-2. Board of Miner Training, Education and Certification abolished and duties imposed upon the Board of Coal Mine Health and Safety.

1 The Legislature hereby finds and declares that:

2 (a) The continued prosperity of the coal industry is of primary importance to the State of
3 West Virginia;

4 (b) The highest priority and concern of this Legislature and all in the coal mining industry
5 must be the health and safety of the industry's most valuable resource - the miner;

6 (c) A high priority must also be given to increasing the productivity and competitiveness of
7 the mines in this State;

8 (d) An inordinate number of miners, working on both the surface in surface mining and in
9 and at underground mines, are injured during the first few months of their experience in a mine;

10 (e) These injuries result in the loss of life and serious injury to miners and are an
11 impediment to the future growth of West Virginia's coal industry;

12 (f) Injuries can be avoided through proper miner training, education and certification;

13 (g) Mining is a technical occupation with various specialties requiring individualized
14 training and education; and

15 (h) It is the general purpose of this article to:

16 (1) Require adequate training, education and meaningful certification of all persons
17 employed in coal mines;

18 (2) ~~Establish a board of miner training, education and certification and empower it to~~
19 ~~require~~ Require certain training and education of all prospective miners and miners certified by
20 the state;

21 (3) Authorize a stipend for prospective miners enrolled in this State's miner training,
22 education and certification program;

23 (4) Direct the Director of the Office of Miners' Health, Safety and Training to apply and
24 implement the standards set by the Board of ~~Miner Training, Education and Certification~~ Coal
25 Mine Health and Safety by establishing programs for miner and prospective miner education and
26 training; and

27 (5) Provide for a program of continuing miner education for all categories of certified
28 miners.

§22A-7-3. Definitions.

1 Unless the context in which a word or phrase appears clearly requires a different meaning,
2 the words defined in section two, article one of this chapter have when used in this article the
3 meaning therein assigned to them. These words include, but are not limited to, the following:
4 Office, director, mine inspector, operator, miner, shotfirer and certified electrician.

5 “Board” means the Board of ~~Miner Training, Education and Certification~~ Coal Mine Health
6 and Safety established by section four of this article.

7 “Mine” means any mine, including a “surface mine,” as that term is defined in section three,
8 article three, chapter twenty-two of this code, and in section two, article four of said chapter; and
9 a “mine” as that term is defined in section two, article one of this chapter.

§22A-7-5. Board powers and duties Additional powers and duties of the Board of Coal

Mine Health and Safety.

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

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

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

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

19 its actions may be heard. The education and training shall be provided in a manner determined
20 by the director to be sufficient to meet the standards established by the board.

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

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

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

29 (h) The board may, upon its own motion or whenever requested to do so by the director,
30 consider two certificates issued by this State to be of equal value or consider training provided or
31 required by federal agencies to be sufficient to meet training and education requirements set by
32 it, the director, or by the provisions of this code.

33 (i) As part of the annual training required by this section, the board shall include training
34 of certified persons and other miners, instruction on miners' rights as they relate to the operation
35 of unsafe equipment as provided in section seventy-one, article two of this chapter, his or her right
36 to withdrawal from unsafe conditions as provided in section seventy-one-a of article two of this
37 chapter and his or her rights under section twenty-two, article one of this chapter.

§22A-7-5a. Study of miner training and education.

1 The ~~board~~ Board of Coal Mine Health and Safety is directed to conduct a study of the
2 overall program of education, training and examination associated with the various miner
3 specialties requiring certification under this article or any other provision of this code. The study
4 shall identify ways to enhance miner education and training to adequately reflect technological
5 advances in coal mining techniques and best practices used in modern coal mines, and improve
6 supervision of apprentice miners. Furthermore, the board shall place particular emphasis in its

7 study on ways to improve education and training in the areas of proper mine ventilation, methane
8 monitoring and equipment deenergization, fire-boss procedures and overall core mining
9 competencies. ~~By December 31, 2012, the board shall report to the Legislature's Joint Committee~~
10 ~~on Government and Finance with recommendations regarding the implementation of the findings~~
11 ~~of this study.~~

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

1 (a) An underground mine foreman-fire boss certified pursuant to this article on or after the
2 effective date of this section shall complete the continuing education requirements in this section
3 within two years of their certification and every two years thereafter. The continuing education
4 requirements of this section may not be satisfied by the completion of other training requirements
5 mandated by the provisions of this chapter.

