

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 648

FISCAL
NOTE

BY SENATOR SMITH

[Introduced February 18, 2019; Referred
to the Committee on Energy, Industry, and Mining]

1 A BILL to repeal §22A-6-5, §22A-6-8, §22A-6-9, §22A-6-10, §22A-6-11, §22A-6-12, §22A-6-13,
 2 and §22A-6-14 of the Code of West Virginia, 1931, as amended; to repeal §22A-7-5a of
 3 said code; to repeal §22A-11-4 of said code; to amend and reenact §11-13BB-4 of said
 4 code; to amend and reenact §22A-5-2 of said code; to amend and reenact §22A-6-1,
 5 §22A-6-3, §22A-6-4, §22A-6-6, and §22A-6-7 of said code; to amend and reenact §22A-
 6 7-2, §22A-7-3, §22A-7-4, §22A-7-5, §22A-7-6, and §22A-7-7 of said code; to amend and
 7 reenact §22A-8-3, §22A-8-4, §22A-8-5, and §22A-8-6 of said code; to amend and reenact
 8 §22A-9-1 of said code; and to amend and reenact §22A-11-1, §22A-11-2, and §22A-11-3
 9 of said code, all relating to reorganizing the Office of Miners' Health, Safety, and Training
 10 and several related boards and offices; terminating the Board of Coal Mine Health and
 11 Safety and transferring its powers and duties to the Director of the Office of Miners' Health,
 12 Safety, and Training; terminating the office of the Health Safety Administrator; terminating
 13 the Board of Miner Training, Education, and Certification and transferring its powers and
 14 duties to Director of the Office of Miners' Health, Safety, and Training; transferring the
 15 authority for hearing appeals of suspensions of mine inspectors to the Board of Appeals;
 16 transferring the authority and duty to identify innovative mine safety technologies eligible
 17 for tax credits to the Director of the Office of Miners' Health, Safety, and Training; repealing
 18 archaic sections and sections incompatible with the transfers in this act; and making
 19 stylistic changes and grammar corrections throughout.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

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

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

1 (a) *List of approved innovative mine safety technology.* — ~~The Board of Coal Mine Health~~

1 ~~and Safety, established in section two, article eleven, chapter twenty-two-a of this code~~ Director
2 of the Office of Miners' Health, Safety, and Training shall annually compile a proposed list of
3 approved innovative mine safety technologies as required by §22A-11-3 of this code. ~~The list shall~~
4 ~~be transmitted to the director for approval. The director has thirty days to approve or amend the~~
5 ~~list. At the expiration of thirty days, the director shall publish the list of approved innovative mine~~
6 ~~safety technologies~~ The list shall describe and specifically identify safety equipment for use in
7 West Virginia coal mines which, in the fiscal year when the equipment is added to the list, is not
8 required by the Mine Safety and Health Administration of the United States Department of Labor
9 or the West Virginia Office Of Miners' Health, Safety And Training or any other state or federal
10 agency, to be used in a coal mine or on a mine site or on any other industrial site. Safety
11 equipment shall remain on the list from year to year until the director removes it from the list. The
12 Office of Miners' Health, Safety and Training may establish by legislative rule or interpretive rule
13 a shorter time period for issuance of and updating of the list of approved innovative mine safety
14 technologies.

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

23 (c) *Delisting.* — (1) If any item of equipment or any line of equipment or class of equipment
24 is listed on the list of approved innovative mine safety technologies in any fiscal year, but then is
25 subsequently adopted by the Federal Mine Safety and Health Administration or the West Virginia
26 Office of Mine Safety or any other state or federal agency as required equipment to be used in a

1 coal mine or on a mine site or on any other industrial site, the equipment shall be removed from
2 the list of approved innovative mine safety technologies compiled and issued for the next
3 succeeding periodic issuance thereafter of the list of approved innovative mine safety
4 technologies.

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

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

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

ARTICLE 5. BOARD OF APPEALS.

§22A-5-2. Powers transferred to the Board of Appeals.

1 (a) There are hereby transferred to the Board of Appeals all functions of the Director of
2 the Office of Miners' Health, Safety and Training relating to the review of orders and notices as
3 set forth in §22A-1-17 of this code.

4 (b) There are hereby transferred to the Board of Appeals all functions of the Director of

5 the Office of Miners' Health, Safety and Training relating to the review of penalty assessments as
6 set forth in §22A-1-21(a)(3) of this code.

