

Investing in Energy



2022

*A Summary of Legislation from 2015-2022
Related to Showcasing West Virginia's Commitment
To Developing an All-Of-The-Above Energy Portfolio*

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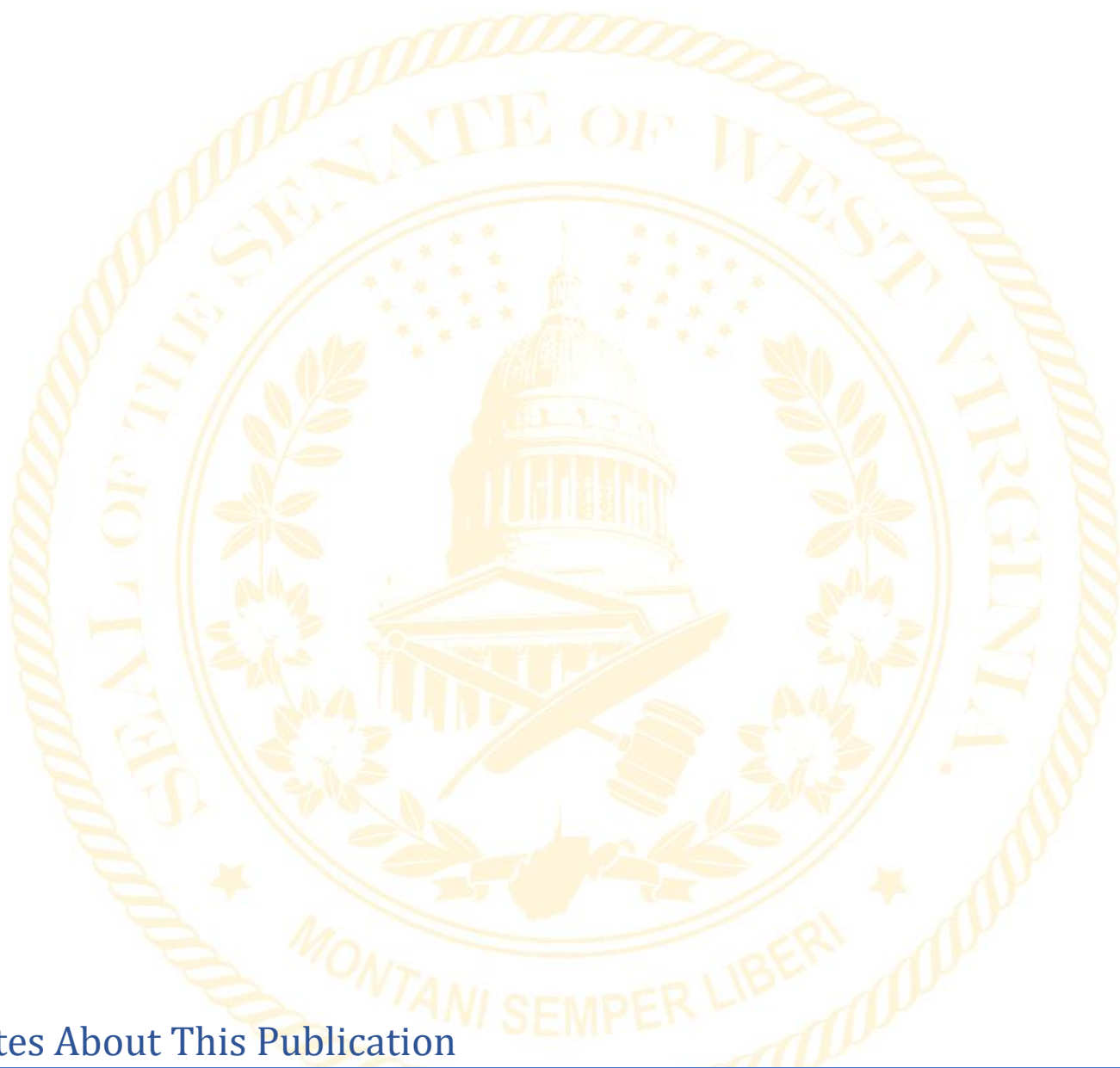
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Notes About This Publication

Produced by Jacque Bland, Communications Director – West Virginia Senate. Information was compiled and edited from available resources including Bill Summaries, bill abstracts, Conference Committee reports and bill titles. Details pertaining to a specific bill may have updated since the bill’s original passage. Electronic versions of this book and other publications are available for download at <https://www.wvlegislature.gov/Senate1/president.cfm>. For corrections, questions or additional information, please email jacque.bland@wvsenate.gov or call 304-357-7999.

2022 Regular Session



Senate Bill 1

Creating Mining Mutual Insurance Company

COAL

This bill created the Mining Mutual Insurance Company. This provides a safety net to coal operators who have experienced difficult financial hardships to comply with the Surface Coal Mining Reclamation Act by giving them an option to obtain performance bonds to assure proper reclamation.

The bill has a short title and an extensive list of legislative findings. It also defines necessary terms. It creates a domestic, private, nonstock corporation owned by the policyholders. It is not a governmental entity and is responsible for its own debts and obligations and its funds are not part of the state's general revenue funds. Since it is not a governmental entity it is not subject to the open proceedings act or the Freedom of Information Act. It would be subject to premium taxes set out in Chapter 33 of the Code.

The bill provides for a board of directors to govern the operation of the company. There shall initially be a provisional board and the bill provides for their qualifications to serve and the manner in which they are appointed. Upon filing of the articles of incorporation the officers and directors shall be selected pursuant to the provisions of those articles. Terms of office are set forth in the bill.

The board of directors is given contracting authority to enter into contracts with licensed insurers, health service plans, insurance service organizations, third-party administrators, brokerage firms or other entities with suitable qualifications to administer the affairs of the company. Any such contract is subject to competitive bidding and must be filed with the Insurance Commissioner.

The company would be subject to regulation by the Insurance Commissioner. They must file their charter and bylaws and apply for a license. The Commissioner is required to act on these documents within 15 days. The Commissioner has the power and authority to:

- Determine the initial capital and surplus requirements;
- Monitor economic viability; and
- Waive other requirements imposed on mutual insurance companies.

The company has 40 months to comply with the capital and surplus requirements.

A special revenue account is created to receive moneys transferred from the Department of Environmental Protection. Within 30 days of the effective date of this act, the Treasurer with the cooperation of the Department of Environmental Protection shall transfer \$50,000,000 into the fund. Thirty days following this transfer these funds shall be transferred to the Mining Mutual as initial capital and surplus. This shall be seen as a noninterest loan and paid back as reclamation activities are completed. Additional funds may be transferred into the special revenue account from time to time with approval of the Insurance Commissioner when capital is needed by the Mutual Mining Company. These funds will be transferred to the company within 30 days and shall be considered a noninterest loan and paid back. Once approved to conduct business, the company may issue nonassessable policies of performance bonds. Participation is optional and the provisions of Code related to corporations' law and insurance law are applicable if they are not in conflict with the provisions of this act.

CODE REFERENCE: West Virginia Code §33-61-1 through §33-61-10 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: March 12, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 4

Repealing ban on construction of nuclear power plants

The proposed legislation repeals the entirety of Article 27A, Chapter 16, which bans construction on nuclear power plants in West Virginia.

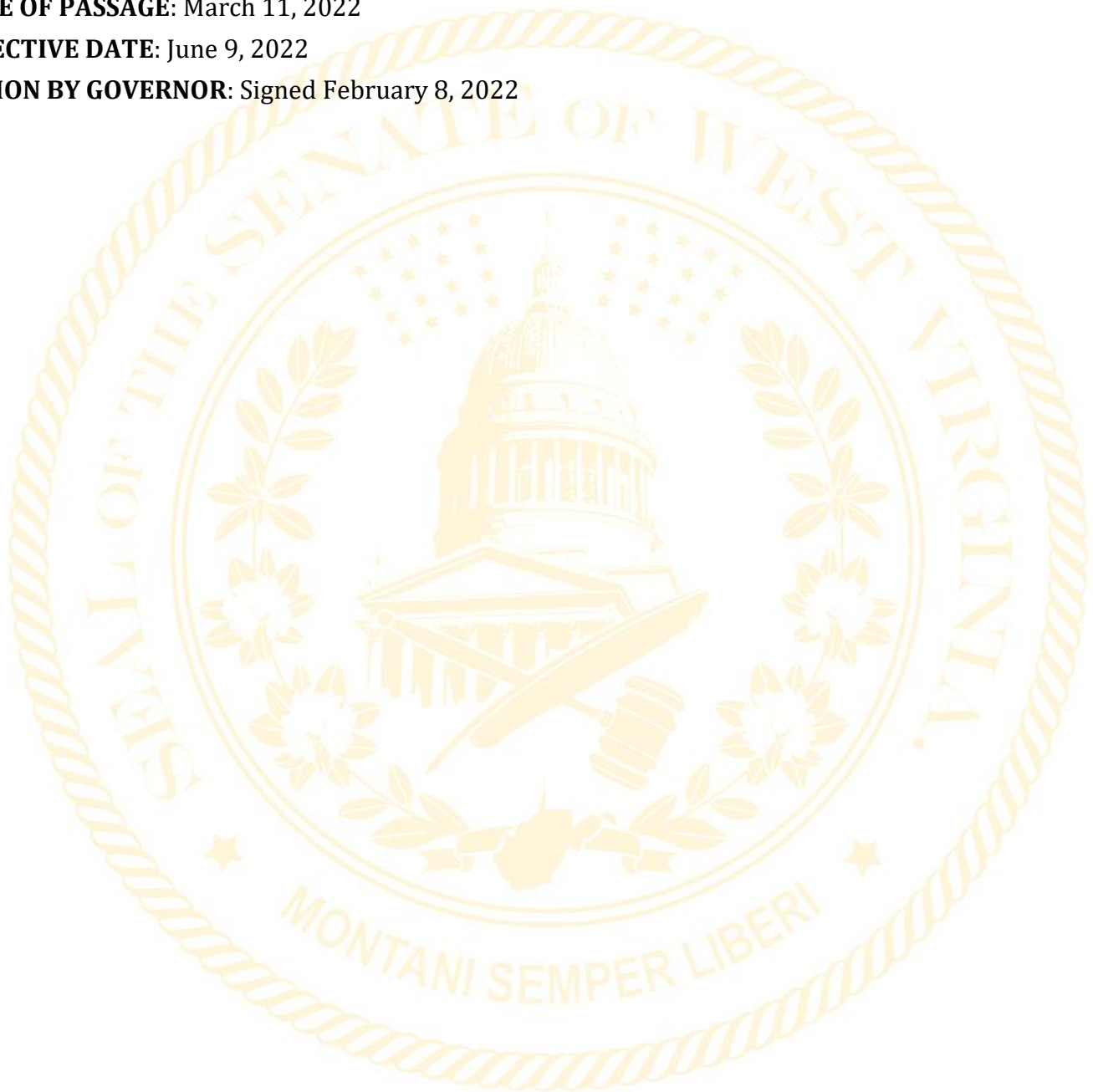
CODE REFERENCE: West Virginia Code §16-27A-1, §16-27A-2 – repeal

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed February 8, 2022

NUCLEAR



Senate Bill 6

Establishing common law “veil piercing” claims not be used to impose personal liability

Senate Bill 6 modifies the application of the “corporate veil piercing” analysis adopted by the Supreme Court of Appeals in *Joseph Kubican v. The Tavern, LLC*, 232 W.Va. 268 (2013) for the purpose of imposing personal liability on a member or manager of a limited liability company.

In subsection (a), the bill clarifies that a member or manager of an LLC is not personally liable for fines, fees, or penalties individually assessed against another member or manager for unrelated acts.

Prior to amendment, subsection (c) provided that members may be held liable in their capacity as members for debts, obligations, or liabilities of the company if a provision to that effect is contained in the articles of organization and the member has consented in writing to the adoption of the provision or to be bound by the provision. The bill adds the following as additional circumstances in which members may be held liable:

- The member against whom liability is asserted has personally guaranteed the liability obligation of the limited liability company in writing;
- There is any tax liability of the limited liability company which the law of the state or of the United States imposes liability upon the member; or
- The member commits actual or constructive fraud which causes injury to an individual or entity.

In new subsection (d), the bill authorizes courts to apply the Kubican “corporate veil piercing” analysis only if a company is not adequately capitalized for the reasonable risks of the corporate undertaking and the company does not carry certain minimum limits of liability insurance coverage for the primary risks of the business (\$100,000 or such higher amount as may be specifically required by law).

In new subsection (e), the bill authorizes non-human members of an LLC to be held liable under the doctrine of joint enterprise liability rather than veil piercing.

In new subsection (f), the bill confirms that a member may still be held liable as a tortfeasor, and that veil piercing does not apply under these circumstances.

In new subsection (g), the bill authorizes a judgment creditor of an LLC to “clawback” funds from a member to reimburse the LLC for the lesser of the amount of a judgment or amount transferred from the LLC to the member in bad faith, and specifies the following circumstances in which this may occur via primary liability rather than veil piercing: conflicted exchange, insolvency distribution, or siphoning of funds.

Lastly, in new subsection (h), the bill defines several new terms: “conflicted exchange”, “insolvency distribution”, “insolvent”, and “siphoning of funds”.

CODE REFERENCE: West Virginia Code – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 245

Revising wage payment and collection

This bill allows an employer to elect the form of payment to an employee. An employer may choose to pay their employee via lawful money of the United States, check or money order, payroll card, or direct deposit.

Should an employer make payment using the payroll card option, an employer is required to provide a written disclosure of any fees associated with the payroll card and ensure that the employee has the ability to make at least one withdrawal or transfer from the payroll card per pay period without cost to the employee. The employer must also make an alternate method of payment via direct deposit available to employees should the employer elect to pay an employee via a payroll card.

CODE REFERENCE: West Virginia Code §21-5-3 and §21-5-4 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 440

Establishing Uniform Commercial Real Estate Receivership Act

The Act applies to receiverships for real property as well as personal property that is related to the real property or used in its operation. It does not govern a receivership for an interest in real property improved by one to four dwelling units, unless (1) the interest is used for agricultural, commercial, industrial, or mineral extraction purposes, other than incidental uses by an owner occupying the property as the owner's residence; (2) the interest secures an obligation incurred when the property was used or planned for use for agricultural, commercial, industrial or mineral extraction purposes; (3) the owner planned or is planning to develop the property with one or more dwelling units to be sold or leased in the ordinary course of the owner's business, or (4) the owner collects rents or other income from an unrelated tenant or other occupier. The Act does not provide the exclusive method for appointment.

The state court's general equity jurisdiction has exclusive jurisdiction of the receivership process

The bill establishes standards under which a court may appoint a receiver in the exercise of its equitable jurisdiction. It also establishes standards under which a petitioning mortgage lienholder is entitled to appointment of a receiver, either as a matter of right or as a matter of the court's discretion. Where the court appoints a receiver ex parte, the court may require the party seeking appointment to post security for any damages, attorney's fees and costs incurred by a person injured by an appointment later determined to be unjustified.

Because a receiver holds receivership property for the benefit of all interested parties the bill requires that the receiver provide sworn evidence of the receiver's independence, subject to an exception to prevent disqualification based on certain pre-existing relationships that are de minimus in nature. While a party seeking the appointment of a receiver may nominate a person to serve as a receiver, the nomination is non-binding on the court.

On appointment, a receiver has the status and priority of a lien creditor with respect to receivership property. Appointment of a receiver does not affect the validity of a pre-receivership security interest in receivership property, and property required after appointment is subject to any pre-receivership security agreement to the same extent as if no receiver had been appointed. On appointment, persons having possession, custody and control of receivership property must turn the property over to the receiver, and persons owing debts that constitute receivership property must pay those debts to the receiver. Entry of the order of appointment effects a stay, applicable to all persons, of an act to obtain possession of, exercise control over, or enforce a judgment against receivership property, as well as an act to enforce a lien against receivership property. In appropriate situations, the court can expand the scope of the stay, and grant relief of the stay. However, certain actions are outside the scope of the stay. The Act also addresses the consequences of a violation of the stay.

The bill sets forth the receiver's presumptive powers, as well as those that the receiver may exercise only with court approval. It also sets forth the duties of the receiver and the duties of the owner of receivership property.

The Act authorizes the receiver to engage and pay professionals to assist in the administration of the receivership following court approval.

With Court approval, the bill permits the receiver to use, sell, lease, license, exchange, or otherwise transfer, receivership property other than in the ordinary course of business. Unless the agreement of

transfer provides otherwise, the transfer is free and clear of rights of redemption and liens other than liens than are senior to the lien of the person who obtained the receiver's appointment. Liens extinguished by the receiver's sale attach to the proceeds with the same validity, perfection, and priority as they had with respect to the property sold. The sale may be conducted as a private sale, and creditors with valid secured claims may credit bid. The bill also provides a safe harbor for purchasers, in case a party objects to the sale but fails to get a stay of the order approving the sale. Secured creditors are entitled to the proceeds of the collateral according to the priority rules established by law other than this Act, although the court may award the receiver the reasonable and necessary fees and expenses for carrying out the receiver's duties.

With court approval, a receiver may adopt or reject an executory contract of the owner relating to receivership property. The bill covers the mechanics for adoption or rejection of executory contracts. The receiver may also assign an adopted executory contract to the extent permitted by the contract and applicable law other than this Act. The bill specifies the consequences of a receiver's rejection of an executory contract. It contains protections for purchasers in possession of real property or real property time share interests that are analogous to those contained in the Bankruptcy Code. The bill also limits the receiver's ability to reject the unexpired lease of a tenant, permitting rejection of the lease only in a very limited situation. Consistent with the receiver's status as an officer of the court, the bill provides the receiver with immunity for acts or omissions within the scope of the receiver's appointment. Further, the bill incorporates the Barton doctrine and provides that a receiver cannot be sued personally for an act or omission in administering receivership property except with the approval of the appointing court.

The bill requires the receiver to notify creditors of the appointment of the receiver unless the court order otherwise and requires creditors to file claims with the receiver as a precondition to obtaining any distribution from receivership property or the proceeds of such property. It permits the receiver to recommend disallowance of claims. The bill also authorizes the court to forgo the filing of unsecured claims where the receivership property is likely to be insufficient to satisfy secured claims against the property. The receiver must file interim reports as directed by the court and on completion of the receivers' duties, a final report.

Where a receiver has been appointed by another state, the bill authorizes the court to appoint that person or its designee as an ancillary receiver for the purpose of obtaining possession, custody, and control of receivership property located within the state. The bill also permits the court to enter any order necessary to effectuate an order of a court in another state appointing or directing a receiver.

The bill makes clear that the appointment of a receiver required by a mortgagee or assignee of rents, and actions taken by the receiver do not make the mortgagee or assignee of rents a "mortgagee in possession" do not constitute an election of remedies or make the secured obligation unenforceable, and do not constitute an "action" within the meaning of the state's "one-action" rule. In a state with anti-deficiency rules, where a receiver conducts a sale of receivership property free and clear of a lien, the state's anti-deficiency rules will apply to any person that held a lien extinguished by the sale to the same extent those rules would have applied after a foreclosure sale not governed by the bill.

CODE REFERENCE: West Virginia Code §55-20-1 through §55-20-28 – new

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: June 7, 2022

ACTION BY GOVERNOR: Signed March 23, 2022

Senate Bill 476

Relating to imposition of minimum severance tax on coal

COAL

This bill corrects a cross reference regarding the severance tax rate on “thin seam” coal. The correction is made by removing any reference to a specific subsection within the cross-referenced section. The bill defines “thin seam” coal identically as it is defined in §13A-3(g)(1). That definition provides: “mined by underground methods from seams with an average thickness of 45 inches or less.”

CODE REFERENCE: West Virginia Code §11-12B-3 – amended

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: March 10, 2022

ACTION BY GOVERNOR: Became Law Without Governor’s Signature

Senate Bill 548

Authorizing Workforce WV employers to obtain employment classifications and work locations

The bill requires participating employers provide Workforce West Virginia with information relating to employment classifications and work locations in which employees are working.

CODE REFERENCE: West Virginia Code §21A-10-11 – amended

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Bill 582

Creating WV Workforce Resiliency Act

This bill created a new article in Chapter 29 (Misc. Boards and Officers) named the West Virginia Workforce Resiliency Act.

The first new section under this article names and describes the purpose of the act; which is to establish an office within the Office of the Governor to coordinate workforce development, job training, education, and related programs and initiatives across agencies and entities of the state.

The second new section established the West Virginia Workforce Resiliency Office with the following criteria:

- The office will be organized within the Governor's office;
- The WV Workforce Resiliency Officer is appointed by the Governor with advice and consent from the Senate;
- The WV Workforce Resiliency Officer has the authority and duties prescribed under this new article;
- The WV Workforce Resiliency Officer shall have managerial or strategic planning experience in matters relating to workforce development, job training, and related fields.
- The third new section described both the Office's and the Officer's authority and duties. These include coordination with various state entities and agencies such as:
 - Workforce West Virginia;
 - Department of Economic Development;
 - Department of Commerce;
 - DHHR;
 - Department of Tourism;
 - Higher Education Policy Commission;
 - WVU;
 - Marshall;
 - WV Economic Development Authority; and
 - Other miscellaneous public and private parties as the Officer deems necessary.

The Office and Officer is otherwise empowered to work to develop, implement, and manage programs and initiatives to accomplish the purpose of this article, and to advise the Governor regarding all matters related to workforce development. Finally, the Office and Officer is to propose opportunities for legislative changes to accomplish said goals.

The fourth and final section of the Act pertains to employees of the Office, who are to be hired, administered, and managed by the WV Workforce Resiliency Officer.

These employees:

- Are exempt from both the classified services category and the classified-exempt services category under §29-6-4;
- Contingent upon receipt of necessary federal and/or state funds;
- Employed at-will;
- Not entitled to make use of the state grievance procedure (because they are at-will);
- Allowed to participate in PEIA, PERS, workers' comp and unemployment comp programs;
- Required to execute surety bonds (includes WV Workforce Resiliency Officer);

Salaries of these employees will be determined by WV Workforce Resiliency Officer.

CODE REFERENCE: West Virginia Code §29-33-1 through §29-33-4 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 30, 2022



Senate Bill 650

Eliminating number of royalty owners required for utilization by operator for lawful use and development by co-tenants

OIL AND GAS

This bill altered the applicability of the co-tenancy reform bill passed during the 2018 general session. The law provided that, in cases where there are 7 or more owners, consent for the lawful use and development of oil or natural gas by persons owning an undivided three fourths in an oil or natural gas property was permissible, was not waste, and was not trespass. This bill removed the conditional language requiring 7 or more owners for the statute to be applicable.

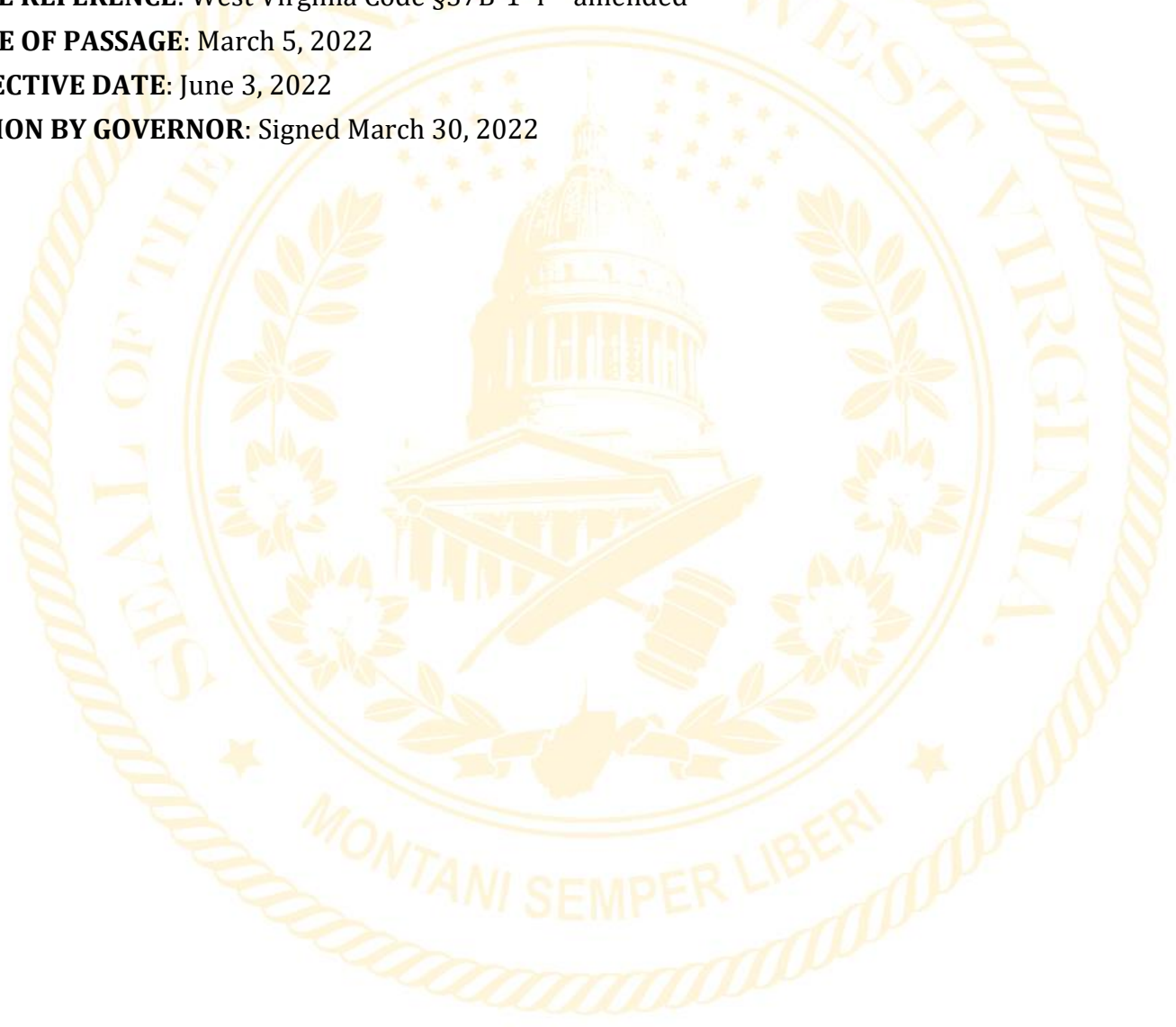
The bill also corrects internal citations.