6 (b) In order to receive continuing education credit pursuant to this section, a mine foreman-
7 fire boss shall satisfactorily complete a mine foreman-fire boss continuing education course
8 approved by the board and taught by a qualified instructor approved by the director. The mine
9 foreman-fire boss shall not suffer a loss in pay while attending a continuing education course. The
10 mine foreman-fire boss shall submit documentation to the office certified by the instructor that
11 indicates the required continuing education has been completed prior to the deadlines set forth in
12 this subsection: *Provided*, That a mine foreman-fire boss may submit documentation of continuing
13 education completed in another state for approval and acceptance by the board.

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

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

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

18 (2) Selected provisions of the West Virginia and federal underground coal mine health and
19 safety rules and regulations;

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

21 (4) Selected policies and memoranda of the Office of Miners' Health, Safety and Training,
22 the Board of Coal Mine Health and Safety, ~~the board of Miner Training, Education and~~
23 ~~Certification~~, and from any safety analysis performed by the company;

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

25 (6) ~~Other subjects as determined by the board of Miner Training, Education and~~
26 ~~Certification~~. The board shall solicit input from mining companies on the substance of the training
27 and discuss how the training shall be scheduled during the year.

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

29 (f) A mine foreman-fire boss who fails to complete the requirements of this section shall
30 have his or her certification suspended pending completion of the continuing education
31 requirements. During the pendency of the suspension, the individual may not perform statutory
32 duties assigned to a mine foreman-fire boss under West Virginia law. The office shall send notice
33 of any suspension to the last address the certified mine foreman-fire boss reported to the director.
34 If the requirements are not met within two years of the suspension date, the director may file a
35 petition with the Board of Appeals pursuant to the procedures set forth in section thirty-one, article
36 one of this chapter and, upon determining that the requirements have not been met, the Board of
37 Appeals may revoke the mine foreman-fire boss' certification, which shall not be renewed except
38 upon successful completion of the examination prescribed by law for mine foremen-fire bosses
39 or upon completion of other training requirements established by the board: *Provided*, That an
40 individual having his or her mine foreman-fire boss certification suspended pursuant to this section
41 who also holds a valid mine foreman-fire boss certification from another state may have the
42 suspension lifted by completing training requirements established by the board.

43 (g) The office shall make a program of instruction that meets the requirements for
44 continuing education set forth in this section regularly available in regions of the State, based on
45 demand, for individuals possessing mine foreman-fire boss certifications who are not serving in a

46 mine foreman-fire boss capacity: *Provided*, That the office may collect a fee from program
47 participants to offset the cost of the program.

48 (h) The office shall make available to operators and other interested parties a list of
49 individuals whose mine foreman-fire boss certification is in suspension or has been revoked.

ARTICLE 9. MINE INSPECTORS' EXAMINING BOARD.

§22A-9-1. Mine Inspectors' Examining Board abolished and duties imposed upon the Board of Coal Mine Health and Safety.