7 (c) Judicial review of decisions by the Board of Appeals shall be available and conducted
8 in the same fashion as set forth in §22A-1-19 of this code.

9 (d) There is hereby transferred to the Board of Appeals, from the Board of Coal Mine
10 Health and Safety, the authority to hear and determine appeals of mine inspectors from
11 suspension orders made by the director pursuant to the provisions of §22A-1-4 of this code.

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY ADMINISTRATION.

§22A-6-1. Declaration of legislative findings and purpose.

1 (a) The Legislature hereby finds and declares that:

2 (1) The Legislature concurs with the congressional declaration made in the Federal Coal
3 Mine Health and Safety Act of 1969 that "the first priority and concern of all in the coal mining
4 industry must be the health and safety of its most precious resource -- the miner";

5 (2) Coal mining is highly specialized, technical and complex and it requires frequent
6 review, refinement and improvement of standards to protect the health and safety of miners;

7 (3) During each session of the Legislature, coal mine health and safety standards are
8 proposed which require knowledge and comprehension of scientific and technical data related to
9 coal mining;

10 (4) The formulation of appropriate rules and practices to improve health and safety and
11 provide increased protection of miners can be accomplished more effectively by persons who
12 have experience and competence in coal mining and coal mine health and safety.

13 ~~(b) In view of the foregoing findings, it is the purpose of this article to:~~

14 ~~(1) Continue the board of coal mine health and safety;~~

15 ~~(2) Require such board to continue as standard rules the coal mine health and safety~~
16 ~~provisions of this code;~~

17 ~~(3) Compel the board to review such standard rules and, when deemed appropriate to~~

18 ~~improve or enhance coal mine health and safety, to revise the same or develop and promulgate~~
19 ~~new rules dealing with coal mine health and safety; and~~

20 ~~(4) Authorize such board to conduct such other activities as it deems necessary to~~
21 ~~implement the provisions of this chapter~~

~~§22A-6-3. Board continued; membership; method of nomination and appointment;~~
~~meetings; vacancies; quorum~~ Board of Coal Mine Health and Safety terminated.

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 January 1, 2017, shall continue to serve for a~~
29 ~~minimum of three years until June 30, 2020. 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 ~~(d) The Governor shall appoint, subject to the approval of a majority of the members of~~
37 ~~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 ~~(e) The board shall meet at least once during each calendar month, or more often as may~~
53 ~~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 ~~(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 ~~(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~~

86 The Board of Coal Mine Health and Safety shall terminate on June 30, 2019, and on or
87 before this date, the board shall transfer all its equipment and records to the Office of Miner's
88 Health, Safety, and Training. Thereafter all functions of the board are transferred to and shall
89 continue with the director.

§22A-6-4. Board powers and duties.

1 (a) The ~~board~~ director shall adopt as standard rules the "coal mine health and safety
2 provisions of this chapter". Such standard rules and any other rules shall be adopted by the ~~board~~
3 director without regard to the provisions of §29A-3-1 *et seq.* of this code. ~~The Board of Coal Mine~~
4 ~~Health and Safety shall devote its time toward promulgating rules in those areas specifically~~
5 ~~directed by this chapter and those necessary to prevent fatal accidents and injuries In drafting~~
6 and promulgating rules pursuant to this section, the director shall give primary focus to the
7 prevention of injuries and fatal accidents.

8 (b) The ~~board~~ director shall review such standard rules and, when deemed appropriate to

9 improve or enhance coal mine health and safety, revise the same or develop and promulgate new
10 rules dealing with coal mine health and safety.

11 (c) The ~~board~~ director shall develop, promulgate and revise, as may be appropriate, rules
12 as are necessary and proper to effectuate the purposes of §22A-2-1 *et seq.* of this chapter and
13 to prevent the circumvention and evasion thereof ~~all without regard to the provisions of chapter~~
14 ~~twenty-nine-a of this code~~ subject to the following provisions:

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

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

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

28 (4) The director shall cause proposed rules and a notice thereof to be posted as provided
29 in §22A-1-18 of this code. The director shall deliver a copy of such proposed rules and
30 accompanying notice to each operator affected. A copy of such proposed rules shall be provided
31 upon request to any individual by the ~~director's request~~ director. The notice of proposed rules
32 shall contain a summary in plain language explaining the effect of the proposed rules.