CODE REFERENCE: West Virginia Code §37B-1-4 – amended

DATE OF PASSAGE: March 5, 2022

EFFECTIVE DATE: June 3, 2022

ACTION BY GOVERNOR: Signed March 30, 2022



Senate Bill 694

Relating to oil and gas conservation

OIL AND GAS

This bill allows for unitization of mineral interests for the purpose of horizontal well drilling for oil and gas.

The bill defines necessary terms and makes necessary stylistic changes to recognize horizontal drilling in West Virginia. It also modifies the composition of the Oil and Gas Conservation Commission. Currently, there are five members, this bill would add a seventh member. In addition to two ex officio members who are the Director of the EPA and the Chief of the Office of Oil and Gas, there is an independent producer, a public who is not a member of the PSC or FERC and an engineer or geologist with oil and gas experience. The two new members would be someone with agricultural or farming experience and a resident mineral owner.

There is a declaration of public policy and legislative intent which encourages horizontal drilling. It also prohibits waste of oil and gas resource and unnecessary use of the surface. It encourages the maximum recovery of oil and gas and to protect the property rights of surface owners and agricultural users.

The bill establishes an application process for proceeding with shallow or deep horizontal well drilling. The application is filed with the Commission. Prior to filing any application an applicant must have:

- Obtained consent of at least 75% of the royalty owners in the unit to pool or unitize.
- Obtained consent of at least 75% of the operators for shallow well unit (this would include Marcellus) and 55% of the operators for deep well units (this would include Utica).
- Made good faith offers and negotiated in good faith with all known and locatable royalty owners and operators.

Once these conditions are met, the operator is deemed to have control of the unit and may file an application. There are factors for the Commission to consider in determining if the operator has the requisite control. If the Commission finds the applicant has not met the necessary requirements the application is dismissed without prejudice. If the application is complete, the Commission will authorize the unitization of the tracts for horizontal drilling. This includes unknown and unlocatable interest owners.

The bill sets out an application process and requires certain documents to be included with the application. These include:

- A description of the project including the target formations.
- Contemplated operations.
- A plat depicting the boundaries and acreage of the proposed horizontal well unit.
- A list of all oil and gas tracts within the horizontal well unit.
- Names and last known addresses of royalty owners, including if they are unknown or unlocatable.
- Names of operators or proposed horizontal well unit target formation acreage including if any are unknown or unlocatable.
- A description of the actions taken to identify and locate unknown and unlocatable owners.
- The percentage of the net acreage in the proposed well unit owned by executory interest royalty owners.
- The percentage of the acreage in the proposed well unit held by bonded operators.

- A percentage allocation of the separately owned tracts or portions thereof in the unit.
- A certificate that the applicant is deemed to have control of the unit.
- Statement that the necessary permits have been applied for the DEP.
- A joint operating agreement governing the contractual relationship between the applicant and any unleased royalty owners following an election by the executory interest to participate in the unit.

Following receipt of an application the Commission is required to schedule a hearing and provide notice to all interested parties. The bill contains a number of factors for the Commission to consider. These include:

- Ownership control of the tracts or portions thereof.
- Whether the tracts are owned in whole or in part by unknown or unlocatable owners.
- The information provided to locate the unknown or unlocatable owners.
- The percentage of executory interest royalty.
- The percentage of acreage held and bonded by operators.
- Whether the applicant controls the proposed well unit.
- The area to be drained by the horizontal well unit.
- Correlative rights.
- The extent the applicant will prevent waste.
- Whether the action has met all of the requirements to be deemed in control of the unit.
- Whether notice has been provided to all necessary parties.
- Whether the applicant demonstrated the intent and ability to drill all wells proposed in the unit.

Upon review, the Commission shall enter a Horizontal Well Unit Order. The order must include:

- The size and boundaries of the horizontal well unit but in no instance shall it exceed 640 acres unless to do so would make draining the well unit more efficient and economical. A horizontal well unit containing one or more shall wells may not contain more than 128 net acres controlled by nonconsenting royalty owners.
- A description of the wells to be drilled and whether they are shallow or deep.
- If vertical wells exist in the area, the area where the horizontal wells may not be completed.
- Target formation(s) where the well unit applies.
- Any unit consideration due.
- If there are unknown or unlocatable interest owners a finding that identifies them as such.
- The allocation of the percentage of production in the horizontal well unit are in proportion to each tract's net acreage within the unit.
- Authorization and perfection of the unitization of all interests in the target formation.
- Authorize the creation of a unit and drilling and operation of one or more horizontal wells.
- Provide for consideration to nonconsenting royalty owners in an amount equal to 25% of the weighted average monetary bonus amount on a net mineral acre basis and a royalty percentage equal to 80 percent of the weighted average production percentage rounded.
- Provide that the applicant, royalty owners, and owners of leasehold, working interest, overriding royalty interest and other interest are bound by the order and consideration shall be paid to the extent of their interest in the well.

For interests where there is no lease in existence there are three options:

- Option 1: To surrender the interest or a portion thereof to the participating operators, including the applicant, to the extent of their interest and for a just compensation, which, if not agreed upon,

shall be an amount equal to the weighted average amount paid to executive interest owners in 3rd party transaction for the acquisition of oil and gas mineral rights in the same target formation.

- Option 2: They can have their interest considered leased for the following consideration:
- Bonus payments per net mineral acre equal to the weighted average monetary bonus paid. If the executive interest can show they made a good faith offer that was rejected and that the offer is less than or equal to the highest bonus paid on a net mineral basis for leases in the same target formation the bonus payment shall be the amount of the offer.
- A royalty percentage that is equal to the average royalty percentage within the unit with the option for the owner to show that a good faith offer was made and if the offer was lower than the highest paid royalty amount in the unit, they will receive the higher amount. Royalty owners can elect to be paid at an index price in effect at the beginning of each calendar month or the weighted average sale price.
- Option 3: To participate in the in the horizontal well unit.

If a nonconsenting owner does not make a timely election, he or she will be deemed to have opted for option two.

A non-consenting operator is permitted to participate after an application has been filed and who does not want to elect to participate in the risk and cost of drilling on a carried basis. A carried basis is This interest is paid, or carried, for the drilling and or completion costs as specified in the contract between the parties, by another working interest owner typically until casing point is reached, or through the tanks, meaning through completion of the well, as agreed upon contractually.

There are provisions to modify the order if the wells are not drilled and completed as provided in the initial order, to correct a clerical error. A modification requires a recalculation of the allocation production from the tracts.

Moneys payable to unknown or unlocatable interest owners are required to be held in an escrow account.

Horizontal well drilling orders shall expire if the well has not been drilled within three years of the entry of the order unless extended by the Commission. If the well has been drilled, they remain in full force and effect until the last well ceases production.

The bill provides for notice of hearings and directs the Commission to establish a website for publication of hearing notices, filed applications, and proposed unit plats. Upon request of an interested party, the Commission shall conduct a hearing on the application. Hearing requests must be received within fifteen days after notice of the application is posed on the Commission's website. If no timely request for a hearing is received, the Commission may issue a proposed unit order and provide a copy of the proposed unit order to all interested parties. Any interested party aggrieved by the order may appeal the proposed order to the Commission and request a hearing, which request must be made within fifteen days of the proposed order. If no timely request is received, the proposed order shall become final. If a hearing is timely requested, the hearing shall commence within 45 days of the issuance of the initial notice. The Commission must render their decision within 20 days of the hearing. The bill contains the required documents for the applicant to file in the event of a hearing. Parties are permitted to appear at hearings in person.

Ten days prior to any hearing the applicant must file with an independent, third-party attorney or accountant selected by the Commission the following:

- The prevailing economic terms of the leases with the unit including the best bonus payment per net mineral acres and production royalty rate.
- The prevailing amount amounts paid to executive interest royalty owners per net mineral acre.

The third party will review this information for accuracy and report back to the Commission:

- Weighted average monetary bonus paid per net mineral acre
- Weighted average production royalty percentage per net mineral acre

The fees for the third-party review are to be paid by the applicant. Additionally, there are provisions to mark portions of the report as confidential All orders of the Commission are subject to judicial review. A unit order does not grant surface rights, and the commission's approval is required for additional drilling through the target formation.

The bill has a provision that deep well horizontal unit applications filed prior to the effective date are grandfathered. Ones filed after the effective date are subject to the provisions of this section.

There is an opportunity for surface owners to acquire interest of unknown and unlocatable interest owners. The applicant is required to notify the person paying the taxes on the surface interest of the availability to acquire mineral interest. The applicant is required to provide information to the surface owner who may then petition the circuit court to perfect a conveyance of the mineral rights. All unknown and unlocatable interest owners are required to be joined as defendants. If a person claims to be a legitimate owner of the mineral rights and establishes such to the satisfaction of the court, the petition is required to be dismissed. If there are amounts awarded to unknown or unlocatable interest owners these amounts are paid into the Oil and Gas Reclamation Fund three years after the petition is filed unless unknown or unlocatable owner makes an appearance in the proceedings. The court may appoint a special commissioner to deliver a deed to the petition five years following the filing of the petition. Personal service or process is preferred via the Rules of Civil Procedure, but if this is not possible serviced may be by publication in a Class III legal advertisement pursuant to West Virginia Code. The petitioner is also required to file a lis pendens notice with the County Clerk. This is a legal notice that a legal action has been filed. That notice is required to contain:

- The names of the petition and defendants and their last known address.
- Details regarding the instrument creating the mineral rights.
- A description of the land.
- Source of the title of the last known owner of the mineral rights.
- A description of the consequences for not appearing i.e. transfers of the mineral rights within the next five years.

Notice is required to be sent certified mail to the last known address of the mineral rights owner(s).

If the court makes a finding conveying the mineral rights to the surface owner, the special commissioner is required to prepare a deed. The form of the deed is set out in the bill. Following entry of the deed the surface owner is entitled to receive all proceeds due and payable under the unit order. It is not necessary to join the applicant for a well unit order to the suit.

There is a limitation of liability for funds due any unknown or unlocatable mineral interest owner by the operator when the operator pays the unknown or unlocatable mineral interest owner's portion into the Oil and Gas Reclamation Fund. Any petition must be filed within three years of notice given to the surface owners.

Once the special commissioner's deed is filed unknown and unlocatable mineral interest owners may not bring an action to recover past or future proceeds due under the well unit order. If they establish to the court's satisfaction they are entitled to proceeds, they will only receive any amount payable from the date of their appearance forward. The operators and surface owners have no liability for any other amount paid.

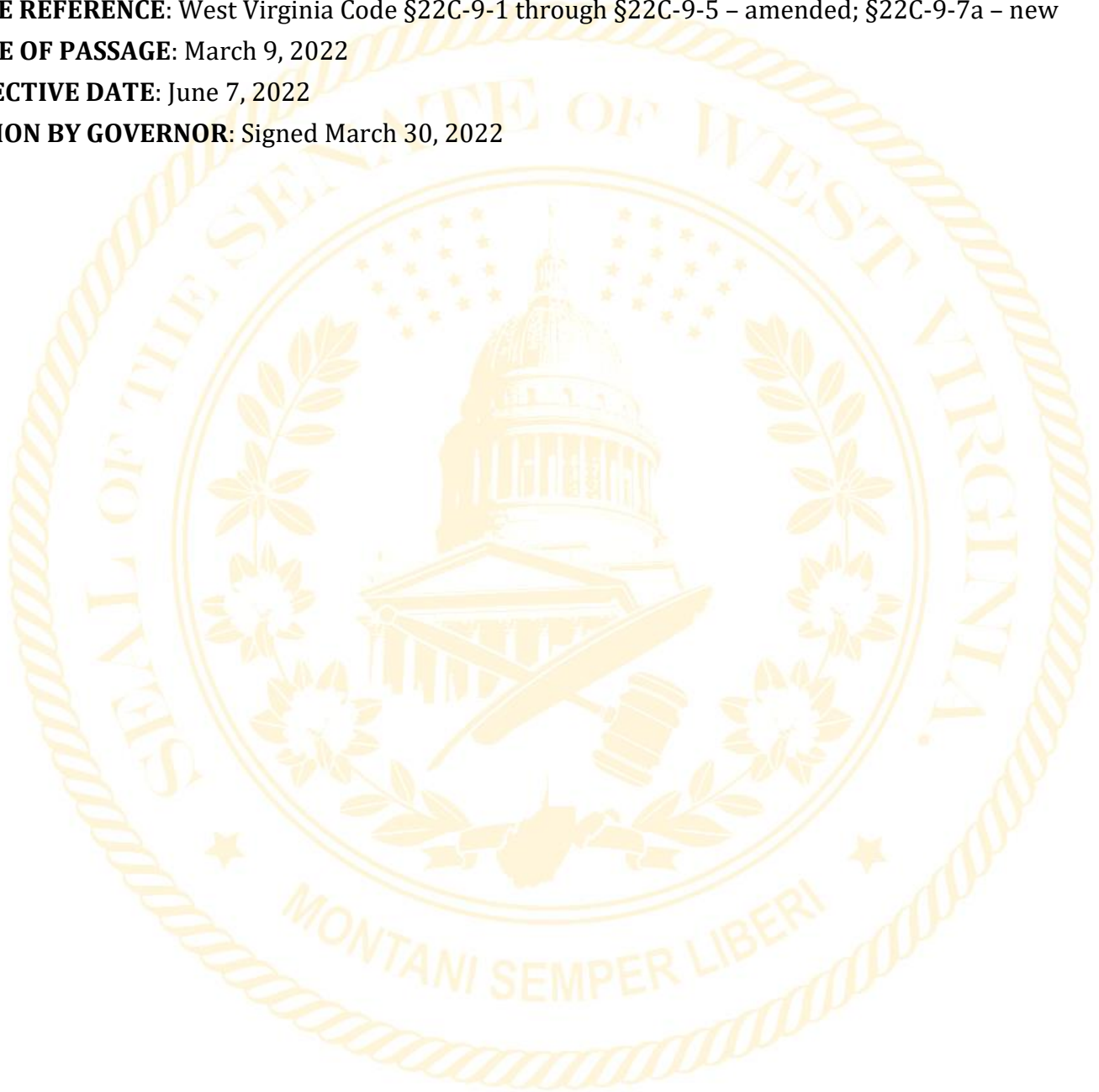
The final section in the bill provides a severability clause.

CODE REFERENCE: West Virginia Code §22C-9-1 through §22C-9-5 – amended; §22C-9-7a – new

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: June 7, 2022

ACTION BY GOVERNOR: Signed March 30, 2022



Senate Bill 713

Removing statutory limit for Environmental Laboratory Certification Fund

ENVIRONMENT

This bill allows, but does not require, WVDEP to consider remote monitoring and testing equipment for its certification program. It also removes the \$300,000 annual program cap for fees paid to WV DEP under its lab certification program.

CODE REFERENCE: West Virginia Code §22-1-15 – amended

DATE OF PASSAGE: March 3, 2022

EFFECTIVE DATE: March 3, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

Senate Bill 714

Relating to tie votes by Coal Mine Safety and Technical Review Committee

COAL

The bill adds the Director of the Office of Miners' Health, Safety and Training as a voting member of the Coal Mine Safety and Technical Review Committee when an additional vote is needed to break a tie.

CODE REFERENCE: West Virginia Code §22A-6-7 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: March 11, 2022

ACTION BY GOVERNOR: Became Law Without Governor's Signature

House Bill 3082

Stabilizing funding sources for the DEP Division of Air Quality

ENVIRONMENT

This bill will stabilize funding sources for the Division of Air Quality within the Department of Environmental Protection. The Division of Air Quality operates from two accounts established in the State Treasury:

- The Air Pollution Education and Environment Fund, and
- The Air Pollution Control Fund.

The bill removed language governing these two funds which allows the transfer of excess funds to other accounts for other purposes. The bill also authorizes the DEP to invest or reinvest these funds in lawful investments. The investments will then generate additional revenue to support the division's operations. The bill adds language requiring that unspent funds and interest shall not be transferred to other funds or to the General Revenue Fund.

The bill includes technical clean up to the code section citations.

CODE REFERENCE: West Virginia Code §22-5-2 and §22-5-4 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: March 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4003

Relating generally to commercial benefit of substances removed from waters of the state by the treatment of mine drainage

ENVIRONMENT

The bill restates long-standing public policy of the state that it is compelled to maintain reasonable standards of purity and quality of the waters of the state which are consistent with public health and the protection of all forms of life.

In this bill, the Legislature finds that treatment of mine drainage reduces environmental harm by reducing pollution in the waters of the state. The expensive treatment of mine drainage may produce materials that contain valuable concentrations of rare earth elements and critical minerals with commercial value. The Legislature finds that these materials are part of the water and can only be separated with expensive investments of resources which may last for decades. The bill is to help fulfill the state's obligations to maintain the purity and quality of the water by encouraging investments into the treatment of mine drainage.

The bill determines that all chemical compounds and other potentially toxic materials which are found within the waters of the state and which are derived from the treatment of mine drainage, may be used, sold, or transferred for commercial gain and benefit. Funds received by the DEP are deposited into the Special Reclamation Water Trust Fund or the Acid Mine Drainage Set-Aside Fund and used by the department to fulfill its legal obligations. Private parties may retain the proceeds for themselves.

CODE REFERENCE: West Virginia Code §22-2-10 – new

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: June 8, 2022

ACTION BY GOVERNOR: Became Law Without Governor's Signature

House Bill 4084

Relating to advanced recycling

RECYCLING

This bill allows advanced recycling facilities to be developed in the state to help convert plastics and other materials into new products with advanced recycling processes. The bill amended the definition section of the Solid Waste Management Act. The Act establishes a program to control solid waste by the DEP.

Advanced recycling is the use of manufacturing processes to convert post-use polymers and recovered feedstocks into products to be used, processed, and sold. Under the bill, post-use polymers and recovered feedstocks will no longer be considered solid waste.

This bill adds 8 new definitions and modifies 2 existing definitions. Among these are advanced recycling, advanced recycling facility, solid waste, solid waste facility, post-use polymer, and recovered feedstock.

The changes except out post-use polymers and recovered feedstocks from regulation, provided they will be converted at an advanced recycling facility. If the materials are not converted or waiting to be converted by the list of processes, the Solid Waste Management Act will still govern the materials.

The overall effect, once implemented and economical, should be an increase in recycling and a decrease in waste.

CODE REFERENCE: West Virginia Code §22-15-2 – amended

DATE OF PASSAGE: March 3, 2022

EFFECTIVE DATE: June 1, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4098

Relating to Geothermal Energy Development

GEOTHERMAL

House Bill 4098 establishes a new regulatory program for the exploration, development, and production of geothermal resources to be administered by the Department of Environmental Protection (DEP). Geothermal resources are underground reservoirs of hot water at varying temperatures and depths below the Earth's surface. Wells are drilled into the reservoirs to tap steam and extremely hot water that can be brought to the surface to be used in a variety of ways, including generation of electricity, direct use, and heating and cooling.

The bill directs the secretary of the DEP to propose a legislative rule to implement the regulatory program. Residential and farm buildings using geothermal heating and cooling heat pump systems would be excluded from regulation. Geothermal systems regulated pursuant to the Bureau of Public Health legislative rule for Water Well Design Standards, 64 CSR 46, or any horizontal system with a depth of less than 30 feet, would also be excluded from regulation.

A permit would be required before commencing work to develop and produce a geothermal resources well. At a minimum, the regulatory program would establish minimum temperature levels and flow rates for determining jurisdiction, standards for well site development, reclamation, and disposal of certain geothermal fluids and other wastewater fluids, in addition to civil penalties and injunctive relief. The bill also directs the DEP to develop a procedure for permit applications, renewals and permit modifications, public review and comment, administrative and judicial review of permitting decisions, and suspension or revocation of a permit.

Finally, the geothermal resources statute acknowledges the common law doctrine that the owner of any geothermal resource is the surface owner of the property overlying the geothermal resource. The statute further provides that it does not divest any person or the state of ownership rights to any geothermal resource, and that no mineral or water estate includes geothermal resources unless clearly reserved in instruments conveying or reserving mineral or water estates.

CODE REFERENCE: West Virginia Code §22-33-1 through §22-33-12 – new

DATE OF PASSAGE: March 12, 2022

EFFECTIVE DATE: June 10, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4296

To revise outdated provisions within Chapter 23 of the West Virginia Code, which pertains to workers' compensation

Chapter 23 of the West Virginia Code is known as the West Virginia Workers' Compensation Act and it governs employer compliance, employee benefits, claim adjudication, and the responsibilities of the Insurance Commission. This bill does not make substantive changes to the Workers Compensation Act and only removes or updates outdated and obsolete provisions in the Code. Much of the bill addresses technical changes necessitated from the 2005 transition when the workers compensation system was privatized. The only added section of Code is W. Va. Code §23-1-21, which was moved from Article 3 of Chapter 23 and allowed for the repeal of Article 3 in its entirety.

CODE REFERENCE: West Virginia Code §23-1-1c, §23-1-1d, §23-1-1e, §23-1-1g, §23-1-3, §23-1-4a, §23-1-6, §23-1-7, §23-1-20, §23-2-1b, §23-2-4, §23-2-5c, §23-5-5d, §23-2-14, §23-2-15, §23-2-16, §23-2B-1, §23-2B-2, §23-2B-3, §23-2C-3a, §23-2C-4, §23-2C-11, §23-2C-13, §23-2C-14, §23-2C-23, §23-2C-24, §23-2D-1, §23-2D-2, §23-2D-3, §23-2D-4, §23-2D-5, §23-2D-5a, §23-2D-6, §23-2D-7, §23-2D-8, §23-2D-9, §23-2D-10, §23-3-1, §23-3-1a, §23-3-2, §23-3-3, §23-3-4, §23-3-5, §23-3-6, §23-4A-2, §23-4A-3, §23-4A-4, §23-4A-5, §23-4A-6, §23-4A-8, §23-4A-9, §23-4B-6, §23-4B-8, §23-4B-8a, §23-4B-8b, §23-4C-1, §23-4C-2, §23-4C-3, §23-4C-4, §23-4C-5, and §23-4C-6 – repealed; §23-1-1, §23-1-1b, §23-1-1f, §23-1-2, §23-1-4, §23-1-5, §23-1-8, §23-1-9, §23-1-10, §23-1-11, §23-1-12, §23-1-13, §23-1-14, §23-1-15, §23-1-18, §23-1-19, §23-2-1, §23-2-1c, §23-2-1d, §23-2-2, §23-2-3, §23-2-5, §23-2-5a, §23-2-6, §23-2-7, §23-2-8, §23-2-9, §23-2-11, §23-2-13, §23-2-17, §23-2A-1, §23-2C-1, §23-2C-2, §23-2C-3, §23-2C-6, §23-2C-7, §23-2C-8, §23-2C-12, §23-2C-15, §23-2C-16, §23-2C-16, §23-2C-18, §23-2C-19, §23-2C-20, §23-2C-21, §23-4A-1, §23-4B-2, §23-4B-4, §23-4B-5, §23-4B-7, and §23-4B-9 – amended; §23-1-21 – new

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: June 8, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4336

Providing for the valuation of natural resources property

OIL AND GAS

This bill provides a revised and more specific methodology to the Tax Commissioner for valuing property producing oil, natural gas, and natural gas liquids for property tax assessments.

The bill rewrites the methodology with more specific definitions and procedures. For instance, the Tax Commissioner shall value property producing oil, natural gas, and natural gas liquids at its fair market value determined by applying a yield capitalization model to the net proceeds. Net proceeds are from the actual gross receipts on a sales volume basis and the actual price received as reported on the taxpayer's returns, less royalties, and less actual annual operating costs, also reported on the taxpayer's returns. The definitions of natural gas liquids and actual annual operating costs remain with some changes. There are many new definitions most concerning expenses.

On July 1, 2022, the Tax Commissioner shall annualize gross receipts and actual annual operating expenses before calculating the working interest model and the royalty interest model for wells that produced less than 12 months during the first calendar year of production or after being shut in. Companies may also provide additional actual gross receipts and actual operating expense information that will be supplemented or used in lieu of the Tax Commissioner annualization calculations.

On July 1, 2024, but not before, the Tax Commissioner may not include a minimum valuation for any calculation related to determining the value of any well. Currently, they are applying a minimum net-proceeds based on volumes extracted. For all assessments made prior to July 1, 2024, no minimum valuation shall exceed the values of \$0.30 per MCF of natural gas, \$10.00 per barrel of oil, or \$0.30 per unit of natural gas liquids. These values were established in a Notice to taxpayers from the State Tax Department dated late last year.

A safe harbor provision is added for marginal wells. These owners have the option of filing a detailed return with expenses or selecting a simplified option for expenses annually created by the Tax Department. This is for efficiency.

The bill contains annual reporting requirements to the legislature so we may reevaluate the methodology and consider additional changes.

The Tax Commissioner is authorized to propose rules required to administer this subdivision, including emergency rules.

Finally, the subdivision has a sunset clause. It will have no further force or effect for any assessments made on or after July 1, 2025, unless it is reenacted by the legislature.