1 ~~The Mine Inspectors' Examining Board is continued. It consists of five members who,~~
2 ~~except for the public representative on such board, shall be appointed by the Governor, by and~~
3 ~~with the advice and consent of the Senate. Members so appointed may be removed only for the~~
4 ~~same causes and in like manner as elective state officers. One of the members of the board shall~~
5 ~~be a representative of the public, who shall be the Director of the School of Mines at West Virginia~~
6 ~~University. Two members of the board shall be persons who by reason of previous training and~~
7 ~~experience may reasonably be said to represent the viewpoint of coal mine operators and two~~
8 ~~members shall be persons who by reason of previous training and experience may reasonably~~
9 ~~be said to represent the viewpoint of coal mine workers.~~

10 ~~The Director of the Office of Miners' Health, Safety and Training is an ex officio member~~
11 ~~of the board and shall serve as secretary of the board, without additional compensation; but the~~
12 ~~director has no right to vote with respect to any matter before the board.~~

13 ~~The members of the board, except the public representative, shall be appointed for~~
14 ~~overlapping terms of eight years, except that the original appointments shall be for terms of two,~~
15 ~~four, six and eight years, respectively. Any member whose term expires may be reappointed by~~
16 ~~the Governor. Members serving on the effective date of this article may continue to serve until~~
17 ~~their terms expire.~~

18 ~~Each member of the board shall be paid the same compensation, and each member of~~
19 ~~the board shall be paid the expense reimbursement, as is paid to members of the Legislature for~~

20 ~~their interim duties as recommended by the Citizens Legislative Compensation Commission and~~
21 ~~authorized by law for each day or portion thereof engaged in the discharge of official duties. Any~~
22 ~~such amounts shall be paid out of the State Treasury upon a requisition upon the State Auditor,~~
23 ~~properly certified by such members of the board.~~

24 ~~The public member is chair of the board. Members of the board, before performing any~~
25 ~~duty, shall take and subscribe to the oath required by section 5, article IV of the Constitution of~~
26 ~~West Virginia.~~

27 ~~The Mine Inspectors' Examining Board shall meet at such times and places as shall be~~
28 ~~designated by the chair. It is the duty of the chair to call a meeting of the board on the written~~
29 ~~request of three members or the Director of the Office of Miners' Health, Safety and Training.~~
30 ~~Notice of each meeting shall be given in writing to each member by the secretary at least five~~
31 ~~days in advance of the meeting. Three members is a quorum for the transaction of business.~~

32 The Mine Inspectors' Examining Board is hereby abolished. All duties and responsibilities
33 imposed upon the Mine Inspectors' Examining Board are transferred and hereby imposed upon
34 the Board of Coal Mine Health and Safety. On the effective date of the reenactment of this article
35 and section of the code, all equipment and records necessary to effectuate the purposes of this
36 article shall be transferred to the Board of Coal Mine Health and Safety.

37 In addition to other duties expressly set forth elsewhere in this article, the board Board of
38 Coal Mine Health and Safety shall:

39 (1) Establish, and from time to time, revise forms of application for employment as mine
40 inspectors, which shall include the applicant's social security number, and forms for written
41 examinations to test the qualifications of candidates for that position;

42 (2) Adopt and promulgate reasonable rules relating to the examination, qualification and
43 certification of candidates for appointment as mine inspectors, and hearing for removal of
44 inspectors, required to be held by section twelve, article one of this chapter. All of such rules shall
45 be printed and a copy thereof furnished by the secretary of the board to any person upon request.

46 The board shall determine whether applicants have the necessary experience to take the mine
47 inspector examination, and the examination of candidates for appointment as a mine inspector
48 shall be conducted by the board and it shall rank all applicants;

49 ~~(3) Conduct, after public notice of the time and place thereof, examinations of candidates~~
50 ~~for appointment as mine inspector. By unanimous agreement of all members of the board, one or~~
51 ~~more members of the board or an employee of the office of miners' health, safety and training~~
52 ~~may be designated to give a candidate the written portion of the examination;~~