33 (5) The ~~board~~ director shall afford interested persons a period of not less than 30 days
34 after releasing proposed rules to submit written data or comments. The ~~board~~ director may, upon

35 the expiration of such period and after consideration of all relevant matters presented, promulgate
36 such rules with such modifications as it may deem appropriate.

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

43 (7) Promptly after any such notice is released by the ~~board~~ director under subdivision (6)
44 of this section, the ~~board~~ director shall issue notice of, and hold a public hearing for the purpose
45 of receiving relevant evidence. Within 60 days after completion of the hearings, the ~~board~~ director
46 shall make findings of fact which shall be public, and may promulgate such rules with such
47 modifications as it deems appropriate. In the event the ~~board~~ director determines that a proposed
48 rule should not be promulgated or should be modified, it shall within a reasonable time publish
49 the reasons for its determination.

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

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

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

60 The ~~board~~ director shall review all reports ~~and any recommended rules submitted by the~~

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

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

81 Further, the ~~board~~ director shall, on or before January 10, of each year, submit a report to
82 the Governor, President of the Senate and Speaker of the House, which report shall include, but
83 is not limited to:

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

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

§22A-6-5. Preliminary procedures for promulgation of rules.

1 [Repealed.]

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

- 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 ~~2017 shall complete a three-year term until June 30, 2020, unless he or she is determined to have~~
4 ~~committed misfeasance, malfeasance or nonfeasance as referenced herein. The Health and~~
5 ~~Safety Administrator shall be entitled to have his or her contract of employment renewed on an~~
6 ~~annual basis except where such renewal is denied for cause: *Provided*, That the Governor has~~
7 ~~the power at any time to remove the Health and Safety Administrator for misfeasance,~~
8 ~~malfeasance or nonfeasance: *Provided, however*, That the board director has the power to~~
9 ~~remove the Health and Safety Administrator without cause upon the concurrence of five members~~
10 ~~of the board.~~
- 11 (b) ~~The Health and Safety Administrator shall work at the direction of the board,~~

12 ~~independently of the Director of the Office of Miners' Health, Safety and Training and has such~~
13 ~~authority and shall perform such duties as may be required or necessary to effectuate this article.~~

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

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

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

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

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

37 ~~(g) At the direction of the board, the administrator shall also conduct an annual study of~~

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

42 (h) ~~The administrator shall provide administrative assistance to the The State Coal Mine~~
 43 ~~Safety and Technical Review Committee, Board of Coal Mine Health and Safety, and serve as~~
 44 ~~the legislative liaison for budgetary issues. The Administrator shall serve as an ex officio,~~
 45 ~~nonvoting member on The State Coal Mine Safety and Technical Review Committee.~~

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

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

52 The position of Health and Safety Administrator shall terminate on June 30, 2019, and
 53 should there be any need for a reconciliation of the accounts of the administrator or of the Board
 54 of Coal Mine Health and Safety following that date, the Department of Commerce shall complete
 55 that reconciliation.

**~~§22A-6-7. Coal Mine Safety and Technical Review Committee; membership; method of
 nomination and appointment; meetings; quorum; powers and duties of the
 committee; powers and duties of the Board of Coal Mine Health and Safety Rule-
 making authority and site-specific rules.~~**

1 (a) ~~The State Coal Mine Safety and Technical Review Committee is continued, and~~
 2 ~~commencing July 1, 2010, is a separate independent committee within the Department of~~
 3 ~~Commerce shall terminate and cease to function on June 30, 2019, and on or before this date,~~
 4 ~~the board shall transfer all its equipment and records to the Director of the Office of Miner's Health,~~

5 Safety, and Training. ~~The purposes of this committee are to:~~

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

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

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

13 ~~(4) Provide a forum for the resolution of technical issues encountered by the board, safety~~
14 ~~education and coal advocacy programs.~~

15 ~~(b) The committee shall consist of two members who shall be residents of this state and~~
16 ~~who shall be appointed as hereinafter specified in this section:~~

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

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

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

28 ~~(4) The members appointed in accordance with the provisions of subdivisions (1) and (2)~~
29 ~~of this subsection may be, but are not required to be, members of the Board of Coal Mine Health~~
30 ~~and Safety, and shall be compensated on a per diem basis in the same amount as provided in~~

31 ~~section ten of this article, plus all reasonable expenses.~~

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

34 ~~(d) A quorum of the committee shall require both members and the committee may only~~
35 ~~act officially by a quorum~~