CODE REFERENCE: West Virginia Code §11-1C-10 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4410

Specifying allocation, apportionment and treatment of income of flow-through entities

During the 2021 session the Legislature amended language in the corporate income tax section of our code dealing with market-based sourcing. The change provided that when determining the proportion of a corporation's sales to be taxed by West Virginia, taxation of a corporation's sales of service and intangible personal property would be based upon where the service or property was delivered, not where the activity that generated the sale occurred. This bill would extend market-based sourcing to flow-through entities. A flow-through entity is a legal business entity that passes any income it makes straight to its owners, shareholders, or investors. This change would effective January 1, 2022.

Per the interpretation of the Tax Department, the bill would amend provisions of the allocation and apportionment of income of nonresidents from multistate business activity section of the West Virginia Personal Income Tax to mirror the recent legislative changes made to the allocation and apportionment section of the West Virginia Corporation Net Income Tax. The apportionment formula is used when a business has income from both inside and outside of West Virginia.

The bill states that the changes do not apply to W. Va. Code §11-21-12K, §11-21-37b, and §11-21-37c. The changes would be effective for taxable years beginning on and after January 1, 2022. Under current law, apportionment of income is typically done using a four-factor formula consisting of a property factor, a payroll factor, and a double weighted sales factor.

This bill would convert the apportionment formula to a single sales factor formula with the numerator being sales in West Virginia and the denominator being sales everywhere. Businesses already incur tax liabilities on property and payroll in West Virginia. Moving to a single sales factor apportionment will prevent businesses from being penalized for locating within the state.

Additional changes to the apportionment formula would include elimination of the current throw-out rule which requires taxpayers to exclude from their West Virginia business income tax calculations sales from states in which they were not subject to tax and the adoption of "market-based sourcing" for services and tangible property.

CODE REFERENCE: West Virginia Code §11-21-37a – amended

DATE OF PASSAGE: March 9, 2022

EFFECTIVE DATE: June 7, 2022

ACTION BY GOVERNOR: Signed by Governor March 30, 2022

House Bill 4418

Relating to the Small Business Supplier Certification Assistance Program

The bill established the Small Business Supplier Certification Assistance Pilot Program, to develop and implement a certification process for small business enterprises to engage in government contracting and bidding processes. The Department of Economic Development may partner with Marshall University to help start the pilot program. The bill sets forth the criteria for the pilot program and its overarching goals to help small businesses better engage with the public sector and bid on public projects. The pilot program is set to run through December 31, 2023. The bill protects information, like trade secrets or other profitable business processes, disclosed by any small business during the certification process from FOIA requests.

CODE REFERENCE: West Virginia Code §5B-2-18 – new

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: June 6, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4433

Providing that retirement benefits are not subject to execution

This bill amends current state law to prohibit municipal policemen's and firemen's pension and relief funds from being the subject of execution, attachment, garnishment, the operation of bankruptcy or insolvency laws or other process, or assignment, except qualified domestic relations orders. It makes exceptions for deductions from payments for group insurance or prepayment plans and allows a municipality to set off any claim arising from embezzlement by, or fraud of, a member, retirant or beneficiary. The bill also exempts assets of the retirement system from state, county, and municipal taxes.

CODE REFERENCE: West Virginia Code §8-22-25b – new

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4451

Eliminating the requirement that otherwise qualified investment assets be located or installed at or within 2 miles of a preexisting manufacturing facility

This bill makes void the requirement that a qualified capital addition to a manufacturing facility be located or installed at or within two miles of a preexisting manufacturing facility owned or operated by the person making the capital addition if the addition is placed in service or use on and after the first day of January 2023.

CODE REFERENCE: West Virginia Code §11-6F-6 – amended

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: January 1, 2023

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4479

Establishing the Coalfield Communities Grant Facilitation Commission

COAL

The bill would amend the provisions of the WV Code by adding a new article to be known as the “Coalfield Grant Facilitation Act of 2022.”

The new article creates the “Coalfield Community Grant Facilitation Commission” consisting of 9 members appointed by the Governor with the advice and consent of the Senate. The Executive Director of the Economic Development Authority (or his or her designee) is a member and will serve as the chair of the Commission. The remaining members will represent: county governments, large and small municipalities, foundations or nonprofits that provide public interest grants, institutions of higher education, business and industry in the state, and coalfield areas of the state. The Commission is required to establish a process for review and approval of awards to applicants for funds a coalfield community may need as a match for a grant; provide grant applicants with technical assistance and support; and educating coalfield communities as to the availability of state, federal and nongovernmental resources. The Economic Development Authority is to provide the Commission administrative, clerical and technical support. Commission members are to be reimbursed for any costs incurred by them for their participation, but not compensation. The Commission must find that a project to be funded is in the public interest and that the grant will be used for a public purpose. A project in the public interest and for a public purpose may provide private benefit, so long as the Commission determines the project will enhance a local community or region, the grant making entity requires a public purpose for grant eligibility and the Commission determines that the project will enhance the quality of life or services of a community or region.

The bill also creates a subcommittee of the Commission made up of representatives of WVU, Marshall, the Alliance for Economic Development of Southern WV, and all institutions of higher learning in the coal field counties and regions to provide assistance in the development of grants and grant applications. The bill requires an annual report to the Joint Committee on Government and Finance on its work.

CODE REFERENCE: West Virginia Code §5B-2K-1 through §5B-2K-6 – new

DATE OF PASSAGE: March 10, 2022

EFFECTIVE DATE: June 8, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

House Bill 4488

Relating to coal mining and changing fees for permitting actions

COAL

This bill ensures adequate funding for the operation of the Department of Environmental Protection's Division of Mining and Reclamation. The division's revenue has gradually decreased each year, but its expenses are remaining relatively constant. Estimates indicate that the division will be operating in a deficit by FY2026 without an increase in revenue.

The provisions of the bill increase or add new fees for various permits concerning surface coal mining operations. Adjusting these fees will generate additional annual revenue for the division. The amended fee structure would include these additions or changes:

- Permit Renewals – \$3,000 (Currently \$1,000 and not differentiated from new permits)
- Major Permit Modification – \$2,000 (Currently \$500)
- Minor Permit Modification – \$1,000 (Currently \$500)
- Permit Reissuance – \$3,000 (New)
- Permit Transfer – \$2,000 (New)
- Annual Permit Fee (All permits) – \$2,000 (Currently \$1000)
- Applications for the water quality certification for activities covered by federal law – \$500 (New)

CODE REFERENCE: West Virginia Code §22-11-10 – amended

DATE OF PASSAGE: March 11, 2022

EFFECTIVE DATE: June 9, 2022

ACTION BY GOVERNOR: Became Law Without Governor's Signature

House Bill 4491

To establish requirements for carbon dioxide sequestration

OIL AND GAS

This bill defines matters relating to underground carbon sequestration. It establishes a new framework to govern these types of injection wells and the operation of such facilities. It will be unlawful to operate a facility without a Class 6 underground injection control permit. The bill empowers DEP to propose rules and to enter cooperative agreements. DEP is to determine the content of permit applications and to establish fees, public notices, public hearings, and comment periods. DEP may only issue a permit if certain conditions are met.

The bill provides that operators are the owners of the injected CO₂ until DEP issues a certificate of completion. Once this certificate is issued, ownership transfers to the owners of the pore space without payment of compensation. All liability and regulatory requirements become the responsibility of the state. The state will defend and indemnify the pore space and surface owners against all claims.

The bill contains ownership provisions governing pore space. Title to pore space may not be severed from the surface estate. The bill does not affect transactions before the effective date if an instrument explicitly severed pore space from the surface estate.

The operator must negotiate with pore space owners and acquire needed rights. If an operator cannot locate or reach an agreement with all pore space owners but has secured consent from at least 75 percent of the interests, all the pore space may be declared included within the facility. Unknown or unlocatable owners are deemed to have consented. This authority is given to the Oil and Gas Conservation Commission.

The OGCC may issue a collective storage order to authorize the long-term storage of CO₂ beneath a tract despite an operator's inability to achieve 75% of the owners' consent, provided the operator has rights to 75% of the entire storage field. The collective order will establish the compensation for unknown, unlocatable, and nonconsenting pore space owners and the basis for the valuation.

CODE REFERENCE: West Virginia Code §22-11A-3 and 22C-9-4 – amended; §22-11B-1 et seq. – new

DATE OF PASSAGE: March 1, 2022

EFFECTIVE DATE: May 30, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

House Bill 4758

Relating to developing and maintaining a database to track reclamation liabilities in the West Virginia Department of Environmental Protection Special Reclamation Program

COAL

This bill requires the DEP to develop and maintain a database to track reclamation liabilities at coal mining operations that were permitted after August 3, 1977. The information will be updated on a quarterly basis starting in July 2022.

The federal office of surface mining, DEP, and the coal industry have requested this change to the Surface Coal Mining and Reclamation Act.

CODE REFERENCE: West Virginia Code §22-3-11 – amended

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: June 6, 2022

ACTION BY GOVERNOR: Signed March 28, 2022

Senate Concurrent Resolution 55

Respectfully urging current presidential administration to open federal lease sales onshore and offshore

Respectfully urging the current presidential administration to open federal lease sales onshore and offshore; supporting critical energy infrastructure to safely deliver energy produced in West Virginia; and ensuring American energy companies can access the capital they need to hire American workers.

Whereas, All West Virginia residents deserve access to affordable and reliable energy, whether electricity, natural gas, or transportation fuels, and

Whereas, West Virginians are currently dealing with the highest inflation in over 40 years, with energy costs rising 29 percent, and gasoline surging 50 percent, according to the U.S. Bureau of Labor Statistics; and

Whereas, The current administration is pursuing a policy placing the United States at the mercy of the Organization of Petroleum Exporting Countries and Russia to meet our domestic needs, harming our national and economic security; and

Whereas, Foreign oil imports from Russia surged more than 20 percent providing over \$16 billion to Russia in 2021, according to the U.S. Energy Information Agency; and

Whereas, The current administration has frozen federal lease sales for American energy resources onshore and offshore while cancelling critical energy infrastructure projects like the KeystoneXL pipeline which would have reduced our dependence on Russian oil imports; and

Whereas, The current administration is actively litigating against its obligations to issue lease sales on federal lands and waters required under federal law; and

Whereas, The Federal Energy Regulatory Commission has continually delayed important decisions on permits for pipelines across the country and has recently issued new harmful policy statements that could further delay and impede critical domestic energy infrastructure from being developed, depriving West Virginia access to energy markets outside of our state; and

Whereas, The Securities and Exchange Commission is designing rules to discourage investment in domestic oil and natural gas companies which may further impede production and opportunities for West Virginians; and

Whereas, The Environmental Protection Agency has not issued a decision on West Virginia's application for Class VI primacy that would allow West Virginia to safely utilize long-term storage in conjunction with state energy development; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby respectfully urges the current Presidential Administration to open federal lease sales onshore and offshore, supporting critical energy infrastructure to safely deliver energy produced in West Virginia, and ensuring American energy companies can access the capital they need to hire American workers; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the President of the United States, the Secretary of the Interior, the Secretary of the Department of Energy, the Federal Energy Regulatory Commission, the White House National Climate Advisor, the Speaker and Clerk of the United States House of Representatives, the President Pro Tempore and

Secretary of the United States Senate, the members of the West Virginia Congressional Delegation, and the news media of West Virginia.

DATE OF ADOPTION: March 12, 2022



2022 First Extraordinary Session

Senate Bill 1001

West Virginia Industrial Advancement Act

The purpose of this bill is to provide certain tax incentives, based upon very significant investment and employment thresholds, for labor and capital intensive heavy industrial facilities to locate in the state. The bill would create a new section of tax code that clarifies how existing tax credits for manufacturing would apply to investments of this magnitude. Per a memorandum of understanding between the State of West Virginia and the \$2.7 billion investment related to the Act, the State will not release any money until this prospective company first spends its money within the state. The available funds would not be awarded all at once. They would come in three separate groupings, with the company required to hit specific, auditable milestones of in-state spending first. Those investments are expected to be infrastructure development and upgrades.

CODE REFERENCE: West Virginia Code §11-13LL-1 through §11-13LL-14 – new

DATE OF PASSAGE: January 12, 2022

EFFECTIVE DATE: January 12, 2022

ACTION BY GOVERNOR: Signed January 12, 2022

2022 Second Extraordinary Session

Senate Bill 2001

Relating generally to funding for infrastructure and economic development projects in state

This bill eliminates the revolving loan from the Consolidated Fund to the Economic Development Authority and replaces it with a special revenue account at the Economic Development Authority. The purpose of the loan is to assist business industrial development. The new funds will assume that purpose with a \$600,000,000 appropriation from which the Economic Development Authority shall repay \$200,000,000 to the revolving loan within 30 days of receipt of the funds.

The bill also enables the Board of Treasury to loan up to \$200,000,000 from the Consolidated Fund to the Department of Transportation. These funds will be deposited into a special revenue account upon receipt of:

- A written request from the Secretary.
- A statement from the Secretary that the funds will be used for the requirements set out in the bill.
- Necessary documentation on the planned expenditures.

The funds are limited to use for projects funded pursuant to the Infrastructure Investment and Jobs Act (the Act). Upon reimbursement from the federal government pursuant to that Act, funds shall be transferred to the Consolidated Fund if the balance exceeds the amount required for expenditures authorized pursuant to the agreement with the federal government executed pursuant to the Act. Quarterly reporting to the Joint Committee on Government Finance is required. At the request of the Board of Treasury Investments, the Secretary is required to provide the opportunity to inspect the Department of Transportation records.

The special revenue account created at the Economic Development Authority would retain any remaining funds from the \$200,000,000 loan and have the additional \$600,000,000 appropriation.

This fund would finance high impact development projects which are projects approved for greater than \$50,000,000 by the Economic Development Authority, the enterprise privately invests \$50,000,000, and the project is anticipated to create a number of jobs as set by a loan to jobs creation ratio established by the Authority in consultation with the Secretary of Economic Development. These funds may be invested and reinvested.

Itemized records are required to be kept by the Authority and there is a requirement for an annual report to the Joint Committee on Government and Finance addressing the status of each project.

CODE REFERENCE: West Virginia Code §31-15-20 – repealed; §12-6C11 and §31-15-23a – amended; §12-6C-11b – new

DATE OF PASSAGE: April 26, 2022

EFFECTIVE DATE: April 26, 2022

ACTION BY GOVERNOR: Signed May 3, 2022

Senate Bill 2005

Authorizing Commissioner of Workforce West Virginia to create Unemployment Compensation Insurance Fraud Unit

The purpose of this bill is to establish within Workforce WV, an Unemployment Compensation Fraud Unit. It is generally modeled after statutes relating to Medicaid and insurance fraud.

The bill allows the director of Workforce to hire fulltime staff and requires him or her to provide office space, equipment, and supplies. The director of the fraud unit is required to be a certified fraud investigator with experience in computer technology. The unit is charged with investigating all types of unemployment fraud.

The bill sets out the duties of the unit which include initiating and conducting investigations of the violations of West Virginia unemployment law, review complaints regarding alleged fraud related to unemployment compensation, conduct independent examinations of alleged fraudulent activity, and perform other duties assigned by the Commissioner.

The new unit is allowed to inspect and copy records, issue subpoenas, give oaths, share records with law enforcement, make criminal referrals, conduct investigations outside of the state if necessary information is located outside of the state. Certain personnel may operate state vehicles and carry firearms after meeting certain qualifications. The new unit is not subject to open meetings law or the Freedom of Information Act.

CODE REFERENCE: West Virginia Code §21A-10-23 – new

DATE OF PASSAGE: April 26, 2022

EFFECTIVE DATE: July 24, 2022

ACTION BY GOVERNOR: Signed May 3, 2022

2021 Regular Session



Senate Bill 34

Creating exemption to state sales and use tax for rental and leasing of equipment

The bill would amend the provisions of the West Virginia Code providing exemptions from the Consumer Sales and Service Tax. The bill adds a new exemption for leases of heavy equipment or machinery among corporations with at least 50% common ownership.

CODE REFERENCE: West Virginia Code §11-15-9 – amended.

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 1, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

Senate Bill 272

Relating to WV Employment Law Worker Classification Act

This bill creates a consistent standard for classifying workers as independent contractors under state workers' compensation and unemployment compensation laws, as well as the Wage Payment and Collection Act and West Virginia Human Rights Act. Previously, each had different standards.

Workers will be presumed to be employees unless they meet each element of a four- part test:

The worker signs a written contract with the principal acknowledging certain conditions related to their services;

The worker has filed or is required to file an income tax return for a business or self-employed entity for the fees earned from the work;

The worker actually and directly controls the manner and means by which the work is performed (except the final result of the work, orientation or safety measures required by the principal, or other obligations under law); and

The worker satisfies at least three criteria from a list relating to the workers' ability to control their finances and behavior.

Even if a worker meets the four-part test, a principal is not required to classify the workers as an independent contractor. Workers who do not meet the four-part test may still be classified as an independent contractor if they meet the IRS 20-factor test. Direct sellers as defined by the IRS are also considered independent contractors.

CODE REFERENCE: West Virginia Code §21-5-1; 21-5A-16, and §23-2-1a – amended; §21-5I- 1, 21-5I-2, 21-5I-3, 21-5I-4, and 21-5I-5 – new

DATE OF PASSAGE: March 11, 2021

EFFECTIVE DATE: June 9, 2021

ACTION BY GOVERNOR: Signed March 19, 2021

Senate Bill 275

Relating generally to WV Appellate Reorganization Act of 2021

The bill amends 24 sections and creates 29 new sections of Code, establishing the West Virginia Intermediate Court of Appeals (“ICA”); eliminating the Workers’ Compensation Office of Administrative Judges (“Office of Judges”); transferring the powers and duties of the Office of Judges to the Workers’ Compensation Board of Review (“Board of Review”); and making other related changes.

The bill creates and amends several sections in the Election Code, W. Va. Code §3- 1-1 et seq., to provide general procedures for the election of judges to the ICA. These sections provide for election timing and frequency; nonpartisan election by division; ballots; certificates of announcement of candidacy; and filling vacancies.

The bill amends one section in Chapter 6 (General Provisions Respecting Officers) to provide a start date for terms of office of ICA judges. The bill creates one new section in Chapter 16 (Public Health) providing for transfer of appellate jurisdiction over final decisions issued by the West Virginia Health Care Authority in certificate of need reviews from the Office of Judges to the ICA; and sets forth effective dates as well as transition procedures.

The bill creates and amends several sections within the Workers’ Compensation Act, W. Va. Code §23-1-1 et seq., to provide for termination of the Office of Judges; transfer of its powers and duties to the Board of Review; transfer of appellate jurisdiction over decisions of the Office of Judges and Board of Review in workers compensation matters; effective dates; and procedures to effectuate the transition.

The bill amends two sections in the State Administrative Procedures Act, §29A-1-1 et seq., to provide for effective dates for the ICA to assume jurisdiction over contested cases as well as procedures to effectuate the transition; provide that circuit courts lack jurisdiction to review contested cases after a date certain; and authorize review of decisions of the ICA under Chapter 29A by the Supreme Court.

The bill creates a new article within Chapter 51 (Courts and their Officers) establishing the ICA which provides as follows:

- Provides a short title, definitions, and legislative findings;
- Creates the ICA as a three-judge court of record;
- Provides qualifications for the office of ICA judge and limitations on their activities;
- Provides for the Clerk of the Supreme Court of Appeals of West Virginia (“Supreme Court”) to act as Clerk of the ICA;
- Provides that the ICA has no original jurisdiction;
- Establishes the court’s appellate jurisdiction over certain matters as well as certain matters over which the ICA is expressly without jurisdiction;
- Provides for discretionary jurisdiction of the Supreme Court over any civil case filed in the ICA;
- Provides for appellate jurisdiction of the ICA over judgments or final orders in criminal matters if the Supreme Court adopts a policy of discretionary review of criminal appeals;
- Sets forth extraordinary circumstances under which the Supreme Court may grant a motion for direct review of a case on appeal to the ICA, and the procedures therefor;
- Provides for initial appointment of the three ICA judges by the Governor from recommended candidates submitted by the Judicial Vacancy Advisory Commission;
- Provides for ICA appointees to begin their duties as judge on July 1, 2022;
- Provides for 10-year terms for ICA judges following initial terms;

- Provides for the filling of vacancies in the judge's offices and temporary assignments where a judge is temporarily unable to serve;
- Provides for supervisory control by the Supreme Court over the ICA;
- Provides that pleadings, practice, and procedure, including all filings, in all matters before the ICA will be governed by rules promulgated by the Supreme Court;
- Requires appeals to the ICA to be filed with the Clerk of the Supreme Court;
- Authorizes filing and appeal bonds for filing appeals to the ICA;
- Provides for discretion by the ICA whether to require oral argument; authorizes the Chief Justice of the Supreme Court to exercise supervisory control over the ICA;
- Requires the administrative director of the Supreme Court to provide necessary facilities, furniture, fixtures, and equipment necessary for the ICA, and to make existing courtrooms available for its use;
- Authorizes the administrative director to contract with other facilities to provide space suitable for the ICA;
- Requires the administrative director to provide administrative support and authorizes employment of additional staff, as necessary;
- Provides for selection of a Chief Judge of the ICA under rules to be established by the Supreme Court; requires a written decision on the merits "as a matter of right in each appeal that is properly filed and within the jurisdiction of the" ICA, and the court's opinions, orders and decisions are binding precedent "unless the opinion, order, or decision is overruled or modified by the Supreme Court of Appeals";
- Provides that while appeals from orders or judgments of the ICA may be made to the Supreme Court, the Supreme Court has discretion to grant or deny any such appeal, and discretion to stay such order or judgment;
- Provides for annual compensation of an ICA judge of \$142,500;
- Requires the Attorney General to appear as counsel for the State in all cases pending in the ICA to the same extent required by law in cases pending in the Supreme Court; and
- Provides a severability clause for the new article.

The bill creates a new section in a separate article of Chapter 51 providing for appeals of family court decisions to the ICA after a date certain and deprive circuit courts of jurisdiction over such matters within the jurisdiction of the ICA after a date certain; and amends another section in a separate article providing for inclusion of ICA judges in the judicial retirement system. Lastly, the bill amends one section in Chapter 58 (Appeal and Error) to provide for appeals of circuit court decisions after a date certain to the ICA and authorizes the filing of petitions to appeal ICA decisions to the Supreme Court.

CODE REFERENCE: West Virginia Code §3-1-16, §3-4A-11a, §3-5-7, §3-5-13, §3-10-3, §3-10-3a, §6-5-1, §23-5-1, §23-5-3, §23-5-4, §23-5-5, §23-5-6, §23-5-8, §23-5-9, §23-5-10, §23-5-11, §23-5-12, §23-5-13, §23-5-15, §23-5-16, §29A-5-4, §29A-6-1, §51-9-1a, §58-5-1 – amended; §3-5-6e, §16-2D-16a, §23-1-1h, §23-5-1a, §23-5-3a, §23-5-5a, §23-5-6a, §23-5-8a, §23-5-8b, §23-5-9a, §23-5-10a, §23-5-11a, §23-5-12a, §23-5-13a, §23-5-16a, §51-2A-24, §51-11-1, §51-11-2, §51-11-3, §51-11-4, §51-11-5, §51-11-6, §51-11-7, §51-11-8, §51-11-9, §51-11-10, §51-11-11, §51-11-12, §51-11-13 – new

DATE OF PASSAGE: April 1, 2021

EFFECTIVE DATE: June 30, 2021

ACTION BY GOVERNOR: Signed April 8, 2021

Senate Bill 277

Creating COVID-19 Jobs Protection Act

This bill prohibits civil actions for any loss, damages, personal injury, or death arising from COVID-19 against any individual or entity, including health care providers, institutions of higher education, businesses, manufacturers, and volunteers. “Arising from COVID-19” includes, but is not limited to:

- Implementing policies and procedures designed to prevent or minimize the spread of COVID-19;
- Testing; and/or monitoring, collecting, reporting, tracking, tracing, disclosing, or investigating COVID-19 exposure or other COVID-19 related information;
- Using, designing, manufacturing, providing, donating, or servicing precautionary, diagnostic, collection, or other health equipment or supplies, such as personal protective equipment;
- Closing or partially closing to prevent or minimize the spread of COVID-19;
- Delaying or modifying the schedule or performance of any medical procedure;
- Providing services or products in response to government appeal or repurposing operations to address an urgent need for personal protective equipment, sanitation products, or other products necessary to protect the public;
- Providing services or products as an essential business, health care facility, health care provider, first responder, or institution of higher education; and actions taken in response to federal, state, or local orders, recommendations, or guidelines lawfully set forth in response to COVID-19.

This bill expressly does not preclude an employee from filing a claim for workers’ compensation benefits. It also does not preclude certain types of product liability claims or claims against any person who engaged in intentional conduct with actual malice.

CODE REFERENCE: West Virginia Code §55-19-1, §55-19-2, §55-19-3, §55-19-4, §55-19-5, §55-19-6, §55-19-7, §55-19-8, and §55-19-9 – new

DATE OF PASSAGE: March 11, 2021

EFFECTIVE DATE: March 11, 2021; retroactive to January 1, 2020

ACTION BY GOVERNOR: Signed March 19, 2021

Senate Bill 368

Authorizing DEP to develop Reclamation of Abandoned and Dilapidated Properties Program

ENVIRONMENT/
OIL AND GAS

The purpose of this bill is to modify fees and processing of solid waste. The bill would shift the solid waste assessment fee imposed upon the disposal of solid waste at any solid waste landfill disposal facility in this state and modify the distribution of the fee from a distribution based solely on a per capita basis to each county or regional solid waste authority to a two-tiered distribution: 25% of the additional fee shall be distributed equally to each county or regional solid waste authority; and, 75% of the additional fee shall be distributed on a per capita basis to each county or regional solid waste authority based on the most recent population projections from the United States Census Bureau.