53 ~~(4)~~ (3) Prepare and certify to the Director of the Office of Miners' Health, Safety and
54 Training a register of qualified eligible candidates for appointment as mine inspectors. The register
55 shall list all qualified eligible candidates in the order of their grades, the candidate with the highest
56 grade appearing at the top of the list. After each meeting of the board held to examine such
57 candidates, and at least annually, the board shall prepare and submit to the Director of the Office
58 of Miners' Health, Safety and Training a revised and corrected register of qualified eligible
59 candidates for appointment as mine inspector, deleting from such revised register all persons: (a)
60 Who are no longer residents of West Virginia; (b) who have allowed a calendar year to expire
61 without, in writing, indicating their continued availability for such appointment; (c) who have been
62 passed over for appointment for three years; (d) who have become ineligible for appointment
63 since the board originally certified that such person was qualified and eligible for appointment as
64 mine inspector; or (e) who, in the judgment of ~~at least four members of the board~~ the board, should
65 be removed from the register for good cause by the board;

66 ~~(5) Cause the secretary of the board to~~ (4) The board shall keep and preserve the written
67 examination papers, manuscripts, grading sheets, and other papers of all applicants for
68 appointment as mine inspector for ~~such period of time as may be established by the board~~ a
69 period of two years. Specimens of the examinations given, together with the correct solution of
70 each question, shall be preserved ~~permanently by the secretary of the board~~;

71 ~~(6) Issue~~ (5) The board shall issue a letter or written notice of qualification to each
72 successful eligible candidate;

73 ~~(7) Hear~~ (6) The Board of Coal Mine Health and Safety shall hear and determine
74 proceedings for the removal of mine inspectors in accordance with the provisions of this article;

75 ~~(8) Hear~~ (7) The board shall hear and determine appeals of mine inspectors from
76 suspension orders made by the director pursuant to the provisions of section four, article one of
77 this chapter: *Provided*, That an aggrieved inspector, in order to appeal from any order of
78 suspension, shall file such appeal in writing with the ~~mine inspectors' examining board~~ Board of
79 Coal Mine Health and Safety not later than ten days after receipt of notice of suspension. On such
80 appeal the board shall affirm the act of the director unless it be satisfied from a clear
81 preponderance of the evidence that the director has acted arbitrarily;

82 ~~(9) Make~~ (8) The board and office shall make an annual report to the Governor and the
83 director concerning the administration of mine inspection personnel in the state service, making
84 such recommendations as the board considers to be in the public interest.

ARTICLE 11. MINE SAFETY TECHNOLOGY.

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

1 The Legislature hereby finds and declares:

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

4 (2) That in furtherance of this priority, the provisions of article two of this chapter are
5 designed to protect the health and safety of this State's coal miners by requiring certain minimum
6 standards for, among other things, certain health and safety technology used by each
7 underground miner;

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

11 (4) That, in furtherance of provisions of this section, it is the intent of the Legislature to
12 ~~create a permanent task force which,~~ direct that the Board of Coal Mine Health and Safety, on a
13 continuous basis, ~~shall evaluate and study issues relating to the commercial availability and~~
14 functional and operational capability of existing and emerging technologies in coal mine health
15 and safety, as well as issues relating to the implementation, compliance and enforcement of
16 regulatory requirements governing the technologies.

**~~§22A-11-2. Mine Safety Technology Task Force continued; membership; method of
nomination and appointment; abolished and duties imposed upon the Board of Coal
Mine Health and Safety.~~**

1 (a) The Mine Safety Technology Task Force ~~is continued, and commencing July 1, 2010,~~
2 ~~is a separate independent task force within the Department of Commerce hereby abolished. All~~
3 ~~duties and responsibilities imposed upon the Mine Safety Technology Task Force are transferred~~
4 ~~and hereby imposed upon the Board of Coal Mine Health and Safety. On the effective date of the~~
5 ~~reenactment of this article and section of the code, all equipment and records necessary to~~
6 ~~effectuate the purposes of this article shall be transferred to the Board of Coal Mine Health and~~
7 ~~Safety.~~

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

10 (1) ~~The Governor shall appoint, by and with the advice and consent of the Senate, three~~
11 ~~members to represent the viewpoint of operators in this state. When these members are to be~~
12 ~~appointed, the Governor shall request from the major trade association representing operators in~~
13 ~~this state a list of three nominees for each position on the task force. All nominees shall be persons~~
14 ~~with special experience and competence in coal mine health and safety. There shall be submitted~~
15 ~~with the list, a summary of the qualifications of each nominee. For purposes of this subdivision,~~
16 ~~the major trade association representing operators in this state is that association which~~