36 ~~(e) (b) The committee director may review any matter relative to mine safety and mining~~
37 ~~technology and may pursue development and resolution of issues related thereto. The committee~~
38 ~~may make recommendations to the board for the promulgation of Where necessary to address or~~
39 ~~resolve such issues, the director may prepare and promulgate rules with general mining industry~~
40 ~~application pursuant to the procedures specified in §22A-6-4 of this code. Upon receipt of a~~
41 ~~unanimous recommendation for rule making from the committee and only thereon, the board may~~
42 ~~adopt or reject such rule, without modification except as approved by the committee: *Provided,*~~
43 ~~That any adopted rule No rule so promulgated shall not reduce or compromise the level of safety~~
44 ~~or protection below the level of safety or protection afforded by applicable statutes and rules.~~
45 ~~When so promulgated, such rules shall be effective, notwithstanding the provisions of applicable~~
46 ~~statutes~~

47 ~~(f) (1) (c) Upon application of a coal mine operator, or on its his or her own motion, the~~
48 ~~committee director has the authority to accept requests for site-specific rule making on a mine-~~
49 ~~by-mine basis and make unanimous recommendations to the board for to promulgate a site-~~
50 ~~specific rules thereon. The committee has authority to approve a request if it concludes that the~~
51 ~~request rule if the rule does not reduce or compromise the level of safety or protection afforded~~
52 ~~miners below the level of safety or protection afforded by any other applicable statutes or rules.~~
53 ~~Upon receipt of a request for site-specific rule making, the committee director may conduct an~~
54 ~~investigation of the conditions in the specific mine in question, which investigation shall include~~
55 ~~consultation with the mine operator and authorized representatives of the miners. Such authorized~~
56 ~~representatives of the miners shall include any person designated by the employees at the mine,~~

57 persons employed by an employee organization representing one or more miners at the mine, or
58 a person designated as a representative by one or more persons at the mine.

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

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

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

77 ~~(h) In performing its functions, the committee has access to the services of the coal mine~~
78 ~~Health and Safety Administrator appointed under section six of this article. The director shall make~~
79 ~~clerical support and assistance available in order that the committee can carry out its duties. Upon~~
80 ~~the request of both members of the committee, the Health and Safety Administrator shall draft~~
81 ~~proposed rules and reports or make investigations.~~

82 ~~(i) The powers and duties provided for in this section for the committee are not intended~~

83 ~~to replace or precondition the authority of the Board of Coal Mine Health and Safety to act in~~
84 ~~accordance with sections one through six and eight through ten of this article.~~

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

§22A-6-8. Effect of rules.

1 [Repealed.]

§22A-6-9. Reports.

1 [Repealed.]

§22A-6-10. Compensation and expenses of board members.

1 [Repealed.]

§22A-6-11. Study of methane detecting shut off devices.

1 [Repealed.]

§22A-6-12. Study of whistleblower protections.

2 [Repealed.]

**§22A-6-13. Study of ingress and egress to bleeder and gob areas of longwall panels and
pillar sections.**

1 [Repealed.]

§22A-6-14. Study of mandatory substance abuse program.

1 [Repealed.]

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

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

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) Require certain training and education of all prospective miners and miners certified
19 by the state;

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

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

25 ~~(5)~~ (4) Provide for a program of continuing miner education for all categories of certified
26 miners.

§22A-7-3. Definitions Definition of "mine".

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 Coal Mine Health and Safety established by section four of~~
6 ~~this article.~~

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

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

1 (a) The Board of Miner Training, Education and Certification ~~is continued, and~~
2 ~~commencing July 1, 2010, is a separate independent board within the Department of Commerce~~
3 shall terminate on June 30, 2019, and on or before this date, the board shall transfer all its
4 equipment and records to the Office of Miner’s Health, Safety, and Training. Thereafter all
5 functions of the board are transferred to and shall continue with the director.