The funds are to be expended for the reasonable costs of administration of the county or regional solid waste authority including the necessary and reasonable expenses of its members, and any other expenses incurred from refuse cleanup, recycling programs, litter control programs, or any other locally important solid waste programs deemed necessary to fulfill its duties. The bill would also change the use by the West Virginia Department of Environmental Protection of the horizontal drilling waste assessment fee deposited into the Gas Field Highway Repair and Horizontal Drilling Waste Study Fund as follows:

- Under current law, those moneys are to be spent on improvement, etc. of public roads of 3 lanes located in the watershed from which the revenue was received. The bill would require instead that those funds be spent on improvement, etc. of public roads of 3 lanes located in the county where the waste is generated through the Division of Highways county office in that county.
- The bill would also allow the West Virginia Department of Environmental Protection to create a new Reclamation of Abandoned and Dilapidated Properties Program and use a new special revenue fund to “work with county commissions or municipalities and implement redevelopment plans which will, at a minimum, establish prioritized inventories of structures eligible to participate in the program, offer reuse options for high-priority sites, and recommend actions county commissions or municipalities may take to remediate abandoned and dilapidated structures in their communities.”
- The new special revenue fund, named the Reclamation of Abandoned and Dilapidated Properties Program Fund, would be funded from legislative appropriations, private funding for the program and excess money from the Solid Waste Facility Closure Cost Assistance Fund.
- Finally, the bill would increase an existing solid waste assessment fee imposed by §22-16-4 upon the disposal of solid waste at any solid waste disposal facility in this state, a portion of the proceeds of which are deposited into the Solid Waste Facility Closure Cost Assistance Fund.

The bill would also exempt any “mixed waste processing and resource recovery facility as those facilities are defined in code or rule and which processes a minimum of 70 percent of the material brought to the facility on any given day on a 30-day aggregate basis” from certain fees and assessments, and from the jurisdiction of the West Virginia Public Service Commission.

CODE REFERENCE: West Virginia Code §22-15-11, §22-15A-11, §22-15A-19, §22-16-4, §22-16-12, §22C-4-30, §24-2-1m – amended; §22-15A-30 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 1, 2021

ACTION BY GOVERNOR: Signed April 16, 2021

Senate Bill 492

Establishing program for bonding to reclaim abandoned wind and solar generation facilities

ENVIRONMENT/
WIND/SOLAR

This bill establishes a bonding program to decommission and reclaim land burdened by wind and solar electrical generation facilities after closure.

Under the bill, owners of wind generation facilities and solar generation facilities are required to submit a decommissioning plan, which must be certified by a qualified independent licensed professional engineer and must follow standards and technical specifications of the Department of Environmental Protection including dates when operations began and plans with cost estimates for decommissioning the facilities.

The bill empowers the DEP to determine and assess a reclamation bond based on a generation facility's total disturbed acreage less salvage value. The amount of the bond cannot exceed the projected cost of decommissioning, less salvage value.

The bond is to be conditioned on the satisfactory decommissioning and reclamation of the facilities.

The bill includes a new exemption from the bonding requirement if a facility is legally bound by a prior decommissioning agreement which is based upon a qualified independent party or was granted a siting certificate by the PSC, conditioned upon the execution of an agreement. If the owner is exempt because of a prior decommissioning agreement, the owner must submit a copy of the agreement to DEP. These prior agreements are not subject to approval or modification by DEP, but are subject to review and comment.

The bill includes an exemption from bond requirements for facilities with nameplate capacities of less than 1 megawatt, and those operated by regulated public utilities who can successfully demonstrate to the PSC and DEP financial integrity and long-term stability. The bill also allows for reductions in bond amounts under certain circumstances.

The bill also provides that the submission of a bond does not absolve owners from complying with other applicable regulations and requirements. The bill includes appellate rights to the Environmental Quality Board and allows for transfer of ownership provisions.

The bill states that the PSC is to condition all siting certificates on compliance with the article as determined by DEP. Developers who are in compliance with the new article enacted by this bill are not subjected to any municipal, county, or local political subdivision's code, ordinances, rules, or regulations.

There are administrative penalties for failure to submit bonds. A charge of \$10,000 for the first day and not more than \$500 for each additional day until submitted. The bill creates a "Wind and Solar Decommissioning Account" into which assessed penalties and accrued interest must be paid and held. Also, to be deposited into this fund, and not addressed by the current fiscal note, is an application fee of \$100 per megawatt, and a modification fee of \$50 per megawatt. This fund will be used by DEP to administer the program.

The DEP will maintain and hold bonds or other surety until released by DEP after DEP is satisfied the property has been properly decommissioned and reclaimed. Bonds will be forfeited when a facility is not properly decommissioned and reclaimed.

Also, if deficiencies are not rectified, the Office of Environmental Remediation or a private entity by contract may decommission and reclaim the facilities.

The bill provides the DEP rulemaking authority and the power to file lawsuits to enforce the program and to recoup costs of reclamation.

CODE REFERENCE: West Virginia Code §22-32-1, §22-32-2, §22-32-3, §22-32-4, §22-32-5, §22-32-6, and §22-32-7 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 8, 2021

ACTION BY GOVERNOR: Signed April 26, 2021



Senate Bill 518

Relating to grounds for administrative dissolution of certain companies, corporations, and partnerships

The purpose of this bill is to provide a more efficient process for the Secretary of State to administratively dissolve fraudulent businesses registered in the State of West Virginia, while protecting and maintaining due process rights for reinstatement or appeal for business owners.

This bill amends §31B-8-809, §31E-13-1320, §31D-14-1420, and §47-9-10a by adding an additional grounds for administrative dissolution, authorizing the Secretary of State to commence a proceeding to administratively dissolve a registered business if a misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the company.

This bill also preserves the process for reinstatement or appeal. A registered business administratively dissolved may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution pursuant to the existing procedure set forth in the code or appeal the Secretary of State's denial of reinstatement pursuant to the existing procedure set forth in the code.

This bill amends code sections of codes pertaining to limited liability companies (§31B-8-809), nonprofits (§31E-13-1320), corporations (§31D-14-1420), and limited partnerships (§47-9-10a).

CODE REFERENCE: West Virginia Code §31B-8-809, §31E-13-1320, §31D-14-1420, and §47-9-10a – amended

DATE OF PASSAGE: April 5, 2021

EFFECTIVE DATE: July 4, 2021

ACTION BY GOVERNOR: Signed April 15, 2021

Senate Bill 532

Limiting claims for state tax credits and rebates

This bill was introduced as the request of the Tax Commissioner. Many of the economic development tax incentives contain language limiting their use to a single credit. Some of these incentives, however, do not include this preclusion. This bill would correct this oversight.

The new section proposed in this bill would provide that no capital investment used to qualify for a tax credit or rebate may be used for a second or subsequent credit or rebate. Should there be a violation of this preclusion the Tax Commissioner will grant a single credit or rebate which is most favorable to the taxpayer. It is required to be based upon:

- Allow the previous credit granted based the capital investment; or
- Allow the second credit or rebate if no credit had previously been granted.

When a liability occurs, there is a required assessment, interest may be charged, and additions shall be charged pursuant to state code.

The Tax Commissioner is granted rulemaking authority to administer the provisions.

The changes would be effective January 1, 2022.

CODE REFERENCE: West Virginia Code §11-10-5ee – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 1, 2021

ACTION BY GOVERNOR: Signed April 21, 2021

Senate Bill 534

Permitting Economic Development Authority to make working capital loans from revolving loan fund capitalized with federal grant funds

This bill authorizes the West Virginia Economic Development Authority (EDA) authority to make working capital loans from a revolving loan fund capitalized with federal grant funds including, but not limited to, federal grant funds received from the United States Economic Development Administration.

This bill also allows the West Virginia Board of Treasury Investments (Board) to inspect and copy, upon written notice, all records related to loans made available by the Board to the EDA. The bill increases the revolving loan capacity from the Board to the EDA to \$200 million from the Consolidated Fund. This bill requires that the note representing the revolving loan to the EDA from the Consolidated Fund carry an interest rate of 50% of the EDA's weighted average interest rate for outstanding loans in the Business and Industrial Development Loan Program, and states that he rate may not be lower than 1.50% to be reset on July 1 of each year.

This bill clarifies that the EDA is not authorized to enter into contracts or agreements with financial institutions for banking goods or services without the approval of the State Treasurer.

CODE REFERENCE: West Virginia Code §12-6C-11, §31-15-5, and §31-15-6 – amended

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: July 8, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

Senate Bill 542

Relating generally to public electric utilities and facilities fuel supply for existing coal-fired plants

COAL

This bill requires that public electric utilities must maintain a minimum 30-day aggregate fuel supply under contract for the remaining life of their coal-fired generating plants.

It also requires that public electric utilities must provide advance notice to the Office of Homeland Security and Emergency Management, the Public Service Commission, and the Legislature's Joint Committee on Government and Finance, before announcing retirement, closure, or sale of an electricity generating unit.

CODE REFERENCE: West Virginia Code §24-1-1c, §24-2-1q, and §24-2-21 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 9, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

Senate Bill 641

Allowing counties to use severance tax proceeds for litter cleanup programs

COAL

The bill authorizes counties which receive allocations from the Coal County Reallocated Severance Tax Fund to use those allocations to fund, among a host of projects which can already be financed, litter redress initiatives.

CODE REFERENCE: West Virginia Code §11-13A-6a – amended

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: July 1, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

Senate Bill 673

Relating to venue for bringing civil action or arbitration proceedings under construction contracts

This bill requires that construction contracts entered into after July 1, 2021, involving a contractor whose principal place of business is in West Virginia, must provide that any civil action or arbitration permitted by the contract must take place in West Virginia.

CODE REFERENCE: West Virginia Code §56-1-1b – new

DATE OF PASSAGE: April 6, 2021

EFFECTIVE DATE: July 1, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

Senate Bill 677

Relating generally to miners' safety, health, and training standards

This bill authorizes the Director of the Office of Miners' Safety, Health, and Training to discharge a tenured underground mine inspector without first petitioning the Board of Coal Mine Health & Safety. After removal from employment, the inspector may request a hearing before the Board to challenge his discharge; however, the hearing is no longer mandatory.

The bill also provides technical cleanup to several sections of code, and replaces outdated terminology related to use of flame safety lamps for detection of gas with approved gas detectors.

CODE REFERENCE: West Virginia Code §22A-1-2, §22A-1-12, §22A-2-40, §22A-2-46, §22A-2-70, and §22A-9-1 – amended

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: July 8, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

COAL

Senate Bill 718

Relating generally to Coal Severance Tax Rebate

The purpose of this bill, which originated in the Senate Committee on Finance, would further clarify the tax rebate granted during the 2019 Regular Session to coal companies for investments in new equipment and improvements to real property.

The original bill provided that a rebate was allowable by comparing the state portion of the severance tax on coal produced from the mine in 2018 with the state portion of severance during the current calendar year. With the passage of time, 2018 has proven to be an outlier. To make the rebate more effective, this bill would remove the 2018 date and rewrite the section of the bill regarding the rebate to allow for a rebate when using the immediately preceding five (5) years of a qualifying investment. The changes to the section also clarify that to be eligible coal production from all the mines of the taxpayer in this state have increased in the pertinent year and there has been an increase in the total number of full-time employees and full-time equivalent employees.

The original bill also required that the rebate could only be used on investments in “new” machinery and equipment. This bill would allow repaired and refurbished equipment to qualify if they are used directly in the production of coal. Definitions have either been added, deleted, or modified for consistency.

CODE REFERENCE: West Virginia Code §11-13EE-2, §11-13EE-3, §11-13EE-5 and §11-13EE-16 – amended

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: April 10, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

COAL

House Bill 2009

Relating to limitations on the use of wages and agency shop fees by employers and labor organizations for political activities

This bill amends two sections in the Wage Payment and Collection Act, W. Va. Code §21-5-1 et seq. The changes to these sections preclude deductions of union, labor organization, or club dues or fees from the wages of public employees, except for municipal employees covered by a collective bargaining agreement with a municipality which is in effect on July 1, 2021.

It expands the definition of “deductions” to include union and club fees, labor organization dues or fees, and any form of insurance offered by an employer; defines a new term, “assignment”, which incorporates the definition of “assignment of earnings” from the Consumer Credit & Protection Act.

The bill also replaces the notarization requirement for assignments with a requirement that an assignment or order must be in writing. It also expressly protects the right of private employers and employees to agree between themselves as to payroll deductions, and expressly protects the right of employees to join, become a member of, contribute to, donate to, or pay dues to a union, labor organization, or club.

The bill amends one section in the Consumer Credit and Protection Act, W. Va. Code §46A-1-1 et seq., by adding union or club fees, labor organization dues or fees, and any form of insurance offered by an employer as deductions which are excluded under the definition of “assignment of earnings”.

The bill makes the following additional changes elsewhere in the Code to correspond with the changes described above: The bill creates one new section in Chapter 7 (County Commissions and Officers) which provides that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of county officers or employees.

The bill amends one section in Chapter 8 (Municipal Corporations) by providing that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of municipal officers or employees, except for municipal employees covered by a collective bargaining agreement with a municipality which is in effect on July 1, 2021.

The bill amends one section in Chapter 12 (Public Moneys and Securities) by removing language that currently allows state officers and employees to authorize voluntary deductions for payment of membership dues or fees to an employee association.

It also authorizes the Auditor to approve and authorize voluntary other deductions as defined in the Wage Payment and Collection Act; removing a proviso regarding existing arrangements for dues deductions between employers or political subdivisions and employees; and clarifying that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of state officers or employees. Finally, the bill amends one section in Chapter 18A (School Personnel) by providing that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of teachers or other school employees.

CODE REFERENCE: West Virginia Code §8-5-12, §12-3-13b, §18A-4-9, §21-5-1, §21-5-3, §46A-2-116 – amended; §7-5-25 – new

DATE OF PASSAGE: March 19, 2021

EFFECTIVE DATE: June 17, 2021

ACTION BY GOVERNOR: Signed March 30, 2021

House Bill 2495

Relating to the filing of asbestos and silica claims

This bill provides new criteria for sworn information forms in asbestos and silica claims under the Asbestos and Silica Claims Priorities Act, which specifies evidence gathered regarding each claim against each defendant. The form must be filed 60 days after filing of the claim, and must contain:

- The name, address, date of birth, marital status, occupation, smoking history, current and past worksites, current and past employers of the exposed person, and any person through which the exposed person alleges exposure;
- Each person through whom the exposed person was exposed to asbestos or silica and the exposed person's relationship to each such person;
- Each asbestos-containing or silica-containing product to which the person was exposed and each physical location at which the person was exposed to asbestos or silica, or the other person was exposed if exposure was through another person;
- The identity of the manufacturer or seller of the specific asbestos or silica product for each exposure;
- The specific location and manner of each exposure, including for any person through whom the exposed person was exposed;
- The beginning and ending dates of each exposure and the frequency of the exposure, including for any person through whom the exposed person was exposed;
- The specific asbestos-related or silica-related disease claimed to exist; and
- Any supporting documentation relating to the information required under this section.

CODE REFERENCE: West Virginia Code §55-7G-4 – amended

DATE OF PASSAGE: March 31, 2021

EFFECTIVE DATE: June 29, 2021

ACTION BY GOVERNOR: Signed April 15, 2021

House Bill 2581

Providing for the valuation of natural resources property and an alternate method of appeal of proposed valuation of natural resources property

OIL AND GAS

This bill requires the Tax Commissioner to propose emergency rules for valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof, by July 1, 2021. It also provides guidelines for promulgating those rules, including definitions of terms.

The bill also reforms the property tax appeals process for all property taxpayers. Specifically, it empowers the Office of Tax Appeals to hear property tax appeals; lowers the standard of proof a taxpayer must meet from “clear and convincing” to “preponderance of the evidence;” makes appeal to the Board of Equalization and Review optional; and eliminates the Board of Assessment Appeals.

CODE REFERENCE: West Virginia Code §11-3-24b, §11-3-25 – repealed; §11-3-15c, §11-3-15f, §11-3-15h, §11-3-15i, §11-3-23, §11-3-23a, §11-3-24, §11-3-24a, §11-3-25a, §11-3-32, §11-10A-1, §11-10A-7, §11-10A-8, §11-10A-10, and §11-10A-19 – amended; §11-1C-10 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: April 10, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

House Bill 2667

To create a cost saving program for state buildings regarding energy efficiency

ENERGY
EFFICIENCY

The purpose of this bill is to promote cost and energy savings for state taxpayers by improving upon current energy savings programs for state buildings.

The bill requires the Office of Energy (within the newly-organized Department of Economic Development) to establish a program to support energy-savings contracts. The program is to include the development of standardized contract templates, procedures, and manuals to assist state agencies to implement energy savings measures.

Agencies within the Department of Administration are authorized under the bill to enter into energy-savings contracts to implement the program. The contracts must mandate an annual energy audit performed by a contractor that includes an analysis comparing anticipated to actual energy savings and including the terms and conditions of agency payment and performance guarantees. The performance guarantees must require the contractor to be responsible for maintenance and repair services for any energy related equipment, including computer software. If a project does not generate the guaranteed level of savings, the provider is liable to the agency for the amount of the shortfall plus related expenses.

Pursuant to the bill, no later than October 1, 2021, the Office of Energy is to establish an energy savings program designed to reduce energy usage for electricity, natural gas, fuel oil, and steam in all state buildings under the care and control of the state. The reductions are to be 25% below 2018 levels by 2030. The bill requires that no later than July 1, 2021, the Department of Economic Development is to establish a program to measure and benchmark the energy usage and efficiency of all state buildings under custody and control of the state. The bill requires the use of a benchmarking tool called the Energy Star Portfolio Manager operated by the United States Environmental Protection Agency. No later than October 1, 2021, and each year thereafter, the secretary shall submit energy usage data for all state buildings to the benchmarking tool.

Finally, the bill requires the Office of Energy to develop and administer a program for auditing energy metering devices for electricity and natural gas which are installed at state buildings to determine whether these devices are active or inactive. The program is to be designed to audit 20% of the energy metering devices each year and is to be complete for all such devices no later than January 1, 2027. If the audit determines that an energy metering device is no longer active, the energy service provider is to be notified, the device removed, and the utility bills adjusted accordingly. Finally, the bill includes regular reports to the Legislature concerning the results of the programs.

CODE REFERENCE: West Virginia Code §5A-3B-1, §5B-2F-2 – amended; §5A-3B-3, §5A-4-7, §5A-4-8 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 9, 2021

ACTION BY GOVERNOR: Signed April 22, 2021

House Bill 2760

Relating to economic development incentive tax credits

This bill would make changes to the economic opportunity tax credit. These modifications include:

- Lowering the new job percentage from the current level of 20 new jobs for a 20% applicability of the tax credit to 10 new jobs for a 10% applicability of the tax credit.
- Elimination of the Credit for small business effective January 1, 2022, but grandfathering any business that qualified prior to that date.
- Significant changes to the credit for high technology manufacturers. It expands the credit to include emerging technological business to encompass drones, robotics that include medical robotic equipment, autonomous motor vehicles, artificial intelligence, manufacture of biotechnological products and manufacturing medical devices. Many of these terms are defined.
- Eliminating confusing language regarding a taxpayer taking multiple tax credits for the same qualified investment.

The bill provides for a number of effective dates and makes technical changes including eliminating a now dormant report to the Legislature.

CODE REFERENCE: West Virginia Code §11-13Q-9, §11-13Q-10, §11-13Q-10a, and §11-13Q-22 – amended

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 9, 2021

ACTION BY GOVERNOR: Signed April 22, 2021

House Bill 3081

Updating the West Virginia Business Corporations Act

This bill updates the Business Corporation Act and Nonprofit Corporation Act to allow shareholder/member meetings to be conducted, in whole or in part, by remote communication to the extent authorized by the corporate board of directors. If remote participation is authorized, the board must establish guidelines and procedures which must, at minimum, provide that participants have a reasonable opportunity to read or hear the proceedings concurrently with the meeting and provide for reasonable verification that remote participants are shareholders/members or a proxy.

CODE REFERENCE: West Virginia Code §31D-7-708 and §31E-7-708 – amended

DATE OF PASSAGE: April 2, 2021

EFFECTIVE DATE: April 2, 2021 (retroactive to March 1, 2020)

ACTION BY GOVERNOR: Signed April 26, 2021

House Bill 3294

Relating to unemployment insurance

This bill creates two new articles in Chapter 21A, relating to unemployment compensation. New Article 2D creates the Unemployment Insurance Program Integrity Act, and new Article 6B creates a short-time compensation program.

Unemployment Insurance Program Integrity Act

The Unemployment Insurance Integrity Act requires the commissioner to check on a weekly basis, unemployment insurance rolls against Division of Corrections and Rehabilitation's list of imprisoned individuals; check new hire records against the National Directory of New Hires; and check unemployment rolls against a commercial database that provides cross-matching functions to verify eligibility for unemployment benefits.

The Act also allows the commissioner to enter into data sharing agreements with other agencies. If Workforce West Virginia receives information affecting eligibility, it must investigate that information and take action within one week. Workforce is also required to implement internal policies to recover overpayments and enter into a cooperative agreement with U.S. Department of Labor Office of the Inspector General.

The Act also allows employers a mechanism for employers to report employees that decline to accept an offer to return to work. Workforce is required to investigate these reports. The procedures outlined in the Act must be in place no later than July 1, 2022.

Short-Time Compensation Program

New Article 6B requires Workforce to create a work-sharing program no later than July 1, 2023. This program allows employers experiencing a slowdown in business to save jobs by reducing the number of hours their employees work in a given unit, instead of laying off a portion of those employees. In exchange, employees whose hours have been reduced can recover prorated unemployment benefits tied to the amount of their reduced hours.

Employers are not required to participate in this program, but must certify as part of the application that participation in the program is in lieu of layoffs and that no employees will be hired or transferred into the affected business unit while the plan is in place. Workforce can approve a work-share plan for employees whose hours are reduced by between 10% or as much as 60%.

Employees included in the work-share plan will be eligible to collect prorated unemployment benefits tied to the percentage reduction in hours. An employer can modify or terminate an approved work-share plan at any time.

However, an employer must request permission to modify its work-share plan unless the change is "not substantial." Every modification, including non-substantial ones, must be reported to the Commissioner in writing. The Commissioner has power to revoke the plan at any time for good cause. Finally, the Commissioner must have access to corporate records necessary to ensure compliance.

CODE REFERENCE: §21A-2D-1 through §21A-2D-10 and §21A-6B-1 §21A-6B-7 – new

DATE OF PASSAGE: April 7, 2021

EFFECTIVE DATE: July 1, 2022

ACTION BY GOVERNOR: Signed April 28, 2021

House Bill 3301

Relating generally to property tax increment financing districts

This bill would make several changes to the Tax Increment Financing Act including the following:

- Authorizes a county commission to extend the length of existence of a development or redevelopment district. Any extension of a TIF timeline by a county subject to the approval of any municipality that lies within the TIF district.
- Authorizes the governing body of a municipality to extend the length of existence of a development or redevelopment district.
- Authorizes a TIF district created prior to December 31, 2020, for which TIF obligations have been issued to be extended up to 5 years or until December 31, 2050, whichever is earlier.
- Prohibits a county commission or municipality from terminating a district early if there are financing bonds outstanding.
- Amends the definition of payment in lieu of taxes, which would allow the payments in lieu of taxes to be less than the amount that would be paid if the property were taxed, but this would only apply for TIF districts created after the enactment of this bill.
- Amends the definition of tax increment in order to clarify that for any TIF district whose termination date is extended, only the regular and excess property tax levies of the county commission and any affected municipality are included during such extension period.
- Clarifies that the termination date of a district that is combined with another district is the latest termination date of the two individual districts.
- Provides that financing bonds may be issued for 30 years from their date of issue rather than from the date of the approval of the district as current law provides. This would allow more flexibility for the issuance of refunding bonds.

CODE REFERENCE: West Virginia Code §7-11b-3, §7-11b-7, §7-11b-9, §7-11b-10, §7-11b-18 and §7-11b-22 – amended

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: April 10, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

House Bill 3310

Relating to the jurisdiction of the Public Service Commission

UTILITIES

This bill sets forth legislative findings generally providing that individuals and entities that enter into solar power purchase agreements should not be considered or treated as public utilities. (See §24-1-1c.)

The bill amends §24-1-2, reorganizes the definitions, places existing definitions in alphabetical order for ease of use, and provides an exception to the term “public utility” for individuals or entities owning a solar facility that is located on the premises of and serves only the needs of a retail customer under a lease or power purchase agreement, subject to the provisions of §24-2-1(a).

This bill amends §24-2-1(a), relating to the jurisdiction of the Public Service Commission. It reorganizes the section by separating and numbering the public services.

The bill also provides that a solar photovoltaic energy facility located on and designed to meet only the electrical needs of the premises of a retail electric customer, the output of which is subject to a power purchase agreement (PPAs) with the retail electric customer, is not a public service, subject to certain conditions and limitations:

- The aggregate of all PPAs and net metering arrangements for any utility must not exceed three percent (3%) of the utility’s aggregate customer peak demand during the previous year;
- There are individual customer on-site generator limits of designing the photovoltaic energy facility to meet only the electrical needs of the premises of the retail electric customer and may not exceed 25kW for residential customers, 500 kW for commercial customers, and 2,000 kW for industrial customers;
- Customers who enter into PPAs must notify the utility of its intent to enter into a transaction. In response, the utility must notify within 30 days if any of the caps have been reached. If the utility does not respond within 30 days, the generator may proceed and the caps will be presumed not to have been reached; and
- The Public Service Commission may promulgate rules to govern and implement the provisions of interconnections for PPAs, except the PSC does not have authority over the power rates for the arrangements between the on- site generator and the customer.