17 ~~represents operators accounting for over one half of the coal produced in mines in this state in~~
18 ~~the year prior to the year in which the appointment is to be made.~~

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

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

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

31 ~~(5) The Director of the Office of Miner's Health, Safety and Training or his or her designee,~~
32 ~~shall serve as an ex officio, nonvoting member.~~

33 ~~(c) Each appointed member of the task force shall serve at the will and pleasure of the~~
34 ~~Governor.~~

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

40 ~~(e) Each member, except ex officio members, of the task force shall be paid the same~~
41 ~~compensation, and each member of the task force shall be paid the same expense~~
42 ~~reimbursement, as is paid to members of the Legislature for their interim duties as recommended~~

43 ~~by the Citizens Legislative Compensation Commission and authorized by law for each day or~~
44 ~~portion thereof engaged in the discharge of official duties. In the event the expenses are paid by~~
45 ~~a third party, the member shall not be reimbursed by the state. The reimbursement shall be paid~~
46 ~~out of the State Treasury upon a requisition upon the State Auditor, properly certified by the Office~~
47 ~~of Miners' Health, Safety and Training. An employer shall not prohibit a member of the task force~~
48 ~~from exercising leave of absence from his or her place of employment in order to attend a meeting~~
49 ~~of the task force or a meeting of a subcommittee of the task force, or to prepare for a meeting of~~
50 ~~the task force, any contract of employment to the contrary notwithstanding.~~

**§22A-11-3. Task force powers and duties The Board of Coal Mine Health and Safety's
duties regarding mine technology.**

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

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

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

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

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

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

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

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

20 (2) Opportunities for improving the integration of technologies and procedures to increase
21 the performance and survivability of coal mine health and safety systems;

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

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

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

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

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

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

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

37 (e) In performing its duties, the ~~task force~~ board shall, where possible, consult with, among
38 others, mine engineering and mine safety experts, radio communication and telemetry experts
39 and relevant state and federal regulatory personnel.

40 (f) Appropriations to the ~~task force~~ commission board and to effectuate the purposes of
41 this article shall be made to one or more budget accounts established for that purpose.

42 (g) The ~~task force~~ board shall annually compile a proposed list of approved innovative
43 mine safety technologies and transmit the list to the Director of the Office of Miners' Health, Safety
44 and Training as provided in section four, article thirteen-bb, chapter eleven of this code. The list
45 shall be approved by unanimous vote of the ~~task force~~ board.

§22A-11-4. Approval of devices.

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

§22A-11-5. Existing state rules to be revised.

1 By August 31, 2017, all existing state rules promulgated pursuant to the authority of this
2 chapter shall be revised to reflect the changes in this chapter enacted by the Legislature during
3 the 2017 regular session.

NOTE: This bill generally relates to coal mining, coal mine safety and environmental protection. The purpose of this bill is to provide that moneys be paid from special reclamation water trust fund to assure a reliable source of capital and operating expenses for the treatment of discharges from forfeited sites. The bill modifies notification requirements for preblast surveys for surface mining operations and certain other blasting activities, as well as minimum bond requirements related to certain reclamation work. The bill provides for changes to the method of plugging abandoned gas wells where a coal operator intends to mine through the well. It also removes certain criteria from evaluation for the narrative water quality standard. The bill authorizes the elimination of the Board of Miner Training, Education and Certification, the Mine Inspectors' Examining Board, and the Mine Safety Technology Task Force, and transfers the duties from those boards and task force to the Board of Coal Mine Health and Safety. The bill provides that an automated external defibrillator (AED) unit be required first-aid equipment located in certain areas of an underground coal mine, and directs that the Office of Miners' Health, Safety and Training revise state rules related to diesel equipment operating in underground mines. Finally, the bill requires additional rulemaking.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.