6 ~~The board consists of six voting members and two ex-officio, nonvoting members, who~~
7 ~~are selected in the following manner:~~

8 ~~(1) One member shall be appointed by the Governor to represent the viewpoint of surface~~
9 ~~mine operators in this state. When such member is to be appointed, the Governor shall request~~
10 ~~from the major association representing surface coal operators in this state a list of three~~
11 ~~nominees to the board. The Governor shall select from said nominees one person to serve on the~~
12 ~~board. For purposes of this subsection, the major association representing the surface coal~~
13 ~~operators in this state is that association, if any, which represents surface mine operators~~
14 ~~accounting for over one half of the coal produced in surface mines in this state in the year prior to~~
15 ~~that year in which the appointment is made.~~

16 ~~(2) Two members shall be appointed by the Governor to represent the interests of the~~
17 ~~underground operators of this state. When said members are to be appointed, the Governor shall~~
18 ~~request from the major association representing the underground coal operators in this state a~~
19 ~~list of six nominees to the board. The Governor shall select from said nominees two persons to~~
20 ~~serve on the board. For purposes of this subsection, the major association representing the~~
21 ~~underground operators in this state is that association, if any, which represents underground~~
22 ~~operators accounting for over one half of the coal produced in underground mines in this state in~~
23 ~~the year prior to that year in which the appointments are made.~~

24 ~~(3) Three members shall be appointed by the Governor who can reasonably be expected~~
25 ~~to represent the interests of the working miners in this state. If the major employee organization~~
26 ~~representing coal miners in this state is divided into administrative districts, the employee~~
27 ~~organization of each district shall, upon request by the Governor, submit a list of three nominees~~
28 ~~for membership on the board. If such major employee organization is not so divided into~~
29 ~~administrative districts, such employee organization shall, upon request by the Governor, submit~~
30 ~~a list of twelve nominees for membership on the board. The Governor shall make such~~
31 ~~appointments from the persons so nominated: *Provided*, That in the event nominations are made~~
32 ~~by administrative districts, not more than one member shall be appointed from the nominees of~~
33 ~~any one district unless there are less than three such districts in this state.~~

34 ~~(4) The Director of the Office of Miner's Health, Safety and Training or his or her designee,~~
35 ~~and the Health and Safety Administrator of the Board of Coal Mine Health and Safety shall serve~~
36 ~~as ex officio, nonvoting members.~~

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

41 ~~(b) The board shall be appointed by the Governor. Members serving on the effective date~~

42 ~~of this article may continue on the board until their terms expire. Appointed members serve for a~~
43 ~~term of three years. The board shall meet at the call of the chair, at the call of the director, or upon~~
44 ~~the request of any two members of the board: *Provided*, That no meeting of the board for any~~
45 ~~purpose shall be conducted unless the board members are notified at least five days in advance~~
46 ~~of a proposed meeting. In cases of an emergency, members may be notified of a board meeting~~
47 ~~by the most appropriate means of communication available.~~

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

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

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

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

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

**§22A-7-5. Additional powers and duties of the ~~Board of Coal Mine Health and Safety~~
director.**

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

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

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

16 (d) The ~~board~~ director shall set minimum standards for a program of continuing education
17 and training of certified persons and other miners on an annual basis: *Provided, That the*
18 *standards shall be consistent with the provisions of section seven of this article. Prior to issuing*
19 *the standards, the ~~board~~ director shall conduct public hearings at which the parties who may be*
20 *affected by its actions may be heard. The education and training shall be provided in a manner*
21 *determined by the director to be sufficient to meet the standards established by ~~the board~~*
22 *legislative rule.*

23 (e) The ~~board~~ director may, in conjunction with any state, local or federal agency or any
24 other person or institution, provide for the payment of a stipend to prospective miners enrolled in

25 one or more of the programs of miner education, training and certification provided in this article
 26 or any other provision of this code.

27 (f) The ~~board~~ director may also, from time to time, conduct any hearings and other
 28 oversight activities required to ensure full implementation of programs established by ~~the~~
 29 director.

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

32 (h) ~~(g)~~ The ~~board~~ director may, upon ~~its~~ his or her own motion, ~~or whenever requested to~~
 33 ~~do so by the director~~ consider two certificates issued by this state to be of equal value or consider
 34 training provided or required by federal agencies to be sufficient to meet training and education
 35 requirements set by ~~the~~ director or by the provisions of this code.

36 ~~(i)~~ ~~(h)~~ As part of the annual training required by this section, the ~~board~~ director shall include
 37 training of certified persons and other miners, instruction on miners' rights as they relate to the
 38 operation of unsafe equipment as provided in §22A-2-71 of this code, ~~his or her~~ the miner's right
 39 to withdrawal from unsafe conditions as provided in §22A-2-72 of this code and his or her rights
 40 under §22A-2-22 of this code.

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

1 [Repealed.]