Finally, this bill corrects errors in §24-2-1(f) and (g).

CODE REFERENCE: West Virginia Code §24-1-2 and §24-2-1 – amended; §24-1-1c – new

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: April 9, 2021

ACTION BY GOVERNOR: Became Law Without Governor’s Signature

2020 Regular Session



Senate Bill 120

Establishing priorities for expenditures for plugging abandoned gas or oil wells

OIL AND GAS

This bill prioritizes how forfeited bond money is to be used to plug abandoned wells.

The bill requires the bond posted for the well to be used to plug the well on the land where the well is located if:

- The bond is forfeited as a result of failure to plug the abandoned well or repair the well that is causing immediate threat to the environment or hindering or impeding the development of mineral resources of the state;
- The well operator was cited for, and then failed to correct, an immediate threat to the environment or hinderance or impediment to the development of mineral resources of the state; or
- The operator failed to reclaim the surface disturbance causing immediate threat to the environment or hindering or impeding the development of mineral resources of the state.

CODE REFERENCE: West Virginia Code §22-10-6 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 545

Authorizing transfer of moneys from Insurance Commission Fund to Workers' Compensation Old Fund

The bill would give the Insurance Commissioner the authority to transfer special revenue moneys contained in the Insurance Commission Fund to the Workers' Compensation Old Fund. The authority to transfer funds would be limited to any fiscal year in which the Insurance Commissioner has determined, and an independent auditor has attested, that a deficit balance existed in the Workers' Compensation Old Fund for the prior fiscal year.

CODE REFERENCE: West Virginia Code §23-2C-16 – amended

DATE OF PASSAGE: March 4, 2020

EFFECTIVE DATE: March 4, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

Senate Bill 554

Relating to termination, expiration, or cancellation of oil or natural gas leases

OIL AND GAS

This bill requires lessees to provide lessors with a recordable release for oil or natural gas leases, when the leases are expired, terminated, or cancelled under their terms. Unless a different time is required by the lease, within 60 days after an oil and gas lease is terminated, expired, or cancelled, the lessee shall deliver, without cost to the lessor, a properly executed and notarized release of the lease.

If the lessee fails to provide a timely release, the lessor may serve notice of the lessee's failure to provide the release. The notice shall contain a statement providing:

- That the lease is terminated, expired, or cancelled according to its terms and state the date;
- That the lessee has a duty to provide a release;
- That if the release or a written dispute from the lessee is not received by lessor within 60 days, that the lessor has the right to file an affidavit of termination, expiration, or cancellation in the office of the county clerk;
- The name and address of the lessor or his or her successors or assigns;
- A brief description of the land covered by the lease;
- If there is a well, the name or API number of the well, if known;
- If located in a unit, the name of the unit, if known;
- The specified recording information for the lease along with other identifying information; and
- A service sheet showing the names and addresses of all persons upon whom the notice has been served.

The notice of the lessee's failure must be sent to 1) the lessee, 2) any lessee's assignee, 3) all other lessors, and 4) all other persons who may have an interest in the leasehold estate, or the minerals leased thereunder.

The lessee has the right to dispute the contents of the notice within 60 days after receipt of the notice.

The lessor has the right to file an affidavit of termination, expiration, or cancellation in the office of the county clerk after the lessee's notice, if the lessor fails to receive a dispute from the lessee within 60 days after providing notice. The lessor must also provide notice of the affidavit to all persons to whom notice was required to be given for the notice of the lessee's failure to provide the release.

The county clerks are required to accept and record these affidavits.

CODE REFERENCE: West Virginia Code §36-4-9b – new

DATE OF PASSAGE: March 2, 2020

EFFECTIVE DATE: May 31, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 578

Recalculating tax on generating, producing, or selling electricity from solar energy facilities

SOLAR

This bill provides modification of the taxable generating capacity of units that generate, produce, and/or sell electricity from solar photovoltaic methods at 8%. Previously, solar photovoltaic methods were not addressed in code, and therefore are assigned a taxable generating capacity of 40%. The effect of the 40% rate created a disproportionately high tax burden, which disincentivized electricity generators from utilizing solar photovoltaic methods. The bill also provides a definition of “solar photovoltaic methods.”

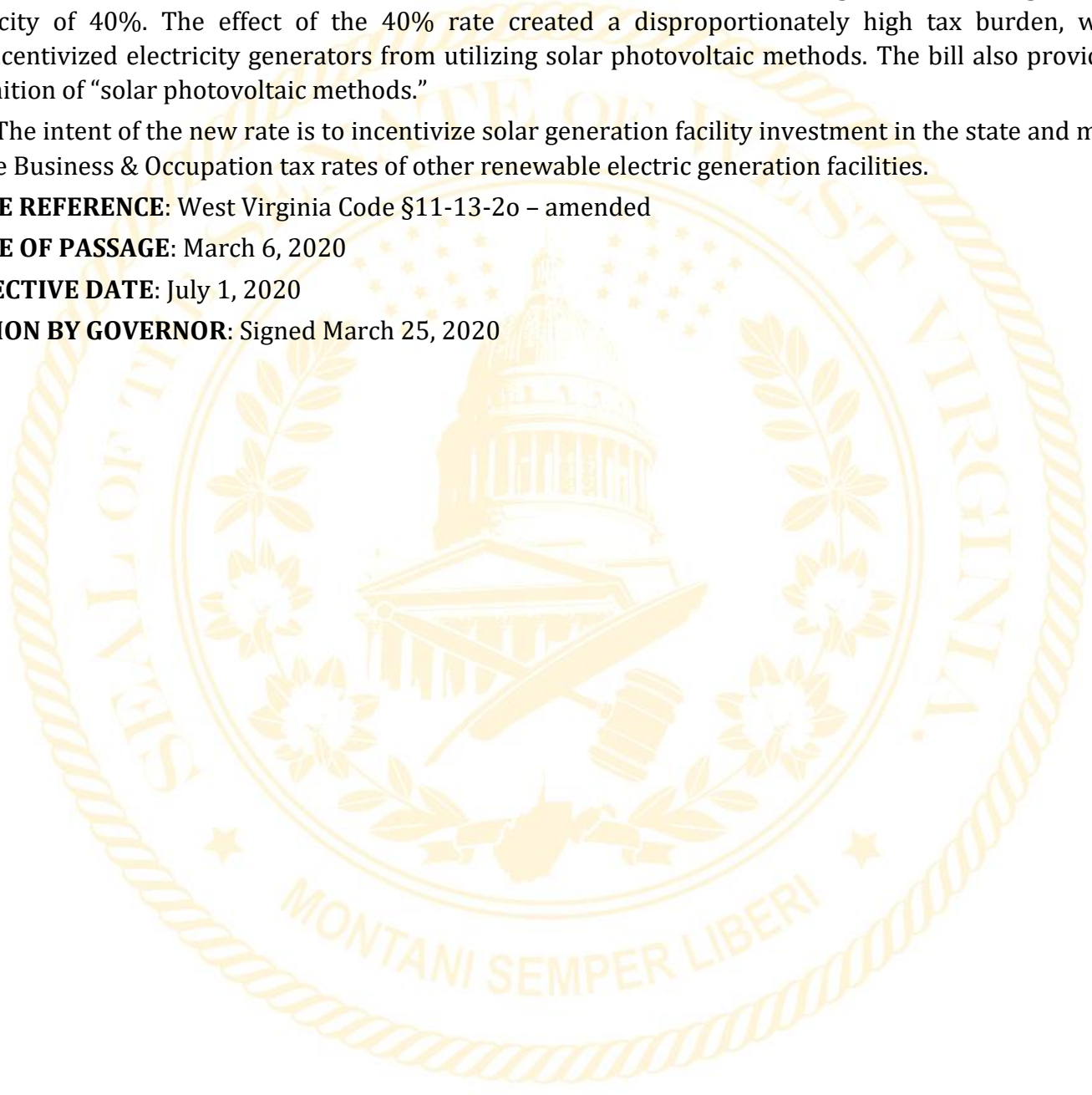
The intent of the new rate is to incentivize solar generation facility investment in the state and match those Business & Occupation tax rates of other renewable electric generation facilities.

CODE REFERENCE: West Virginia Code §11-13-2o – amended

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020



Senate Bill 583

Creating program to further development of renewable energy resources

SOLAR

This bill encourages the development of solar power in the state. The bill creates a program named Renewable Energy Facilities Programs to encourage retail solar projects, and also the bill expedites siting certificates to encourage new merchant solar plant construction for the wholesale market.

Under the bill, electric utilities may file an application with the PSC to build and operate solar generating facilities, energy storage resources, or both. The utilities must offer the energy for sale to residential, commercial, and industrial customers through renewable special contracts or renewable tariffs.

No facility shall have a capacity of more than 50 megawatts until 85% of that electric output is sold. After 85% of the first 50 megawatts is sold, the program can be expanded in increments of up to 50 megawatts per expansion. Further expansions may be made after 85% percent of the aggregate output is sold. No single facility or utility shall have a generating capacity greater than 200 megawatts and the statewide cumulative capacity may not exceed 400 megawatts for all utilities.

Applications made under this bill, are in lieu of an application for a certificate of public convenience and necessity, and utilities may petition the commission for accelerated cost recovery. The bill requires utilities to publish notice of an application and usually hold a public hearing. The commission is required to approve completed applications and allow concurrent cost recovery if expenses and rates are prudent, just, and reasonable.

The bill contains language limiting the cost recovered from customers, but also establishes that there are no such limits for renewable special contracts or renewable tariffs. The bill expires for new applications on December 31, 2025. The expiration does not affect projects with applications filed before this date.

Regarding wholesale solar generation, any entity who is not an electric utility; who intends to construct an electric generating facility as an exempt wholesale generator; who will generate electricity solely through solar methods; and who, if desired, intends to construct and operate energy storage, may file an application with the Public Service Commission, and after publication and a hearing the PSC shall issue a siting certificate or modification within 150 days of the application filing date.

CODE REFERENCE: West Virginia Code §24-2-1o – new

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: June 3, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 793

Relating to B&O taxes imposed on certain coal-fired electric generating units

COAL

This bill amends §11-13-2q of the business and occupation tax to clarify the definition for coal-fired merchant power plants. It also provides an election for recomputation of the taxable generating capacity of a coal-fired electric power generating unit placed in service prior to January 1, 1995.

Under previous law, the taxable generating capacity of those units was based on the unit's net generation during calendar years 1991 through 1994. This bill allows the owners or operators of those generating units to make an irrevocable election to reduce the taxable generating capacity of those units to 45 percent of the official capability of the generating unit, for taxable periods beginning on and after July 1, 2021.

However, this election is subject to the requirement that the owner agree to keep the generating units in operation until at least January 1, 2025. In the event a generating unit ceases to be operational during the required time period, a recapture tax is imposed. The recapture tax is also be imposed if ownership of the generating unit is transferred on or after July 1, 2021, but before January 1, 2025.

In the event federal law or regulation requires closure of the generating unit, the recapture tax is not applicable to periods after the closure date.

CODE REFERENCE: West Virginia Code §11-13-2q – amended; §11-13-12r – new

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 802

Relating to public utilities generally

NATURAL GAS/
UTILITIES

This bill allows new large natural gas users (100 million cubic feet or more annually) to bypass local utilities and contract with natural gas producers in West Virginia.

The new facility must notify the utility that would otherwise provide service that it intends to receive service from a non-utility, and receive natural gas produced in West Virginia.

The new facility must certify to the Public Service Commission that it has notified the utility, that its projected annual gas usage will be at least 100 million cubic feet; and that it will receive natural gas produced in West Virginia. It must also provide the tax ID number of the direct supplier.

After the new facility makes the certification to the PSC, the new facility may proceed to obtain direct service; the PSC has no further input into the arrangement.

The bill will not affect the PSC's ability to regulate the safety of natural gas pipelines.

CODE REFERENCE: West Virginia Code §24-2-20 – new

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 810

Implementing federal Affordable Clean Energy Rule

ENVIRONMENT

This bill amends the Code relating to the Obama Administrations Clean Power Plan (CPP) so that the West Virginia Department of Environmental Protection can promulgate rules to comply with the Trump Administration's Affordable Clean Energy (ACE) Rule.

CODE REFERENCE: West Virginia Code §22-5-20 – amended

DATE OF PASSAGE: March 4, 2020

EFFECTIVE DATE: June 2, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 816

Updating North American Industry Classification System code references

This bill updates the North American Industrial Code (NAIC) reference in the definition of “manufacturing” as used in West Virginia Code § 11-6F-2 and 11-13S-3. The previous code reference is 211112, and this bill changes it to the current code reference of 21130, but only to the extent the classification applies to the processing of raw natural gas or oil to recover the liquid hydrocarbons. This activity is now classified under 211130.

In 2011, the definition of “manufacturing” in West Virginia Code §11-6F-2 and §11-13S-3 was amended to include business activity classified under code 211112, which at that time included natural gas liquid extraction. In 2017, the United States Bureau of the Census updated the NAICS and moved natural gas liquid extraction to code 211130, which also applies to natural gas extraction.

This bill codifies in West Virginia Code the current NAIC classifications.

CODE REFERENCE: West Virginia Code §11-6F-2 and §11-13S-3 – amended

DATE OF PASSAGE: February 29, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 2646

Providing a safe harbor for employers to correct underpayment or nonpayment of wages and benefits due to separated employees

This bill provides a safe harbor for employers to correct underpayment or nonpayment of wages and fringe benefits due to employee separation prior to the filing of a lawsuit. The bill prohibits an employee from seeking liquidated damages or attorney's fees when bringing an action for the underpayment or nonpayment of wages and fringe benefits due upon the employee's separation from employment without first making a written demand to the employer.

Upon separation or with issuance of the final paycheck, the employer must inform the employee who the employer's authorized representative is and where to send a written demand through both email and regular mail. If the employer fails to comply with this requirement, the employee is not subject to the requirements of the bill. After a written demand is received, the bill provides the employer seven calendar days to correct the alleged underpayment or nonpayment of wages and fringe benefits prior to the filing of a lawsuit.

The bill prohibits an employee from seeking liquidated damages or attorney's fees without first making this written demand. This bill also states that if a class action is brought by multiple employees for the underpayment or nonpayment of wages and fringe benefits, the written demand should state that it is a demand for all similarly situated employees. However, if the employer corrects underpayment or nonpayment of wages and fringe benefits for only the named employee in a class action, then the rest of the members of the class may continue with their suit.

CODE REFERENCE: West Virginia Code §21-5-4a – new

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4001

Creating West Virginia Impact Fund

The bill creates the following:

- A special revenue account called the “West Virginia Impact Fund”;
- A new agency called the Investment Committee; and
- A new agency called the Mountaineer Impact Office.

The purpose of these agencies is to further economic development, infrastructure development and job creation in the State of West Virginia.

This is done through investment of the moneys of the fund in projects requiring at least \$25 million of capital “to further economic development, infrastructure development and job creation in the State of West Virginia for the public benefit.”

The Investment Committee consists of the Governor, the Secretary of Commerce and 5 non-government persons appointed by the Governor, with the advice and consent of the Senate, who “must have recognized competence and experience in finance, investments, or other business management-related fields.” The Senate President and the Speaker of the House are also ex-officio, non-voting members.

The Impact Fund holds any state funds made available for investments in final projects approved for those purposes by the Investment Committee. The Mountaineer Impact Office proposes investments for the Investment Committee’s consideration and process those investments that are approved. Returns on investments are returned to the Impact Fund for future approved final projects.

Expenses for administration of the Investment Committee and the Mountaineer Impact Office are paid from monies in the Impact Fund and the returns on investments.

The Mountaineer Impact Office provides audit reports of the Impact Fund moneys and the investments to the Legislature annually.

CODE REFERENCE: West Virginia Code §12-6E-1 through §12-6E-11 – new

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: March 5, 2020

ACTION BY GOVERNOR: Signed March 12, 2020

House Bill 4019

Downstream Natural Gas Manufacturing Investment Tax Credit Act of 2020

OIL AND GAS

This bill creates the Downstream Natural Gas Manufacturing Investment Tax Credit Act of 2020 with the goal of encouraging investment in downstream natural gas manufacturing businesses through the use of an income tax credit. This is similar to the Economic Opportunity Tax Credit (Currently any business in West Virginia that engages in downstream natural gas manufacturing would qualify for the Economic Opportunity Tax Credit).

The amount of credit allowable depends upon the cost of the qualified investment property and the number of new jobs created. This bill allows that on or after July 1, 2020, an eligible taxpayer for this credit would be any person subject to the Personal Income Tax or Corporation Net Income Tax who makes a qualified investment in a new or expanded downstream natural gas manufacturing facility located in West Virginia and creates at least five new jobs in the State. Downstream natural gas manufacturing refers to oil and gas manufacturing operations after the production and processing phases and includes, but is not limited to, facilities that use oil, natural gas liquids, or the products produced by ethane crackers as raw materials to manufacture industrial and commercial products.

The allowable credit is taken over a 10-year period at the rate of one-tenth per year. Unused credit may be carried forward for another 10 years. Property that qualifies for another tax credit in chapter 11 of the West Virginia Code is not eligible for credit under this bill. Similarly, qualified investment property under this bill is not eligible for another credit under chapter 11 of the Code. This proposed credit cannot be taken in conjunction with another tax credit based on the same investment property. This bill requires a Tax Credit Review and Accountability Report related to this proposed credit to be submitted by the Tax Commissioner every three years to the Governor, Senate President, and House Speaker.

If the investment ceases to be used or is disposed of prior to the end of its useful life, the taxpayer must recalculate and refile for a revised credit. All previously calculated credits are forfeited above the new recalculated amount. The taxpayer must pay all additional taxes owed due to the reduction in the credit for the earlier years with interest. Also, if the number of employees falls below the level on which the annual credit is based, the taxpayer must recalculate the credit allowance at the new lower level and forfeit the difference for the current and remaining years, unless new employees are added bringing the taxpayer back to the higher level. If the taxpayer prematurely removes qualified investment property from service and the number of employees filling the new jobs created by the person falls below the number of new jobs required in order to qualify for the amount of credit being claimed, there are recapture provisions. The bill also allows for partial recapture in certain circumstances.

The bill defines what happens during the transfer of a qualified investment to a successor. The successor business is allowed to claim the remaining available credits, and the transferor is not required to recalculate the earlier years credit. The bill includes rules for administration and enforcement of the credit. It also includes provisions defining record keeping, the application process, burden of proof as being on the taxpayer at a level of clear and convincing evidence.

CODE REFERENCE: West Virginia Code §11-13FF-1 through §11-13FF-18 – new

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: June 3, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4088

Disposition of funds from certain oil and natural gas wells due to unlocatable interest owners

OIL AND GAS

This bill requires deposit of all unclaimed funds and proceeds due to an owner of real property interests to the Oil and Gas Reclamation Fund, if the owner's name or location is unknown and the owner does not make a claim for those funds for seven years after the date of the court order authorizing the distribution of the funds. The Oil and Gas Reclamation Fund is used to plug abandoned oil and gas wells and address associated environmental concerns throughout the state.

Similarly, the bill requires deposit of all unclaimed funds and proceeds due to owners of mineral interests to the Oil and Gas Reclamation Fund, if the owner's name or location is unknown and the owner does not make a claim for those funds for seven years after the date of the of the special commissioner's lease. The mineral interest of the unknown or missing owner is transferred to the surface owner by deed and gives the surface owner all future proceeds under the lease after the date of the deed.

CODE REFERENCE: West Virginia Code §37-4-9 – new; §55-12A-7 – amended

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: June 3, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4090

Creating the Oil and Gas Abandoned Well Plugging Fund

OIL AND GAS

This bill attempts to accomplish two goals. It reduces the severance tax on oil and gas produced from low-producing wells to reduce costs of production. The lower costs will help ensure the wells are kept in service longer. The bill then uses the reduced amount of taxes to plug and reclaim orphaned oil and gas wells that are polluting the environment.

Except for horizontal wells targeting shale formations, the bill reduces the 5% severance tax to 2.5% for wells producing natural gas at average levels between 5,000 cubic feet and 60,000 cubic feet of natural gas per day. The statutory exemption for all wells producing less than 5,000 cubic feet or less of natural gas per day remains unchanged. Except for horizontal wells targeting shale formations, the bill also reduces the 5% severance tax to 2.5% on oil production by wells at average levels between ½ barrel and 10 barrels of oil per day. The current exemption for all wells producing less than ½ barrel per day remains unchanged.

This bill also strikes the expired subsection (d) from this section of code and creates a new subsection (d) outlining the method by which the taxpayer determines the average amount of production.

This bill also creates a new fund into which the tax proceeds from the reduced 2.5% severance tax is paid. This fund is called the Oil and Gas Abandoned Well Plugging Fund, and it is administered by the DEP to be used only to plug orphaned oil and natural gas wells. The bill further specifies that these funds in the Oil and Gas Abandoned Well Plugging Fund cannot be transferred to general revenue and may only be used to plug orphaned wells.

The bill places a cap on the balance of the new fund at \$6 million. If the balance ever exceeds that amount on June 1 of any year, the 2.5% tax is reduced to 0% for the following year or until the balance is reduced to below 6 million on a later June 1 date. The initial date by which the fund must be less than 6 million is June 1, 2023.

The bill further requires the DEP to report to the governor and legislature every year regarding the balances in two well plugging funds, the number of wells that were plugged in the previous year, and a 5-year plan to plug additional wells.

CODE REFERENCE: West Virginia Code §11-13-3a – amended; §22-6-29a – new

DATE OF PASSAGE: March 3, 2020

EFFECTIVE DATE: Tax periods after January 1, 2020

ACTION BY GOVERNOR: Signed March 23, 2020

House Bill 4091

Allowing for expedited oil and gas well permitting upon payment of applicable expedited fees

OIL AND GAS

This bill has been prepared to encourage the development of a faster oil and gas well permitting process for horizontal wells. This bill creates three new subsections to allow for an expedited oil and gas well permit application process which will cost the applicant special expedited fees. This process will only apply to shallow horizontal wells.

The current permitting fee is \$10,000 for an initial horizontal well drilled at a location and \$5,000 more for each additional leg drilled at the same location. In the bill, the additional expedited permitting fee will be \$20,000 for the initial horizontal well drilled at a location and \$10,000 more for each additional horizontal well drilled at the same location. The expedited permit modification fee is set at \$5,000 under the bill. A modification application currently has no fees.

The secretary must issue expedited permits within 45 days of the submission of a permit application, unless additional information is required, or the application is denied. The time requirement is extended if the DEP must ask for additional information. The DEP must refund to the applicant a daily pro-rated amount of the expedited permit fees for each day the permit is not approved after the 45th day through the 60th day which is the day when the fee is reduced to the normal permit fee amount. No refunds are due below the normal fee amount. The prorated amount is \$1333.33 per day.

With regard to permit modifications the procedures are the same, but the DEP must issue the expedited permit modifications within 20 days of the submission of a permit modification application. A similar prorated refund will be due for each day after 20 days and before the 30th day. The prorated amount is \$500 per day. Again the 30th day is when the fee is reduced to the normal permit fee of zero.

The bill provides that one half of the additional fees will be used for the DEP to process the applications, but not to exceed \$1,000,000 annually. The remaining one half of the expedited fees and all residuary above the \$1,000,000 cap is used for the reclamation and plugging of orphaned oil or gas wells.

CODE REFERENCE: West Virginia Code §22-6A-7 – amended

DATE OF PASSAGE: February 5, 2020

EFFECTIVE DATE: May 5, 2020

ACTION BY GOVERNOR: Signed February 17, 2020

House Bill 4421

Natural Gas Liquids Economic Development Act

NATURAL GAS

The purpose of this bill is to encourage the development, transportation, and use of natural gas liquids for the economic benefit of this state by providing certain tax credits related to the transportation and storage of natural gas liquids.

The bill has two components. It creates both the Natural Gas Liquids Economic Development Act and the West Virginia Natural Gas Liquids Property Tax Adjustment Act.

The Natural Gas Liquids Economic Development Act contains legislative findings for the purposes of the bill. It also finds that the West Virginia Economic Development Authority and the West Virginia Infrastructure and Jobs Development Council should assist and grow the natural gas liquids segment of the economy.

The West Virginia Natural Gas Liquids Property Tax Adjustment Act creates a tax credit for eligible taxpayers to be used against personal income taxes and corporate net income taxes. (Being §11-21-1 et seq. and §11-24-1 et seq. respectively.)

The amount of tax credit allowed to the eligible taxpayer is defined as the amount of West Virginia ad valorem property tax paid on the value of inventory and equipment of the eligible taxpayer during the applicable tax year.

An eligible taxpayer is defined as those who produce, store, use, or transport NGLs and who are subject to the personal income tax or the corporate net income tax.

The credit is to be applied under the personal income tax or corporate net income tax. Any credit remaining after application against these types of tax liabilities for the current taxable year is carried forward to a subsequent taxable year for up to three taxable years. These credits may not be used against any prior taxable year.

This tax credit is stackable in that, under the bill, the credits will be allowed even after application of all other applicable tax credits for these types of taxes.

The taxpayer must file an annual schedule showing the amount of tax paid for the taxable year and the amount of credit allowed under the article. The annual schedule shall be set forth in the form and contain all information prescribed by the Tax Commissioner.

Under certain conditions the tax credit is transferable to successor taxpayers and is apportioned between transferrer and successors for the year of the transfer. The tax credit also survives buyouts and mergers of entitled taxpayers. The credit itself is not alone transferable, only the rights to the credit may be transferred with the taxpayer or its assets.

If a taxpayer takes a credit against a tax under this article who was not entitled to the credit, the taxpayer must file amended returns and the improper credit will be recaptured. Moreover, all additional taxes must be paid with interest and applicable penalties paid as provided in §11-10-17 and other penalties and additions to tax as may be applicable as provided in §11-10-1 et seq. However, penalties and additional taxes may be waived at the discretion of the Tax Commissioner, but interest is not subject to waiver.