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

1 The director shall propose rules for legislative approval, pursuant to §29A-3-1 et seq. of
 2 this code, that are necessary to establish a program to implement the provisions of this article.
 3 Such program shall include, but not be limited to, implementation of a program of instruction in
 4 each of the miner occupational specialties and the conduct of examinations to test each
 5 applicant's knowledge and understanding of the training and instruction which he or she is
 6 required to have prior to the receipt of a certificate.

7 The director is authorized and directed to utilize state mine inspectors, mine safety

8 instructors, the state mine foreman examiner, private and public institutions of education and such
9 other persons as may be available in implementing the program of instruction and examinations.

10 ~~The director may, at any time, make such recommendations to the board as he or she~~
11 ~~may deem appropriate.~~

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

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

§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~~ and from any safety analysis performed by the
23 company;
- 24 (5) A review of fatality and accident trends in underground coal mines; and
- 25 (6) The ~~board~~ director shall solicit input from mining companies on the substance of the
26 training and discuss how the training shall be scheduled during the year.
- 27 (e) The ~~board~~ director may approve alternative training programs tailored to specific
28 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 §22A-1-31 of this code
36 and, upon determining that the requirements have not been met, the Board of Appeals may revoke
37 the mine foreman-fire boss' certification, which shall not be renewed except upon successful
38 completion of the examination prescribed by law for mine foremen-fire bosses or upon completion
39 of other training requirements established by the ~~board~~ director: *Provided*, That an individual
40 having his or her mine foreman-fire boss certification suspended pursuant to this section who also
41 holds a valid mine foreman-fire boss certification from another state may have the suspension
42 lifted by completing training requirements established by the ~~board~~ director.

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 8. CERTIFICATION OF UNDERGROUND AND SURFACE COAL MINERS.

§22A-8-3. Permit of apprenticeship-underground miner.

1 A permit of apprenticeship-underground miner shall be issued by the director to any
2 person who has demonstrated by examination a knowledge of the subjects and skills pertaining
3 to employment in underground mines, including, but not limited to, general safety, first aid, miner
4 and operator rights and responsibilities, general principles of electricity, general mining hazards,
5 roof control, ventilation, mine health and sanitation, mine mapping, state and federal mining laws
6 and regulations and such other subjects as may be required by the board of miner training,
7 education and certification: *Provided*, That each applicant for said permit shall complete a
8 program of education and training of at least eighty hours, which shall be determined by, ~~the~~
9 ~~Board of Miner Training, Education and Certification and~~ provided for, and implemented by the
10 director: *Provided, however*, That if a sufficient number of qualified applicants having successfully
11 completed the state training program provided by the Office of Miners' Health, Safety and Training
12 are not available, the operator may request approval from the director to conduct the operator's
13 own preemployment training program so long as such training adequately covers the minimum
14 criteria determined by the board and such trainees shall be eligible for the same certification as
15 provided for trainees undergoing training provided by the state.

§22A-8-4. Permit of apprenticeship-surface miner.

1 A permit of apprenticeship-surface miner shall be issued by the director to any person who

2 has demonstrated by examination a knowledge of the subjects and skills pertaining to
3 employment in the surface mining industry, including, but not limited to, general safety, first aid,
4 miner and operator rights and responsibilities, general principles of electricity, health and
5 sanitation, heavy equipment safety, high walls and spoil banks, haulage, welding safety, tippie
6 safety, state and federal mining laws and regulations and such other subjects as may be required
7 by the board of miner training, education and certification: *Provided*, That each applicant for said
8 permit shall complete a program of education and training of at least forty hours, which program
9 shall be determined by, ~~the Board of Miner Training, Education and Certification~~ and provided for,
10 and implemented by the director: *Provided, however*, That if a sufficient number of qualified
11 applicants having successfully completed the state training provided by the Office of Miners'
12 Health, Safety and Training are not available, the operator may request approval from the director
13 to conduct the operator's own preemployment training program so long as such training
14 adequately covers the minimum criteria determined by the board and such trainees shall be
15 eligible for the same certification as provided for trainees undergoing training provided by the
16 state.

§22A-8-5. Supervision of apprentices.