The bill creates a 5-year statute of limitations for the issuance of an assessment of tax by the Tax Commissioner from the date of filing of any tax return on which this credit was taken or from the date of payment, whichever is later.

The bill provides a sunset date of July 1, 2030. Credits will no longer be available for taxable years beginning after that date, and any remaining unused credits are forfeited.

The bill requires the Tax Commissioner to provide reports to the Joint Committee on Government and Finance detailing the amount of credits claimed for each type of taxes.

Taxpayers claiming the credit are required to provide any information the Tax Commissioner may require for the report, provided the information is subject to the confidentiality and disclosure provisions of §11-10-5d and §11-10-5s.

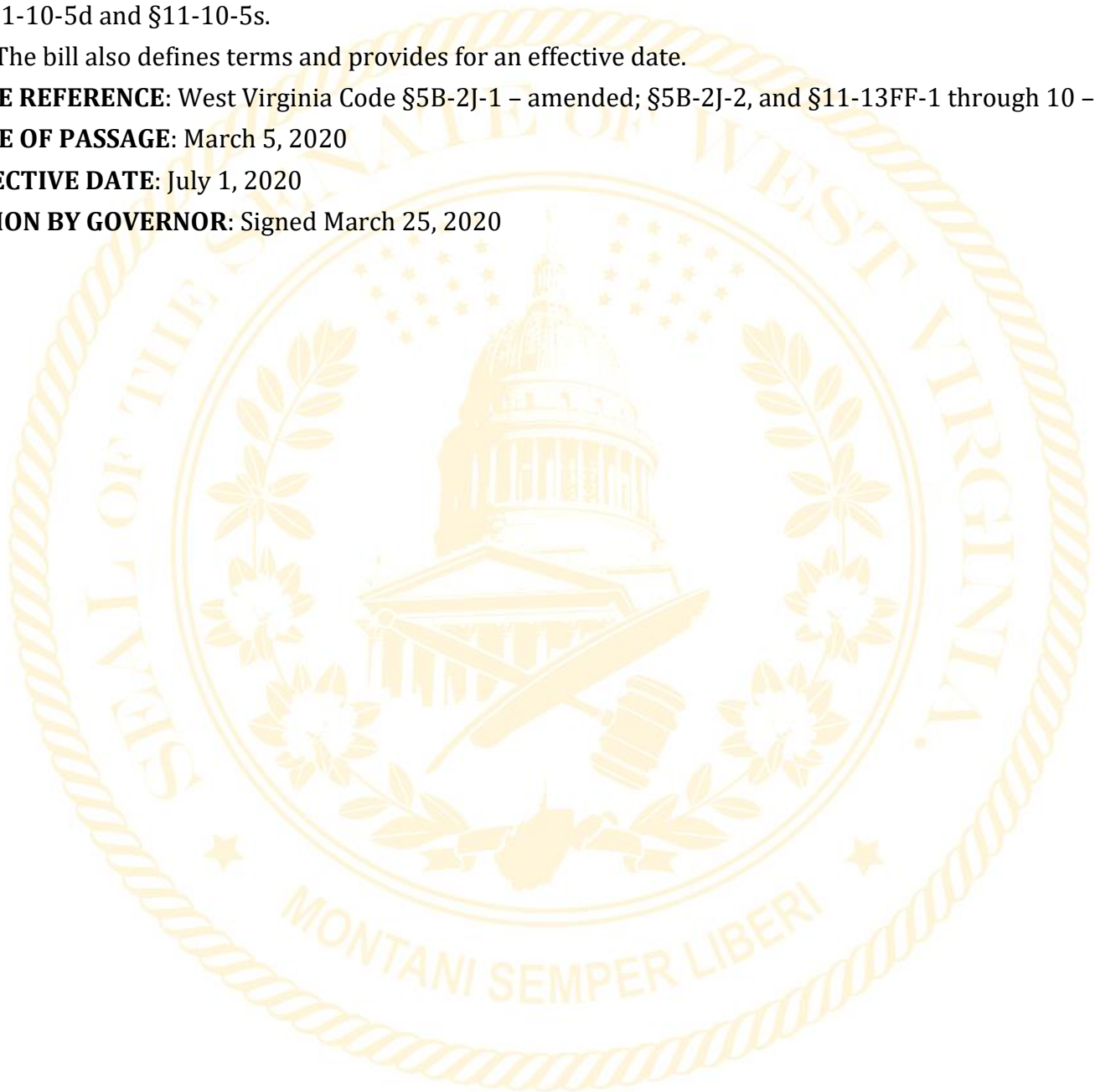
The bill also defines terms and provides for an effective date.

CODE REFERENCE: West Virginia Code §5B-2J-1 – amended; §5B-2J-2, and §11-13FF-1 through 10 – new

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020



House Bill 4439

Clarifying the method for calculating the amount of severance tax attributable to the increase in coal production

COAL

The purpose of House Bill 4439 is to establish the Coal Severance Tax Rebate. The bill sets out legislative findings and defines necessary terminology.

This rebate would be allowed for capital investments in new machinery and equipment directly used in severing coal for sale, profit or commercial use and coal preparation and processing facilities placed in service or use on or after the effective date of this article.

Any new company would have to be engaged in coal production for a period of two years prior to possibly qualifying for this investment tax credit. Any unused tax credit for any single year of investment would be carried forward for a period not to exceed ten years. There is also a provision for suspension if the taxpayer is delinquent in the payment of severance taxes.

Finally, there is a required report from the Tax Commissioner to the Joint Committee on Government and Finance by July 1, 2022, and on the first of July every year thereafter. There are also provisions regarding construction of the statute, severability and rulemaking for the Tax Commissioner.

CODE REFERENCE: West Virginia Code §11-13EE-1 through 16 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4484

Relating to the Hazardous Waste Management Fund

ENVIRONMENT

The Hazardous Waste Management Act creates the Hazardous Waste Management Fund which is used to regulate and manage hazardous waste use and storage in this state. The act creates an annual certification fee for facilities that manage hazardous waste. The fees generated by the act are matched by federal grants which support the hazardous waste management program.

The fee and the fund will terminate on June 30, 2020. As a result, the state will lose the federal matching funds. The fees generate about \$700,000 in annual revenue which allows the state to receive about \$1,630,000 annually in matching funds.

The bill merely changes the date and extends the program through June 30, 2025. There are no other changes.

CODE REFERENCE: West Virginia Code §22-18-22 – amended

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: June 3, 2020

ACTION BY GOVERNOR: Approved March 25, 2020

House Bill 4615

West Virginia Critical Infrastructure Protection Act

ENERGY
INFRASTRUCTURE

This bill provides numerous protections for critical infrastructure. The bill defines critical infrastructure and critical infrastructure facility and creates new criminal offenses.

The bill provides that any person who willfully and knowingly trespasses or enters property containing a critical infrastructure facility without permission by the owner of the property or lawful occupant thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$250 nor more than \$1,000, confined in jail not less than 30 days nor more than one year, or both fined and confined. If the intent of the trespasser is to willfully damage, destroy, vandalize, deface, or tamper with equipment, or impede or inhibit operations of the critical infrastructure facility, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$100 nor more than \$1,000, confined in a jail for not more than one year, or both fined and confined.

If a person who willfully damages, destroys, vandalizes, defaces, or tampers with the equipment in a critical infrastructure facility causes damage in excess of \$2,500, the person is guilty of a felony and, upon conviction thereof, shall be fined not less than \$1,000 but not more than \$5,000, imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

Additionally, any person or organization who conspires with any person to commit the offense of trespass against a critical infrastructure facility is guilty of a misdemeanor and, upon conviction thereof shall be fined in an amount of not less than \$2,500 nor more than \$10,000. Any person or organization who conspires with any person or organization to willfully damage, destroy, vandalize, deface, or tamper with equipment in a critical infrastructure facility and who does cause damages in excess of \$2,500 is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 but not more than \$20,000. Finally, any person who is arrested for or convicted of the new offenses may be held civilly liable for any damages to personal or real property while trespassing, in addition to the penalties imposed by the bill, and any person or entity that compensates, provides consideration to, or remunerates a person for trespassing as described in this section may also be held liable for damages to personal or real property committed by the person compensated or remunerated for trespassing.

CODE REFERENCE: West Virginia Code §61-10-34 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4661

Relating to the powers of the Public Service Commission and the regulation of natural gas utilities

NATURAL GAS/
UTILITIES

This bill changes the regulation of natural gas utilities in two ways:

- The bill empowers gas utilities to seek proposals to increase natural gas production and recover the resulting costs through the gas utility's purchased gas adjustment (PGA) mechanism. This will allow for new wells to be drilled and older wells to be properly maintained or reworked to increase dwindling supplies of gas to certain consumers whose supply is becoming depleted.
- A gas utility may petition the PSC for approval of the related costs to serve such customers. Upon a finding by the Commission that (1) the process of determining the costs and expected additional natural gas supply is reasonable; (2) the expected additional supply is dependable; and (3) the costs of the additional supply are reasonable and not contrary to the public interest; the Commission may approve the petition.
- If new supplies of natural gas are unavailable, the bill provides an option that empowers gas utilities to recover the costs to convert customers to other energy sources, like propane or electric. Under the bill, the utilities may defer reasonable and prudent costs to convert customers. The utility will recover its reasonable and prudent conversion costs in a future base rate case through recovery of the deferred expenses amortized over a reasonable time to be determined by the commission.

As this is a regulated market, under both parts of the bill, the PSC will have the final say on whether costs are reasonable under the circumstances. Also, the extra costs incurred will be spread across the whole of the utility's customer base and will not be carried entirely by the small communities who receive the benefit.

CODE REFERENCE: West Virginia Code §24-2-4c and §24-3-7 – amended

DATE OF PASSAGE: February 27, 2020

EFFECTIVE DATE: May 27, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

2019 Regular Session



Senate Bill 1

Increasing access to career education and workforce training

The purpose of this bill is to establish an Advanced Career Education (ACE) program and create the WV Invests Grant Program, both of which are for the purpose of increasing access to career education and workforce training.

The purpose of ACE programs (§18-2E-11) is to: 1) Connect secondary schools with community and technical colleges and four-year colleges that offer associate degrees to prepare secondary students for success in post-secondary education and the workforce; and 2) to provide more opportunities for secondary students to earn post-secondary college credits, certifications, and associate degrees. [§18-2E-11(b)(1) and (2)]

The community and technical colleges, public baccalaureate institutions, career technical education centers, county boards of education, or both are required to establish partnerships that establish ACE programs. An ACE program would feature multiple defined pathways that begin when a student is in high school and end with the student obtaining a credential or an associate degree. The bill also requires that the ACE programs be available to public, non-public, and home school students. [§18-2E-11(c)]

An ACE program is required to include of a curriculum of courses leading to an associate degree or advanced certification that has been determined to satisfy an area of workforce need as determined the Department of Commerce. The Department of Commerce is required to at least annually provide written notification to the State Board of Education and the WV Council for Community and Technical College Education of a determination of areas of workforce need within the state. These areas of workforce need could be determined on a statewide basis or regional basis. [§18-2E-11(d)]

The State Superintendent, the Chancellor of the Council for Community and Technical College Education, the Chancellor of the Higher Education Policy Commission, or their designees, are required to facilitate the ACE programs. [§18-2E-11(e)(1 through 5)] At a minimum, an ACE program must satisfy the following objectives:

- Provide additional opportunities to students to attain college credentials through ACE pathways;
- Increase the number of students in this state that attain college credentials through ACE pathways;
- Allow students to attain college credentials through ACE at little or no cost;
- Ensure that ACE provides a clear roadmap to the courses and requirements necessary to attain college credentials; and
- Ensure that course requirements within ACE pathways are not duplicated.

The State Board and the Council are required to jointly promulgate guidelines for the administration of ACE programs and pathways. [§18-2E-11(f) (1 through 5)] The guidelines are required to be adopted by both the State Board and the Council. At a minimum, the guidelines are required to include the following:

- That ACE program partnerships be reduced to written partnership agreements;
- The information required to be in the partnership agreements;
- That ACE programs and pathways must meet the requirements of the accrediting entity for the community and technical college or the baccalaureate institution awarding the associate degrees;

- That partnership agreements must be approved by the State Superintendent, the Chancellor for the Council for Community and Technical College Education and the Chancellor of the Higher Education Policy Commission; and
- Any other necessary provisions.

Additionally, the bill requires that the Division of Vocational Education and the Council annually report certain information to the Governor and LOCEA. The reporting requirements are set out in the bill. [§18-2E-11 (g)]

This bill also provides that students that have completed a secondary education program in a public, private, or home school and have continued to be enrolled in a program leading to an advanced certification or an ACE program are considered adults enrolled in regular secondary programs under the definition of “net enrollment” for state aid purposes. The number of adults enrolled in secondary vocational programs that may be included in “net enrollment” for state aid purposes is increased from 1,000 to 2,500. The bill also provides that, beginning with the 2021 fiscal year, a career technical education center can only receive funding for enrollment if the center has satisfied certain ACE requirements including the requirement to partner with at least one community and technical college. [§18-9A-2(I)(1)(A)]

This bill also creates the WV Invests Grant Program (§18C-9-1 et seq.) which is to be administered by the vice chancellor for administration. Necessary terms are defined. [§18C-9-3] Under the program, the Council is to award grants pursuant to the following:

- A grant can only be awarded to applicants satisfying the eligibility requirements;
- The maximum amount of the grant is the cost of tuition charged to all students for coursework leading to completion of the chosen associate degree or certificate, less all other state and federal aid for which the student is eligible;
- Grant payments are to be made directly to the eligible institutions;
- In the event that a grant recipient transfers from one eligible institution to another, the grant is transferable only with approval of the vice chancellor for administration;
- The grant can be used at any eligible institution to seek an associate degree or certificate in an eligible post-secondary program; and
- If the grant recipient terminates enrollment for any reason during the academic year, the unused portion must be returned by the institution to the council for return to the WV Invests Grant Fund for allocation and expenditure. [§18C-9-4]

The bill also requires the Council to report to the Legislature and Governor on the WV Invests Grant Program, which must include research and data concerning student success and grant retention. [§18C-9-4(c)] The Council is required to propose legislative rules to implement the provisions of this article that provide for: (1) Application requirements and deadlines; (2) appeal procedures for the denial or revocation of the grant; and (3) any other necessary provisions. Authority for an emergency rule is also included. [§18C-9-4(d) and (e)]. To be eligible for a WV Invests Grant, an individual must satisfy the following requirements [§18C- 9-5 (a)(1 through 11)]:

- Be a citizen or legal resident of the United States and have been a resident of West Virginia for at least one year immediately preceding the date of application;
- Have completed a secondary education program in a public, private, or home school;
- Have not been previously awarded a post-secondary degree;

- Be at least 18 years of age (except that individuals younger than 18 can qualify upon completion of a secondary education program in a public, private, or home school);
- Meet the admission requirements of, and be admitted into, an eligible institution;
- Satisfactorily meet any additional qualifications of financial need, enrollment, academic promise, or achievement as established by the Council through rule;
- Have filed a completed FAFSA;
- Be enrolled in an eligible post-secondary program;
- Be enrolled in at least six credit hours per semester;
- Have completed a WV Invests Grant application as provided by the Council in accordance with a schedule established by the Council; and
- Have, prior to the start of each semester, satisfactorily passed a drug test administered by the eligible institution with the applicant being responsible for the actual cost of the drug test.

Also, each grant can be renewed until the course of study is completed, as long as the following qualifications, as determined by the vice chancellor for administration and Council, are satisfied[§18C-9-5(b)(1 through 5)]:

- Maintaining satisfactory academic standing, including a cumulative GPA of at least 2.0;
- Making adequate progress toward completion of the eligible post-secondary program;
- Satisfactory participation in a community service program authorized by the Council (Council is required to promulgate rules to provide for the administration of this requirement, including, but not limited to, requiring completion of at least eight hours of unpaid community service during the time of study, which may include, but is not limited to, participating with nonprofit, governmental, institutional or community-based organizations designed to improve the quality of life for community residents, meet the needs of community residents or foster civic responsibility);
- Continued satisfaction of the initial eligibility requirements; and
- Satisfaction of any additional eligibility criteria established by the Council through legislative rule.

The bill also requires that each recipient of a WV Invests Grant enter into an agreement with the vice chancellor for administration, which requires repayment of an amount of the grants awarded to the recipient, in whole or in part, if a recipient chooses to reside outside the state within two years following obtainment of the degree or certificate for which the grant was awarded. The Council is prohibited from requiring a recipient to repay grants, in whole or in part, unless the prospective recipient has been informed of this requirement in writing before initial acceptance of the grant award.

Each WV Invests Grant agreement must include the following:

- Disclosure of the full terms and conditions under which assistance under this article is provided and under which repayment can be required; and
- A description of the appeals procedure.

Recipients who are not in compliance with the agreement must be required to repay the amount of the grant awards received, plus interest, and where applicable, reasonable collection fees on a schedule and at a rate of interest, prescribed in the Council's rules. The Council also must provide for proration of the amount to be repaid by a recipient who maintains employment in the state for a period of time within the two-year time period.

The bill further provides that a recipient is not in violation of the agreement during any period in which the recipient is meeting any of the following conditions:

- Pursuing a half-time course of study at an accredited institution of higher education;
- Serving as a member of the armed forces of the United States;
- Failing to comply with the terms of the agreement due to death or permanent or temporary disability as established by sworn affidavit of a qualified physician; or
- Satisfying the provisions of any additional repayment exemptions prescribed by the Council through rule.

Lastly, the bill creates in the State Treasury a special revenue fund to be known as the “WV Invests Fund” which is to be expended for the purpose of administering the WV Invests Grant Program.

CODE REFERENCE: West Virginia Code §18-2-6 and §18-9A-2 – amended; §18-2E-11 and §18C-9-1 through §18C-9-6 – new.

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Signed March 25, 2019



Senate Bill 531

Relating generally to workers' compensation claims

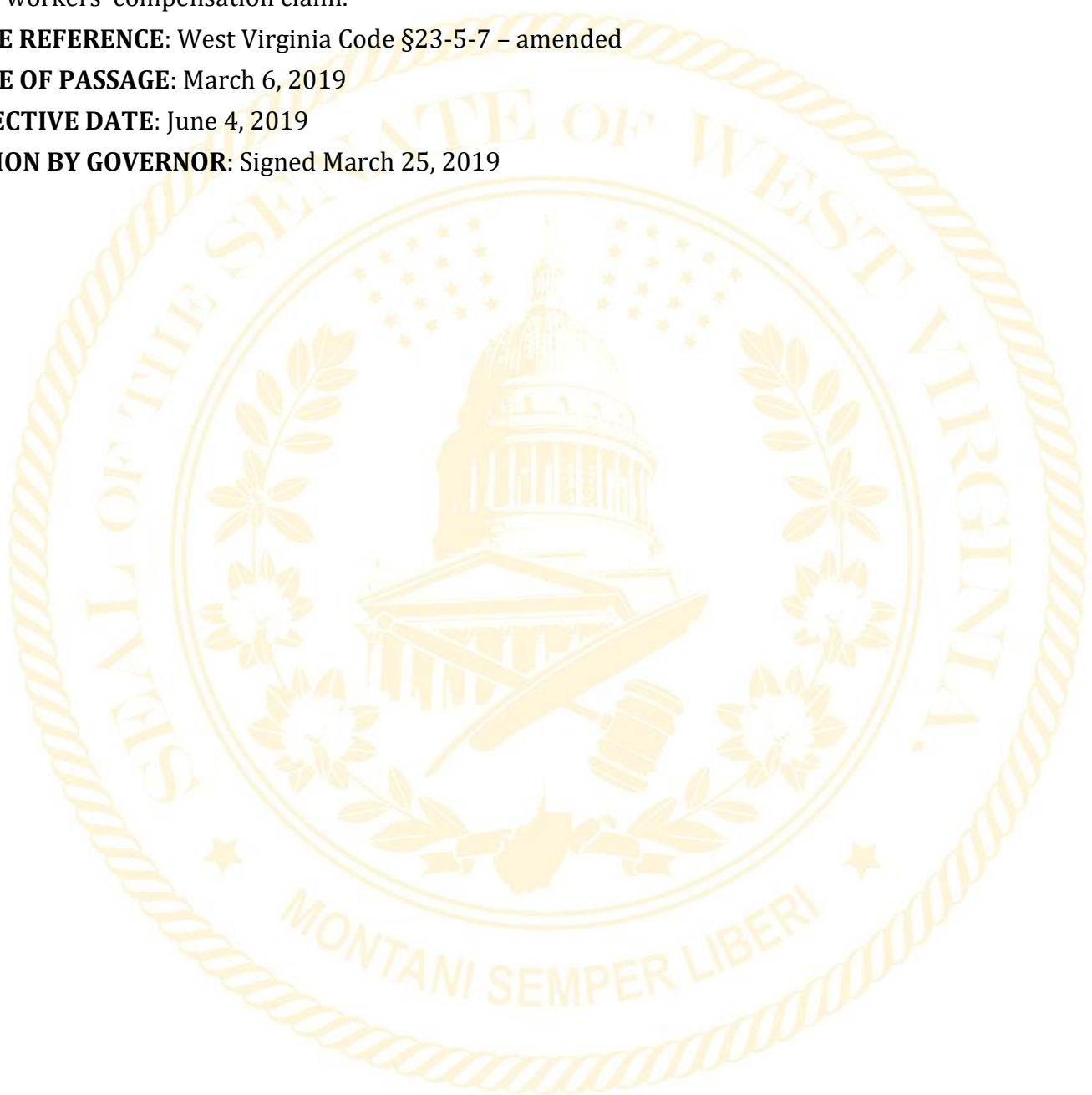
This bill removes the requirement that workers' compensation claimants who are settling their medical claim for occupational hearing loss or hearing impairment must be represented by counsel. Those specific claimants will no longer be required to hire an attorney to settle the medical portion of their workers' compensation claim.

CODE REFERENCE: West Virginia Code §23-5-7 – amended

DATE OF PASSAGE: March 6, 2019

EFFECTIVE DATE: June 4, 2019

ACTION BY GOVERNOR: Signed March 25, 2019



Senate Bill 635

Relating generally to coal mining activities

COAL

The purpose of this bill is to provide a series of changes to our current mining laws. This bill is broken down into four essential parts: 1) Economic Development, 2) Environmental, 3) Underground Coal Mining, and 4) Crimes and Their Punishment.

- Economic Development
 - Within the article dealing with the Coalfield Community Development Office, it abolishes the requirement that a community impact statement be provided; requires now that the office consult with the department's Office of Mining and Reclamation on a quarterly basis to review the permit application databases to determine if newly proposed surface mines present economic opportunities for mine operators to cooperate with landowners and local governmental officials; and, states that an operator only need to prepare and submit certain information upon request by the Office.
- Environmental
 - Within the article dealing with the Surface and Coal Mine Reclamation Act, it requires the Secretary of the DEP to promulgate rules relating to surface owner protection from material damage due to subsidence. States that the Secretary shall consider the federal standards.
 - Within the article dealing with the Water Pollution Control Act, it requires the Secretary of the DEP to promulgate rules relating to surface coal mine operations. The rules should relate to categories of permitting actions and permitting fees.
 - Within the article dealing with the Aboveground Storage Tank Act, it requires the Secretary of the DEP to promulgate rules relating to incorporating relevant provisions of the Groundwater Protection Rules for Coal Mining contained in 38 CFR 2F for tanks and devices located at coal mining operations.
- Underground Coal Mining
 - Within the article dealing with Office of Miners' Health, Safety and Training; Administration; Enforcement, it requires any miner issued a personal assessment to either appeal or pay the fine within 30 days of receipt of the violation; requires that the state's Mine Rescue Team be provided as a backup mine rescue team to operation that cannot secure a backup, and requires that the Office of Miners' Health, Safety and Training use surplus special revenue funds to pay for the rescue team or teams; and, the Act holds harmless the mine owner and the State of West Virginia. If they refuse to effect a rescue for persons in the act of mine trespass due to safety concerns.
 - Within the article dealing with the OMHST's Substance Abuse Enforcement, it allows any employee involved in an accident involving physical injuries or damage to equipment to be drug tested by the employer; and, requires that any miner that fails a drug test to be suspended for at least six months.
 - Within the article dealing with Underground Mines, for ventilation, it requires that a mine operator submit a copy of the MSHA-approved ventilation plan to the director of OMHST once approved. That this shall serve as the state-approved plan as well. For apprentice miners, the director of the OMHST shall promulgate rules to establish a course of instruction. That apprentice miners work within sight and sound of an experienced miner

for 90 days instead of 120 days. For tracking data, it allows the director of the OMHST to use the employers tracking data for the purpose of decertifying any examiner who fails to perform his/her duties. And, finally, it requires that all existing rules under this article be revised to reflect any changes enacted during the 2019 Regular Session.

- Within the article dealing with Use of Diesel-Powered Equipment in Underground Coal Mines, it eliminates the requirement that an operation measure Nitrogen Oxide (NO) unless they are measuring the ambient air (close to the equipment).
- Within the article dealing with Certification of Underground and Surface Coal Miners, it allows a competent miner to supervise up to two red hat miners instead of limiting it to one; and, removes the certification for any miner convicted of mine trespass.
- Crimes and Their Punishment
 - Within the article dealing with Crimes Against Property, it removes the provision for entry into an underground coal mine from the section dealing with entry into a building.
 - Within the article dealing with Trespass, it establishes the offense of mine trespass with criminal penalties for first, second, and third offenses upon conviction. First offense is a misdemeanor and jail not less than one week and pay a fine of not less than \$1,000 or more than \$5,000; second offense is a felony and jail not less than five years and not more than 10 years and fined not less than \$5,000 or more than \$10,000; and third offense is a felony and jail not less than five years or more than 10 years and fined not less than \$10,000 or more than \$25,000. The bill creates additional graduated criminal penalties for those who cause bodily injury or death to others while trespassing, provides for double damages for property damages created during a mine trespass; and provides for certain protections insuring the right to demonstrate is not violated.

CODE REFERENCE: West Virginia Code §22A-2A-405, §22A-8-5, §22A-8-10, §61-3-12, and §61-3B-6 – amended; §5B-2A-5, §5B-2A-6, §5B-2A-8, §5B-2A-9, §22-3-14, §22-11-10, §22-30-3, §22-30-24, §22A-1-21, §22A-1-35, §22A-1A-1, §22A-1A-2, §22A-2-2, §22A-2-12, §22A-2-13, §22A-8-5, §22A-2-80 – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: March 9, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 2049

Relating to a prime contractor's responsibility for wages and benefits

This bill amends W. Va. Code §21-5-7, providing that when a contract employee is seeking redress for unpaid wages and benefits, the employee must: (1) notify the prime contractor by certified mail only that wages or fringe benefits have not been paid within 100 days of the date the wages or fringe benefits become payable to the employee and (2) commence the action within one-year of the date the employee delivered notice to the prime contractor.

Subsection (c) requires employers of employees to whom wages and benefits are owed to whenever feasible provide immediately upon request by the employee or the prime contractor complete payroll records relating to work performed under the contract with the prime contractor.

Subsection (d) requires a union or other plan administrator that represents an employee to whom wages and benefits are owed to, whenever feasible, immediately, upon notice of a claim cooperate with the employee and prime contractor, identify and quantify wages and benefits owed for work performed under the contract with the prime contractor. Further, if the union or any of its agents or other plan administrators become aware that an employer is not timely in the payment of wages and benefits, the union or other plan administrator shall immediately notify the affected employee and the prime contractor from whom the affected employee provided work.

CODE REFERENCE: West Virginia Code §21-5-7 – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2479

Corporate Governance Annual Disclosure Act

This bill improves the Insurance Commissioner's surveillance of the financial conditions of insurers. The bill requires insurers writing more than \$500 million or insurance groups writing more than \$1 billion in annual premium to maintain an internal audit function providing independent, objective, and reasonable assurance to the insurer's or insurance group's audit committee regarding the insurer's governance, risk management, and internal controls. In order to ensure objectivity, the internal audit function must be organizationally independent.

The internal audit function will not defer ultimate judgment on audit matters to others and shall appoint an individual to head the internal audit function who will have direct and unrestricted access to the Board of Directors. The head of the internal audit function must report to the audit committee regularly, but no less than annually on the periodic audit plan, factors that may adversely impact the internal audit function's independence or effectiveness, material findings from completed audits, and the appropriateness of corrective actions implemented by management as a result of audit findings.

Article §33-52-1 et seq., the Corporate Governance Annual Disclosure Act, institutes a requirement that an insurer or insurer group must annually provide a confidential disclosure regarding its corporate governance practices. This law does not prescribe new corporate governance standards, but rather requires tailored, confidential reporting to ensure appropriate policies and procedures of insurers' Boards of Directors and internal oversight are in place and effective. The Model Act and Regulation together require an insurer or group of insurers to provide a detailed corporate governance annual disclosure (CGAD) allowing for more frequent review, consideration, and assessment of corporate governance practices. Currently, most of this information is only subject to review during periodic onsite examinations.

The insurer or group of insurers may choose to provide information on governance activities that occur at the ultimate controlling parent level, an intermediate holding company level, and/or the individual legal entity level, based on its determination of the level at which decisions are made, oversight is provided, and governance accountability is assessed in relation to the insurance activities of the insurer.

This bill's passage ensures that the State of West Virginia will remain accredited with the National Association of Insurance Commissioners (NAIC).

CODE REFERENCE: West Virginia Code §33-33-2, §33-33-12, and §33-33-16 – amended; §33-33-12a and §33-52-1 et seq. – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2480

Relating to the regulation of an internationally active insurance group

This bill provides legal authority to a designated state to act as a group-wide supervisor for an internationally active insurance group (IAIG) as well as the authority for domestic regulators to cooperate in requiring certain action by the insurance holding company system and engage in group-wide supervision activities such as requesting group level information, assessing enterprise risks affecting the group and communicating and sharing group-wide information with other regulators. For a holding company to be considered an IAIG, it must meet various criteria, including:

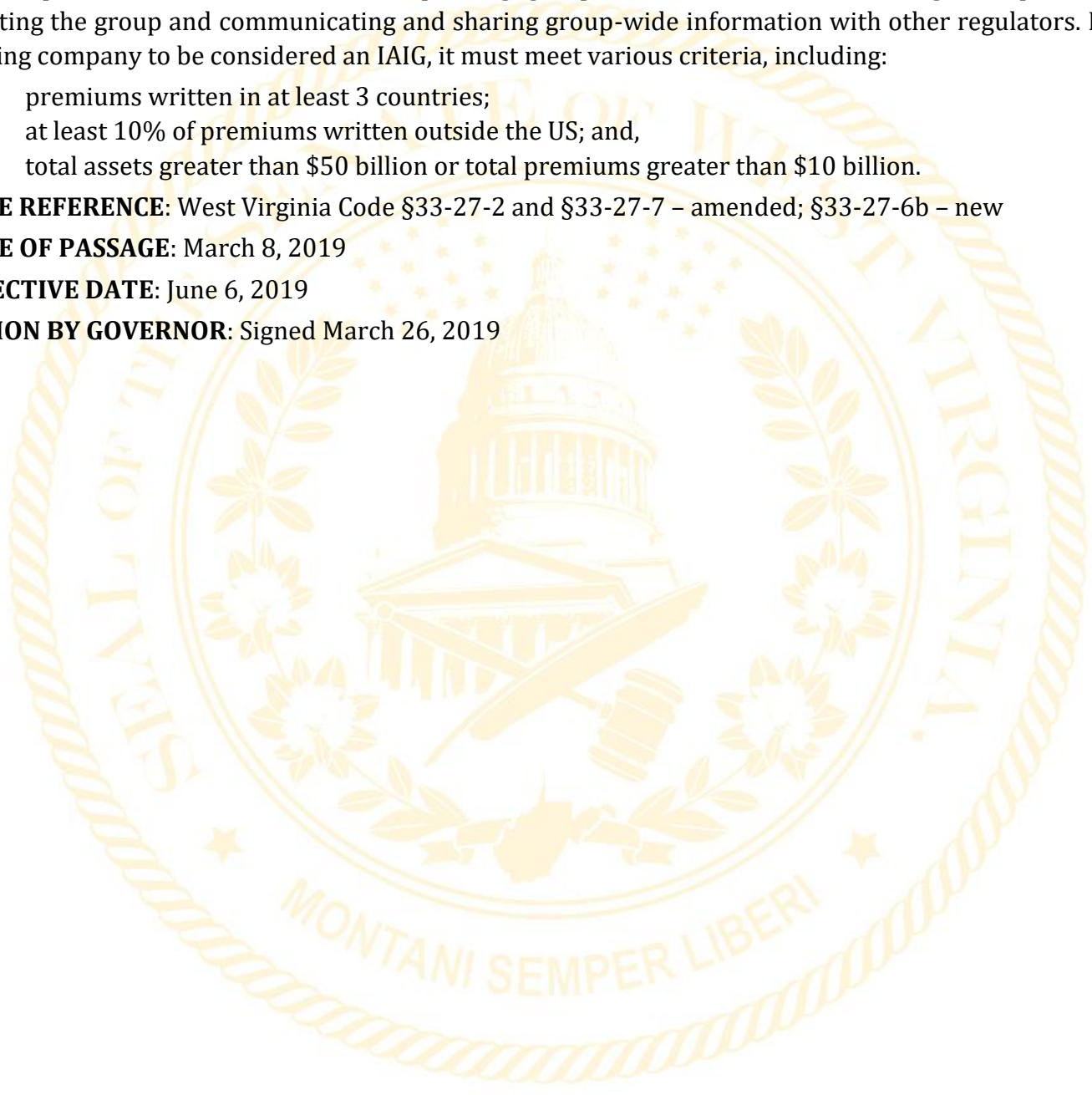
- premiums written in at least 3 countries;
- at least 10% of premiums written outside the US; and,
- total assets greater than \$50 billion or total premiums greater than \$10 billion.

CODE REFERENCE: West Virginia Code §33-27-2 and §33-27-7 – amended; §33-27-6b – new

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: Signed March 26, 2019



House Bill 2550

Creating a matching program for the Small Business Innovation and Research Program and the Small Business Technology Transfer Program

This bill would allow the Department of Commerce to provide 3 types of grants to eligible businesses to use as matching funds for Small Business Innovation and Research (SBIR) or Small Business Technology Transfer (SBTT) funding. To be eligible, the business must:

- Be a for-profit WV based business;
- Received a Phase I or Phase II award from the appropriate federal agency and indicate that they have filed the necessary final report for Phase I and fully intend to apply for Phase II;
- Meet all SBIR and SBTT requirements;
- May not be in receipt of duplicate funding from other sources to use as a match;
- That at least 51% of the research for the project would be conducted in WV and that the business will remain in WV throughout the duration of the project; and
- Must demonstrate the ability to conduct the necessary research

The bill sets out an application process and includes necessary elements to be included on the application.

The Secretary may award a WV Phase Zero grant of \$2500 upon successful submission of an approved Phase I SBIR and SBTT proposal. A business is only eligible for one grant per federal submission, up to a maximum of five over the lifetime of the entity.

The Secretary may award grants up to a maximum of \$100,000 to match funds received through a SBIR and SBTT Phase I proposal. Seventy-five percent is granted to the business upon receipt of the SBIR and SBTT Phase I award. The additional 25% upon submission of the Phase II application. A business is only eligible for one grant per federal submission, up to a maximum of five over the lifetime of the entity.

The Secretary may award grants up to a maximum of \$100,000 to match funds received through a SBIR and SBTT Phase II proposal. Seventy-five percent of the yearly match is granted to the business upon receipt of the SBIR and SBTT Phase II award. In year two 75% of the yearly amount is awarded. The additional 25% upon submission of the Phase II final report. A business is only eligible for one grant per federal submission, up to a maximum of five over the lifetime of the entity.

CODE REFERENCE: West Virginia Code §5B-8-1 through §5B-8-5 – new

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 2661

Relating to natural gas utilities

NATURAL GAS/
UTILITIES

This bill changed the regulation of natural gas utilities in two ways:

- The bill empowered gas utilities to ask the PSC for permission to implement programs to incentivize producers to increase natural gas production and recover the resulting costs through the gas utility's purchased gas adjustment (PGA) mechanism. This option allows for new wells to be drilled and older wells to be properly maintained or reworked to increase dwindling supplies of gas to certain consumers.
- The bill provided a second option that empowers gas utilities to recover the costs to convert customers to other heating fuels, like propane or electric, and recover the costs through the PGA mechanism. Utilities may also choose to defer the cost recovery to a rate case.

This bill allows for cost recovery of projects by utilities without expensive, time consuming, and complicated rate cases. Under both options, the PSC will have the final say on whether costs are reasonable under the circumstances. Also, the extra costs incurred will be spread across the whole of the utility's customer base and will not be carried entirely by the small communities who receive the benefit.

CODE REFERENCE: West Virginia Code §24-2-4c and §24-3-7 – amended

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: Vetoed on March 27, 2019

House Bill 2673

Creating the Oil and Gas Abandoned Well Plugging Fund

OIL AND GAS

This bill amends and reenacts §11-13A-3a and enacts a new section §22-6-29a of the Code. The bill does two things. The bill reduces the severance tax on oil and gas produced from low producing wells to reduce costs of production, helping to ensure the wells are kept in service longer. The bill then uses the reduced amount of funds paid to plug and reclaim orphaned oil and gas wells that are polluting the environment.

In §11-13A-3a, the tax exemption begins for all taxable periods on or after January 1, 2019. The bill creates an exemption for wells producing natural gas at average levels of less than 60,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period. The current exemption is for wells producing less than 5,000 cubic feet of natural gas per day.

The proposed bill also creates an exemption for wells producing oil at average levels of less than 10 barrels of oil per day during the calendar year immediately preceding a given taxable period. There is currently an exemption for wells producing less than ½ barrel per day.

This bill strikes the expired subsection (d) from the code and then exempts the operators from filing severance tax returns for wells producing less than an average 60,000 cubic feet per day for natural gas and 10 barrels per day for oil.

In §22-6-29a, After creating the tax exemption and filing exemption, the bill then implements a fee of 2.5% of gross proceeds, calculated as though it was being taxed under §11-13A-1 et seq. The current severance tax rate is 5%. The fee is paid to a new fund known as the Oil and Gas Abandoned Well Plugging Fund which is to be administered by the DEP and used only to plug orphaned oil and natural gas wells. Under the statutory scheme, the DEP must first use the funds from the sister fund known as the Oil and Gas Reclamation Fund. When these funds are expended, then the DEP can begin using the newly created fund.

If on June 1 of any year, the newly created fund has a balance of more than 4 million dollars, the 2.5% fee is suspended for the following calendar year, thus effectively eliminating all taxes on these wells producing an average of less than 60,000 cubic feet and 10 barrels of oil per day. The DEP must spend the money to plug wells or temporarily lose the revenue stream.

The bill further specifies that these funds in the Oil and Gas Abandoned Well Plugging Fund cannot be transferred to general revenue and may only be used to plug orphan wells to eliminate pollution to the environment. The bill further requires the DEP to report to the governor and legislature every year regarding the balances in the two funds and the number of wells that were plugged in the previous year. Lastly, there is a civil penalty of \$1500 dollars maximum to be paid by any operator that fails to pay the required 2.5% fee by March 31st each year.

CODE REFERENCE: West Virginia Code §11-13A-3a – amended; §22-6-29a – new

DATE OF PASSAGE: March 9, 2019

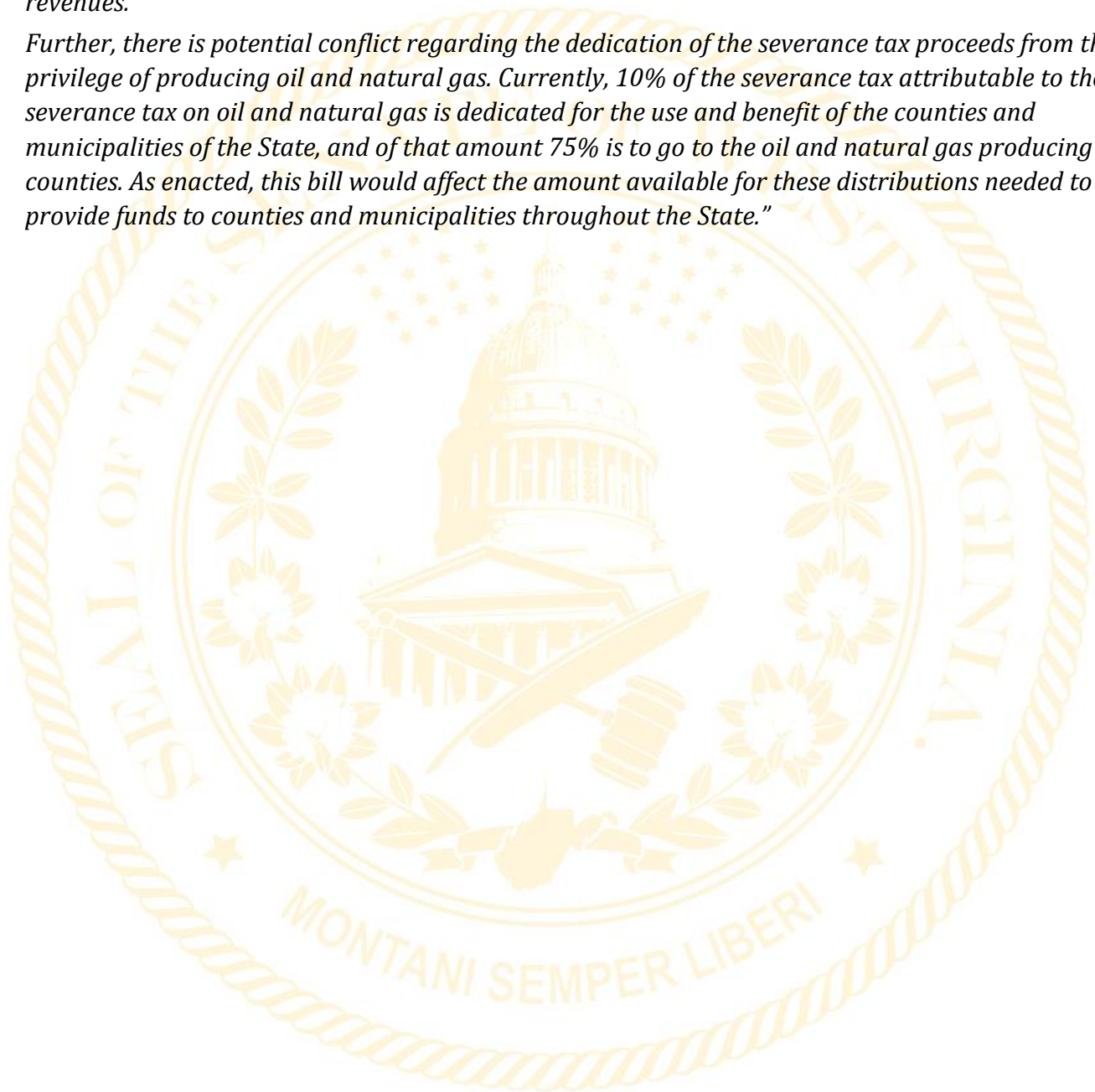
EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: The Governor vetoed this bill on March 27, 2019. The Governor stated:

“The goal of providing additional needed funding to the Department of Environmental Protection to plug abandoned oil and gas wells and reclaim property disturbed by the plugging is a goal that needs to be pursued and achieved. However, this needed funding should come from general revenues

generated by the current severance tax rate, among other sources, rather than from significantly diminished revenues generated by a 50% tax rate cut, which, under the bill, effectively becomes a 100% tax rate cut when \$4 million is in the Fund. I believe it would be to the detriment of the State and to the many causes to which general revenues are put to allow for such an increase in the amount of natural gas and oil produced with an effective tax rate of 0% once \$4 million has been deposited to the Fund, in order to direct funding to a purpose more efficiently funded from general revenues.

Further, there is potential conflict regarding the dedication of the severance tax proceeds from the privilege of producing oil and natural gas. Currently, 10% of the severance tax attributable to the severance tax on oil and natural gas is dedicated for the use and benefit of the counties and municipalities of the State, and of that amount 75% is to go to the oil and natural gas producing counties. As enacted, this bill would affect the amount available for these distributions needed to provide funds to counties and municipalities throughout the State.”



House Bill 2829

Relating to the termination of severance taxes on limestone and sandstone

STONE MINING

The purpose of this bill is to terminate the severance tax on limestone and sandstone. The elimination would be effective on July 1, 2019.

A review of the Severance Tax on limestone and sandstone mining the past three fiscal years shows that the state collected an average of \$1.2 million in revenue. It is estimated the General Revenue Fund will lose roughly \$1.1 million in funding from the loss of Severance Tax on sandstone and limestone mining in FY2020 and \$1.2 million for each fiscal year, thereafter.

CODE REFERENCE: West Virginia Code §11-136A-3 – amended

DATE OF PASSAGE: March 1, 2019

EFFECTIVE DATE: May 30, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 3142

Relating to reducing the severance tax on thermal or steam coal

COAL

The bill would reduce the regular severance tax on thermal or steam coal to 2% over a three-year period. The first year of reduction would be at 35% of the 2%, the second year would be at 65% of 2% and in the final year it would increase to the full 2%.

CODE REFERENCE: West Virginia Code §11-13A-3, §11-13A-6 and §11-13A-6a – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 3144

North Central Appalachian Coal Severance Tax Rebate Act

COAL

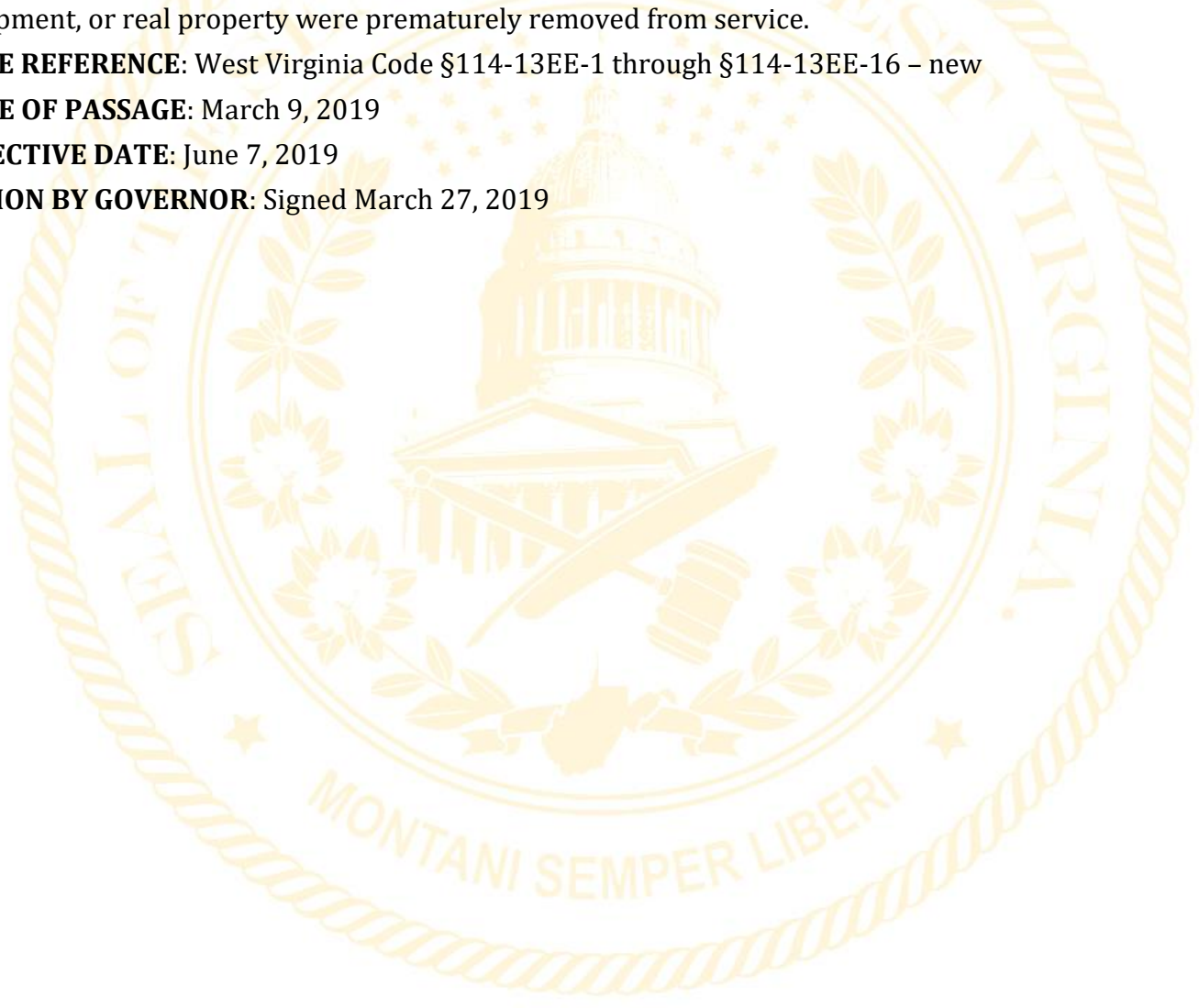
The bill would provide a rebate for capital investment in new machinery, equipment, and improvements to real property directly used in severing coal for sale, profit or commercial use and coal preparation and processing facilities placed in service or use on or after the effective date of this article. The rebate amount would be 35% of the cost of the new machinery, equipment, or improvements to real property. The rebate amount is limited to 80% of the State portion of the severance taxes attributable to the additional coal produced as a result of the new machinery, equipment, or improvements to real property. A taxpayer who fails to use the machinery, equipment, or improvements to real property for at least 5 years in the production of coal in this state shall pay a “recapture tax” equal to the amount of rebate received for the years the machinery, equipment, or real property were prematurely removed from service.

CODE REFERENCE: West Virginia Code §114-13EE-1 through §114-13EE-16 – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 27, 2019



2019 First Extraordinary Session

House Bill 207

Exempting from business and occupation tax certain merchant power plants

COAL

The bill would provide that on or after July 1, 2020, a merchant power plant is exempt from the business and occupation tax on the generating capacity of its generating units located in this State that are owned or leased by the taxpayer and used to generate electricity. When the July 1, 2020, date falls during a taxpayer's taxable year, the tax liability for that year shall be prorated based upon the number of months before and the number of months beginning on and after July 1, 2020, in that taxable year.

For purposes of the bill, the term "merchant power plant" means an electricity generating plant in this state that:

- is not subject to regulation of its rates by the West Virginia Public Service Commission;
- sells electricity it generates only on the wholesale market;
- does not sell electricity pursuant to one or more long-term sales contracts; and,
- does not sell electricity to retail consumers.