1 Each holder of a permit of apprenticeship shall be known as an apprentice. Any miner
2 holding a certificate of competency and qualification may have one person working with him or
3 her, and under his or her supervision and direction, as an apprentice, for the purpose of learning
4 and being instructed in the duties and calling of mining. Any mine foreman or fire boss or assistant
5 mine foreman or fire boss may have three persons working with him or her under his or her
6 supervision and direction, as apprentices, for the purpose of learning and being instructed in the
7 duties and calling of mining: *Provided*, That a mine foreman, assistant mine foreman or fire boss
8 supervising apprentices in an area where no coal is being produced or which is out by the working
9 section may have as many as five apprentices under his or her supervision and direction, as
10 apprentices, for the purpose of learning and being instructed in the duties and calling of mining or

11 where the operator is using a production section under program for training of apprentice miners,
 12 approved by the ~~Board of Miner Training, Education and Certification~~ Director of the Office of
 13 Miners' Health, Safety and Training.

14 Every apprentice working at a surface mine shall be at all times under the supervision and
 15 control of at least one person who holds a certificate of competency and qualification.

16 In all cases, it is the duty of every mine operator who employs apprentices to ensure that
 17 such persons are effectively supervised and to instruct such persons in safe mining practices.
 18 Each apprentice shall wear a red hat which identifies the apprentice as such while employed at
 19 or near a mine. No person shall be employed as an apprentice for a period in excess of eight
 20 months, except that in the event of illness or injury, time extensions shall be permitted as
 21 established by the Director of the Office of Miners' Health, Safety and Training.

§22A-8-6. Certificate of competency and qualification -- Underground or surface miner.

1 A certificate of competency and qualification as an underground miner or as surface miner
 2 shall be issued by the director to any person who has at least six months' total experience as an
 3 apprentice and demonstrated his or her competence as a miner by successful completion of an
 4 examination given by the director or his or her representative: ~~in a manner and place to be~~
 5 ~~determined by the Board of Miner Training, Education and Certification~~ *Provided*, That all
 6 examinations shall be conducted in the English language and shall be of a practical nature, so as
 7 to determine the competency and qualifications of the applicant to engage in the mining of coal
 8 with reasonable safety to the applicant and fellow employees: *Provided, however*, That notice of
 9 the time and place of such examination shall be given to management at the mine, to the local
 10 union thereat if there is a local union, and notice shall also be posted at the place or places in the
 11 vicinity of the mine where notices to employees are ordinarily posted. Examinations shall also be
 12 held at such times and places, and after such notice, as the ~~board~~ director finds necessary to
 13 enable all applicants for certificates to have an opportunity to qualify for certification.

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 hereby abolished. All duties and responsibilities
 2 imposed upon the Mine Inspectors' Examining Board are transferred ~~and hereby imposed upon~~
 3 ~~the Board of Coal Mine Health and Safety~~ to the Director of the Office of Miners' Health, Safety,
 4 and Training. On the effective date of the reenactment of this article and section of the code, all
 5 equipment and records necessary to effectuate the purposes of this article shall be transferred to
 6 the ~~Board of Coal Mine Health and Safety~~ director.

7 In addition to other duties expressly set forth elsewhere in this article, the ~~Board of Coal~~
 8 ~~Mine Health and Safety~~ director shall:

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

12 (2) Adopt and promulgate reasonable rules relating to the examination, qualification and
 13 certification of candidates for appointment as mine inspectors, and hearing for removal of
 14 inspectors, required to be held by §22A-1-12 of this chapter. All of such rules shall be printed and
 15 a copy thereof furnished by the ~~secretary of the board~~ director to any person upon request. The
 16 ~~board~~ director shall determine whether applicants have the necessary experience to take the mine
 17 inspector examination, and the examination of candidates for appointment as a mine inspector
 18 shall be conducted by the ~~board~~ and it shall rank all applicants director who shall prepare a
 19 register of qualified, eligible candidates for appointment as mine inspector;

20 (3) The director shall issue a letter or written notice of qualification to each successful
 21 eligible candidate;

22 ~~(3) (4) Prepare and certify to the Director of the Office of Miners' Health, Safety and~~
 23 ~~Training a register of qualified eligible candidates for appointment as mine inspectors. The register~~
 24 ~~shall list all qualified eligible candidates in the order of their grades, the candidate with the highest~~

25 ~~grade appearing at the top of the list. After each meeting of the board held to examine such~~
26 ~~candidates, and at least annually, the board shall prepare and submit to the Director of the Office~~
27 ~~of Miners' Health, Safety and Training. The director shall, at least annually, prepare a revised and~~
28 corrected register of qualified eligible candidates for appointment as mine inspector, deleting from
29 such revised register all persons: (a) Who are no longer residents of West Virginia; (b) who have
30 allowed a calendar year to expire without, in writing, indicating their continued availability for such
31 appointment; (c) who have been passed over for appointment for three years; (d) who have
32 become ineligible for appointment since the ~~board~~ director originally certified that such person
33 was qualified and eligible for appointment as mine inspector; or (e) who, in the judgment of the
34 ~~board~~ director, should be removed from the register for good cause; ~~by the board~~

35 (4) ~~(5)~~ The ~~board~~ director shall keep and preserve the written examination papers,
36 manuscripts, grading sheets, and other papers of all applicants for appointment as mine inspector
37 for a period of two years. Specimens of the examinations given, together with the correct solution
38 of each question, shall be preserved;

39 ~~(5) The board shall issue a letter or written notice of qualification to each successful eligible~~
40 ~~candidate~~

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

43 (7) The ~~board~~ Board of Appeals, established in §22A-5-1 et seq. of this code, shall hear
44 and determine appeals of mine inspectors from suspension orders made by the director pursuant
45 to the provisions of §22A-1-4 of this code: *Provided*, That an aggrieved inspector, in order to
46 appeal from any order of suspension, shall file such appeal in writing with the ~~Board of Coal Mine~~
47 ~~Health and Safety~~ Board of Appeals not later than ten days after receipt of notice of suspension.
48 On such appeal the board shall affirm the act of the director unless it be satisfied from a clear
49 preponderance of the evidence that the director has acted arbitrarily;

50 (8) The ~~board and office~~ director shall make an annual report to the Governor and the

51 ~~director~~ Legislature concerning the administration of mine inspection personnel in the state
 52 service, making such recommendations as the ~~board~~ director considers to be in the public
 53 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 direct that the Director of the Office of Miners' Health, Safety, and Training, on a continuous basis,
 13 evaluate and study issues relating to the commercial availability and functional and operational
 14 capability of existing and emerging technologies in coal mine health and safety, as well as issues
 15 relating to the implementation, compliance and enforcement of regulatory requirements governing
 16 the technologies.

§22A-11-2. Mine Safety Technology Task Force abolished and duties imposed upon the ~~Board of Coal Mine Health and Safety~~ Director of the Office of Miners' Health, Safety, and Training.

1 (a) The Mine Safety Technology Task Force hereby abolished. All duties and
 2 responsibilities imposed upon the Mine Safety Technology Task Force are transferred and hereby

3 imposed upon the ~~Board of Coal Mine Health and Safety~~ Director of the Office of Miners' Health,
 4 Safety, and Training. On the effective date of the reenactment of this article and section of the
 5 code, all equipment and records necessary to effectuate the purposes of this article shall be
 6 transferred to the ~~Board of Coal Mine Health and Safety~~ Office of Miners' Health, Safety, and
 7 Training.

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

1 ~~(a) The board shall provide technical and other assistance to the office related to the~~
 2 ~~implementation of the new technological requirements set forth in the provisions of section fifty-~~
 3 ~~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)~~ (a) The board, ~~working in conjunction with the~~ director shall continue to study issues
 6 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)~~ (b) The ~~board~~ director 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)~~ (c) On or before July 1 of each year, the ~~board~~ director shall submit a report to the
27 Governor and the ~~director~~ Legislature that shall include, but not be limited to:

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

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

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

35 (4) Any other information the ~~board~~ director considers appropriate.

36 ~~(e)~~ (d) In performing ~~its~~ his or her duties, the ~~board~~ director shall, where possible, consult
37 with, among others, mine engineering and mine safety experts, radio communication and
38 telemetry experts and relevant state and federal regulatory personnel.

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

41 ~~(g)~~ (f) The ~~board~~ director shall annually compile a ~~proposed~~ and update a list of approved
42 innovative mine safety technologies and transmit the list to the Director of the Office of Miners'
43 Health, Safety and Training as which meet the criteria provided in §11-13BB-4 of this code. The
44 list shall be approved by unanimous vote of the board

§22A-11-4. Approval of devices.

1 [Repealed.]

NOTE: The purpose of this bill is to terminate the administrative, investigative, certification, and research boards affiliated with the Office of Miners' Health, Safety, and Training and to transfer the powers and duties of those boards to the Director of Miners' Health, Safety, and Training.

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