CODE REFERENCE: West Virginia Code §11-13-2r – new

DATE OF PASSAGE: July 24, 2019

EFFECTIVE DATE: October 21, 2019

ACTION BY GOVERNOR: Signed July 30, 2019

2018 Regular Session



Senate Bill 290

Relating to DEP standards of water quality and effluent limitations

ENVIRONMENT

This bill prevents the DEP from setting benchmarks for substances or conditions present in storm water discharges that are more restrictive than the water quality criterion, the federal benchmark, the chronic aquatic life water quality criterion or the ambient aquatic life advisory concentration. The bill also requires the DEP to set benchmarks for storm water with the permittee that utilize mixing zones appropriate for relevant conditions. Finally, the bill requires the DEP to develop guidance for determining how benchmarks in permits demonstrate the adequacy of storm water best management practices.

CODE REFERENCE: West Virginia Code §22-11-6 – amended

DATE OF PASSAGE: March 8, 2018

EFFECTIVE DATE: June 6, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

Senate Bill 360

Clarifying oil and gas permits not be on flat well royalty leases

OIL AND GAS

In 1982, the West Virginia legislature enacted West Virginia Code §22-6-8, more commonly known as the “flat-rate statute.” The flat-rate statute governs oil and gas leases that provide for flat-rate royalties. The legislature found that such leases provided “wholly inadequate compensation,” were “unfair, oppressive, [and] work[ed] an unjust hardship on” owners of mineral interests, and “unreasonably deprive[d] the economy of the state of West Virginia of the just benefit of the natural wealth of th[e] state.”

To remedy that unfairness, the statute provides that a natural gas company cannot obtain a drilling permit unless it files an affidavit certifying that “it shall tender to the owner of” the mineral interests “not less than one eighth of the total amount paid to or received by or allowed to the owner of the working interest at the wellhead for the oil or gas so extracted, produced or marketed.” The term “at the wellhead” has been subject to several judicial interpretations.

Recently, in *Leggett v. EQT Production Co.*, 800 S.E.2d 850 (W.Va. 2017), the West Virginia Supreme Court interpreted “at the wellhead” to permit the deduction of post-production expenses from a lessor’s royalty under old flat-rate leases.

Under this bill, the language of the statute is revised to read that a permit applicant shall pay to the owner of the oil or gas in place not less “than one eighth of the gross proceeds, free from any post-production expenses, received at the first point of sale to an unaffiliated third-party purchaser in an arm’s length transaction for the oil or gas so extracted, produced or marketed before deducting the amount to be paid to or set aside for the owner of the oil or gas in place, on all such oil or gas to be extracted, produced or marketed from the well.”

The bill nullifies the *Leggett* decision. The new statutory language more closely resembles the “marketable product doctrine” rather than “net back method.”

CODE REFERENCE: West Virginia Code §22-6-8 – amended

DATE OF PASSAGE: March 2, 2018

EFFECTIVE DATE: May 31, 2018

ACTION BY GOVERNOR: Signed March 9, 2018

Senate Bill 395

Providing for judicial review of appealed decisions of Air Quality Review Board, Environmental Quality Board and Surface Mine Board

ENVIRONMENT

Current law provides that judicial review of an order issued by an environmental board following an appeal hearing will take place in the Circuit Court of Kanawha County. This bill would by-pass the circuit court and send appeals directly to the West Virginia Supreme Court of Appeals. The bill requires that a perfected petition of appeal must be filed with the Supreme Court within 30 days of the order's entry. The bill also states that an order is not stayed pending appeal.

This bill eliminates the requirement for use of the Attorney General as counsel and allows the hiring of outside counsel without approval of the Attorney General. Finally, this bill amends the sections of the Code relating to the Air Quality Board, the Environmental Quality Board, and the Surface Mine Board to reflect that appeal will be made directly to the Supreme Court.

CODE REFERENCE: West Virginia Code §22B-1-9, §22B-2-3, §22B-3-3, and §22B-4-3 – amended

DATE OF PASSAGE: March 6, 2018

EFFECTIVE DATE: March 6, 2018

ACTION BY GOVERNOR: Signed March 20, 2018

Senate Bill 525

Relating to certification for emergency medical training – mining

COAL

The purpose of this bill is to move the code section governing the licensure of emergency medical technicians – mining from its current place in the chapter governing Public Health into the chapter governing Miner's Health, Safety and Training. The requirements remain identical, and the only substantive change is that references to the abolished Board of Miner Training, Education and Certification are changed to the Board of Coal Mine Health and Safety.

CODE REFERENCE: West Virginia Code §16-4C-6c – repealed; §22A-10-3 – new

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 21, 2018

Senate Bill 626

Relating to coal mining generally (Coal Jobs and Safety Act IV)

COAL

This bill is the 2018 effort by the Legislature to bring state environmental and coal safety laws into conformity with the federal counterpart. The bill does the following:

- Chapter 22 Article 3: Surface Coal Mining and Reclamation Act
 - This bill alters notice requirements regarding permit applications pursuant to the Surface Coal Mining and Reclamation Act. Notices are to be published in forms and by manners prescribed by the secretary, including electronic methods.
- Chapter 22 Article 11: Water Pollution Control Act
 - The bill establishes that any applicant for water quality certification that seeks certification for activities covered by a U.S. Army Corp. of Engineers permit under the Water Pollution Control Act will be granted certification without conditions. The bill removes special language in the code which targets the coal industry, but no other industry. The coal industry must comply with the language being removed anyway, under DEP rules. This change just removes duplicative requirements.
- Chapter 22A, Article 1: Office of Miner's Health, Safety, and Training
 - The bill eliminates the requirement that a comprehensive mine safety plan be subject to annual review by the director of West Virginia Office of Miner's Health, Safety, and Training unless it is proven that the operator has a pattern of mine safety violations which warrant annual review or there has been an accident resulting in a death or serious bodily injury.
 - The bill creates a new section, §22A-1-42, providing that the MSHA-approved ground control plan shall serve as the state-approved plan and be the only plan required by the director of West Virginia Office of Miner's Health, Safety, and Training.
 - The proposed bill also requires that surface operations have Automated External Defibrillators as required by the director, who will promulgate rules concerning them.
- Chapter 22A, Article 2: Underground Mines
 - The bill provides that the operator's MSHA-approved plan will be the only plan that shall be required by the director of West Virginia Office of Miner's Health, Safety, and Training for the following terms: a. Ventilation plans; b. Belt air plans; c. Seal plans; d. Roof control; e. Emergency shelter plans under the transportation provisions; f. Emergency response plans; g. Tracking and communications plans; and, h. Self-Contained Self-Rescuers storage plans.
 - The bill adds a requirement that 1 additional SCSR than is required by MSHA is to be located at the working section for each person present. The bill requires that operators provide at least 3 SCSRs, which include 1 on the working section, 1 in storage, and 1 on the mantrip. Also, the bill allows for fines and assessments by the director if 3 SCSRs are not present. However, this provision may be changed by the committee amendment.
 - If all state requirements are in the federal plan, there will only be the federal plan. The bill only affects the administrative planning process and does not affect safety laws or their enforcement. Only one MSHA-approved plan is to be accepted by the director, but both federal and state agencies remain responsible for enforcement.
- Chapter 22A, Article 2A: Use of Diesel-powered equipment in Underground Coal Mines

- The proposed bill allows for a diesel-powered generator to be used underground where (1) it is vented directly to a return, (2) there is a person within sight and sound of the generator, and (3) all other safety rules relating to diesel-powered generators are followed.

CODE REFERENCE: West Virginia Code §22-3-9, §22-3-20, §22-11-7a, §22A-1-36, §22A-2-2, §22A-2-3, §22A-2-4, §22A-2-4a, §22A-2-5, §22A-2-25, §22A-2-26, §22A-2-37, §22A-2-55, and §22A-2A-1001 – amended; §22A-1-42 – new

DATE OF PASSAGE: March 8, 2018

EFFECTIVE DATE: June 6, 2018

ACTION BY GOVERNOR: Signed March 27, 2018



House Bill 2546

Allowing replacement costs of employer provided property to be deducted from an employee's final paycheck if the property is not returned

The bill would allow employers to deduct the replacement cost of property they supply to employees for use in the employer's business if the property is not returned upon discharge or resignation. Examples of such property include equipment, phones, computers, supplies and uniforms. The bill sets forth requirements for when replacement costs may be deducted:

- The property must have a value in excess of \$100. The employee must have signed an agreement for the replacement cost to be deducted when the property was supplied. The agreement must contain:
 - Itemization of property supplied and the replacement cost thereof;
 - Clear statement that property is to be returned upon discharge or resignation and that replacement cost will be deducted from final paycheck if not timely returned.
- The employer must notify the employee in writing at time of discharge or as soon as practicable thereafter of the replacement cost, and make a demand for the return within a certain time, not to exceed 10 business days. The employer shall relinquish the withheld replacement cost if the property is returned within the time specified in the notice. The employee may object to the amount of the replacement cost within the time specified in the notice. If the employee does so, the employer shall place the withheld funds in an interest-bearing escrow account.
- If the employee does not bring a civil action within 3 months of filing the objection, then the money in the escrow account reverts to the employer.
- This bill does not apply to employer/employee relationships covered by a collective bargaining agreement.

CODE REFERENCE: West Virginia Code §21-5-4(f) – new

DATE OF PASSAGE: February 14, 2018

EFFECTIVE DATE: May 15, 2018

ACTION BY GOVERNOR: Signed February 23, 2018

House Bill 4268

Co-tenancy Modernization and Majority Protection Act

OIL AND GAS

This bill allows oil and gas development to occur in cases where there are seven or more royalty owners and at least 75% of the undivided interest owners of the oil and gas consent to development.

Prior to development, consenting cotenants and the operator are required to search the county records, last known addresses, and the internet to locate and identify all owners of the oil and gas estate. Reasonable efforts must be made to negotiate with all owners to acquire consent through leasing, purchasing, or assignments of interests.

The operator is required to pay non-consenting cotenants by one of the following methods, to be selected by the non-consenting cotenant:

- To receive a production royalty free of post-production expenses, equal to the highest royalty percentage paid to the consenting cotenants in the same property, and lease bonus and delay rental payments equal to the weighted average per net mineral acre paid to the consenting cotenants; or
- To participate in the development and receive his or her share of the revenue and costs attributable to the tract being developed, after the market value of the nonconsenting cotenant's share of production equals double the share of such costs payable or charged to the interest of the nonconsenting cotenant.

Non-consenting cotenants have 45 days to make an election. Non-consenting cotenants who do not make an election within the required time-period and all unknown or unlocatable owners are deemed to have elected the production royalty option.

In the case of a non-consenting cotenant who chooses the production royalty option, the bill provides that such cotenants shall benefit from the most favorable provisions in the consenting cotenant leases unless otherwise agreed to in writing. In the case of a non-consenting cotenant who chooses to participate, such cotenants shall benefit from other terms and provisions determined to be just and reasonable by the Oil and Gas Conservation Commission. The commission is authorized to propose legislative rules to implement and make effective the provisions of the new code section.

The interests of the unknown or unlocatable owners are to be reserved, reported, and remitted to the Treasurer quarterly. The Treasurer will deposit and administer the funds in a newly created fund known as the Unknown and Unlocatable Interest Owners Fund. After July 1, 2023, the Treasurer must evaluate the size of the account and likelihood of claims being paid and begin transferring unneeded money as follows: 50% to the Oil and Gas Reclamation Fund, which is used by the DEP to plug orphan wells; and 50% to the Public Employees Insurance Agency Stability Fund. Among other duties, the Treasurer is empowered to invest the funds with the West Virginia Board of Treasury Investments, conduct investigations to locate lawful owners, payout lawful claims to owners, and deduct reasonable administration costs.

Seven years after the first quarterly report is filed, a bonafide surface owner may file an action to quiet title to the interests of all unknown and unlocatable interest owners of the oil and natural gas estate underlying the surface tract and after satisfying certain requirements and procedures set forth in the bill shall be entitled to receive a special commissioner's deed transferring title to the interest of any or all unknown or unlocatable interest owners in an oil and natural gas estate which underlies the surface

tract. The surface owner shall thereafter be entitled to his or her proportionate share of all future proceeds.

CODE REFERENCE: West Virginia Code §22C-9-3, §22C-9-4, §37-7-2 – amended; §37B-1-1 through §37B-1-7, §37B-2-1 through §37B-2-9 – new

DATE OF PASSAGE: March 5, 2018

EFFECTIVE DATE: June 3, 2018

ACTION BY GOVERNOR: Signed March 9, 2018



House Bill 4270

Providing for the timely payment of moneys owed from oil and natural gas production

OIL AND GAS

This bill provides for quarterly production reporting to the Department of Environmental Protection. The Department of Environmental Protection shall publish the production data to its website within a reasonable time.

The bill adds a new chapter addressing oil and natural gas production information reporting from horizontal wells.

The new chapter requires an operator or producer to provide certain information set forth in §37B-1-1 thereof with each payment. An interest owner who does not receive the required information in a timely manner may send a written request for the same by certified mail. The operator or producer has 60 days to provide the requested information. If the information is not provided within the 60-day period, the interest owner may bring a civil action against the operator or producer to enforce the provisions of the new section, and a prevailing interest owner shall be entitled to recover reasonable attorneys' fees and court costs incurred in the civil action.

Next, §37B-1-2 provides an exception to the timely payment rule which allows accumulation of payments until the total amount attributable to an interest owner exceeds \$100 but requires annual remittance not less than once annually regardless of the amount accumulated. Remittance of all accumulated amounts is required immediately, or as soon as practicable, upon cessation of production of oil, natural gas, or natural gas liquids or upon relinquishment or transfer of the payment responsibility to another party.

Lastly, §37B-1-3 requires all regular production payments from horizontal wells be made not less than 120 days from the first date of sale of oil, natural gas, or natural gas liquids and within 60 days thereafter for each additional sale, unless failure to remit is due to lack of record title in the interest owner, a legal dispute concerning the interest, a missing or unlocatable owner of the interest, or due to conditions otherwise specified in the new article. The bill assesses an interest penalty for non-timely payments of prime plus 2% compounded quarterly until such payment is made.

CODE REFERENCE: West Virginia Code §22-6-22 – amended; §37B-1-1 through §37B-1-3 – new

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

House Bill 4626

Relating to West Virginia Innovative Mine Safety Technology Tax Credit Act

COAL

The bill adds language to the definition of the “[l]ist of approved innovative mine safety technology” that is to be compiled and maintained by the Board of Coal Mine Health and Safety. Expenditures for eligible safety property on the list are qualified for a tax credit under the West Virginia Innovative Mine Safety Technology Tax Credit Act. The effect of the amendment is to include “proximity detection systems, cameras and underground safety shelters and the refurbishing thereof . . . on the list whether required or not”, thus making the costs of these properties eligible for the tax credit as well.

The bill also adds language providing that the list may include safety equipment other than that described in the expressions of legislative intent if “specified herein.” The bill extends the termination date of the tax credit from December 31, 2018, to December 31, 2025.

CODE REFERENCE: West Virginia Code §11-13BB-3, §11-13BB-4, and §11-13BB-14 – amended

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 20, 2018

2017 Regular Session



Senate Bill 222

Relating to disqualification for unemployment benefits

This bill addresses the standards for disqualification from unemployment compensation benefits in circumstances involving a strike or bona fide labor dispute. The bill provides that an individual is disqualified from benefits for any week or portion thereof in which he or she did not work as a result of a strike or bona fide labor dispute. A lockout is not considered a strike or bona fide labor dispute and no person may be disqualified due to a lockout. An employee can show he or she has been displaced from employment because of a lockout by presenting himself or herself physically for work at the workplace on the first day of the lockout or the first day he or she is able to be present at the workplace and the employer denied the individual the opportunity to perform work.

Employees are not entitled to benefits if non-striking employees or contractors operate the facility or perform the employees' duties unless they are permanent replacements. A permanent replacement is an employee currently employed and has been notified that he or she is permanently replacing the striking worker. Employees or contractors hired for shorter periods of time such as the length of the strike or bona fide labor dispute may not be determined to have permanently replaced the striking employee.

CODE REFERENCE: West Virginia Code §21A-6-3 – amended

DATE OF PASSAGE: April 3, 2017

EFFECTIVE DATE: July 2, 2017

ACTION BY GOVERNOR: Signed April 8, 2017

Senate Bill 224

Repealing requirement for employer's bond for wages and benefits

The purpose of this bill is to remove the requirement that certain employers within the State of West Virginia must post a wage bond for the first five years of their operation. In §21-5-14, the bill shortens the length of time that a construction or mineral severance, production or transportation business must be in operation to be exempt from the wage bond requirement from five years to one year. Additionally, certain other businesses are exempted from the wage bond requirement if they satisfy one of three conditions:

- it has been in business in another state for at least five years
- it has at least \$100,000 in assets, or,
- it is a subsidiary of a parent company that has been in business for at least five years. In §21-5-15, the penalties for knowingly, willfully and fraudulently disposing of or relocating assets with the intent to deprive employees of their wages and benefits are increased, with the possible fine increasing from \$30,000 to \$60,000.

CODE REFERENCE: West Virginia Code §21-5-14 and §21-5-15 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

Senate Bill 330

Relating to WV Workplace Freedom Act

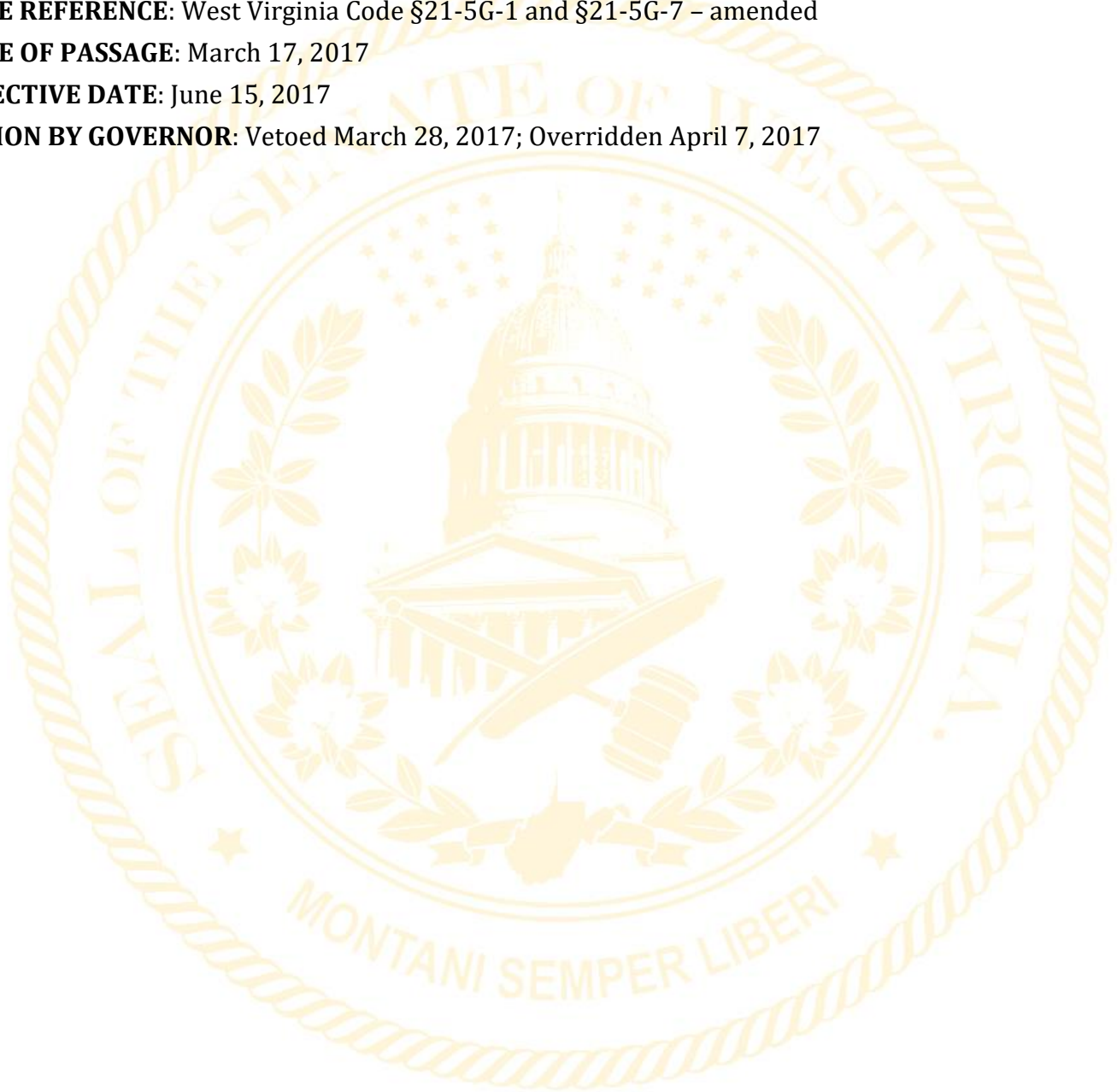
This bill strikes two provisions from the West Virginia Workplace Freedom Act for clarification. The definition of the term “state” is stricken from the Definitions section of the Act. Additionally, a Construction provision is stricken that dealt with collective bargaining agreements in the building and construction industry.

CODE REFERENCE: West Virginia Code §21-5G-1 and §21-5G-7 – amended

DATE OF PASSAGE: March 17, 2017

EFFECTIVE DATE: June 15, 2017

ACTION BY GOVERNOR: Vetoed March 28, 2017; Overridden April 7, 2017



Senate Bill 490

Clarifying standard of liability for officers of corporation

This bill adopts a provision of the Model Business Corporation Act, which was otherwise adopted in West Virginia in 2002, to address standards of liability for corporate officers. Broadly, the standard adopted mirrors the liability standard already in code for corporate directors and is commonly referred to as the “business judgment rule.”

The bill provides that officers are not liable to the corporation or shareholders for any decision unless certain elements can be satisfied.

First, the challenged conduct must not be otherwise protected in state code. Second, the challenged conduct must consist of or be the result of:

- action taken not in good faith,
- a decision which the officer did not reasonably believe to be in the best interests of the corporation or as to which the officer was not informed to an extent the officer reasonably believed appropriate under the circumstances,
- a lack of objectivity due to the officers’ familial, financial or business relationship with another person having a material interest in the challenged conduct which could reasonably be expected to have affected the officer’s judgment and the officer does not establish that the challenged conduct was reasonably believed by the officer to be in the best interest of the corporation,
- a sustained failure of the officer to devote attention to ongoing oversight of the business and affairs of the corporation, or
- receipt of a financial benefit to which the officer was not entitled or any other breach of the officers’ duties to deal fairly with the corporations and its shareholders that is actionable under applicable law.

The party seeking to hold the officer liable for money damages must show harm to the corporation or shareholders and that the harm suffered was proximately caused by the challenged conduct.

For other money payment under a legal remedy, including compensation for unauthorized use of corporate assets, the party seeking to hold the officer liable has whatever persuasion burden may be called for to establish that the payment sought is appropriate under the circumstances.

For other money payment under an equitable remedy including profit recovery by or disgorgement to the corporation, the party seeking to hold the officer liable has whatever persuasion burden may be called for to establish that the equitable remedy sought is appropriate under the circumstances.

The bill specifically disclaims any intent to alter the burden of proving the fact or lack of fairness otherwise applicable where fairness is at issue, alter the fact or lack of liability of an officer under another section of chapter 31D, including the provisions governing the consequences of an unlawful distribution under W.Va. Code §31D-8-833 or a transactional interest under W.Va. Code §31D-8-860, or alter any rights to which the corporation or a shareholder may be entitled under another provision of West Virginia Code or United States Code.

CODE REFERENCE: West Virginia Code §31D-8-842a – new

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 21, 2017

Senate Bill 505

Providing five-year reclamation period following completion of well pads for horizontal wells

OIL AND GAS

This bill provides a five-year reclamation period following completion of the construction of a well pad for well pads designed for multiple horizontal wells.

The bill states that the operator of a horizontal well shall reclaim the land surface within the area disturbed in siting, drilling, completing or producing the well in accordance with the following requirements:

- Except as provided elsewhere in this article, within six months after a horizontal well is drilled and completed on a well pad designed for a single horizontal well, the operator shall fill all the pits and impoundments that are not required or allowed by state or federal law or rule or agreement between the operator and the surface owner that allows the impoundment to remain open for the use and benefit of the surface owner (i.e. a farm pond as described in section nine of this article) and remove all concrete bases, drilling supplies and drilling equipment
- Impoundments or pits for which certificates have been approved pursuant to section nine of this article shall be reclaimed at a time and in a manner as provided in the applicable certificate and said section.
- Within that six-month period, the operator shall grade or terrace and plant, seed or sod the area disturbed that is not required in production of the horizontal well in accordance with the erosion and sediment control plan.
- No pit may be used for the ultimate disposal of salt water. Salt water and oil shall be periodically drained or removed and properly disposed of from any pit that is retained so the pit is kept reasonably free of salt water and oil. Pits may not be left open permanently.
- For well pads designed to contain multiple horizontal wells, partial reclamation shall begin upon completion of the construction of the well pad.
- "Partial reclamation" means grading or terracing and planting or seeding the area disturbed that is not required in drilling, completing or producing any of the horizontal wells on the well pad in accordance with the erosion and sediment control plan.
- This partial reclamation satisfies the reclamation requirements of this section provided that the maximum period in which partial reclamation satisfies the reclamation requirements of this section is five years from completion of the construction of the well pad.
- For purposes of this subdivision, construction of a well pad will be deemed to be complete twelve months after construction is commenced if construction of the well pad is not actually completed prior to that date. Within six months after expiration of the five-year maximum partial reclamation period, the operator shall complete final reclamation of the well pad as set forth in this subsection.
- Within six months after a horizontal well that has produced oil or gas is plugged or after the plugging of a dry hole, the operator shall remove all production and storage structures, supplies and equipment and any oil, salt water and debris and fill any remaining excavations. Within that six-month period, the operator shall grade or terrace and plant, seed or sod the area disturbed where necessary to bind the soil and prevent substantial erosion and sedimentation.

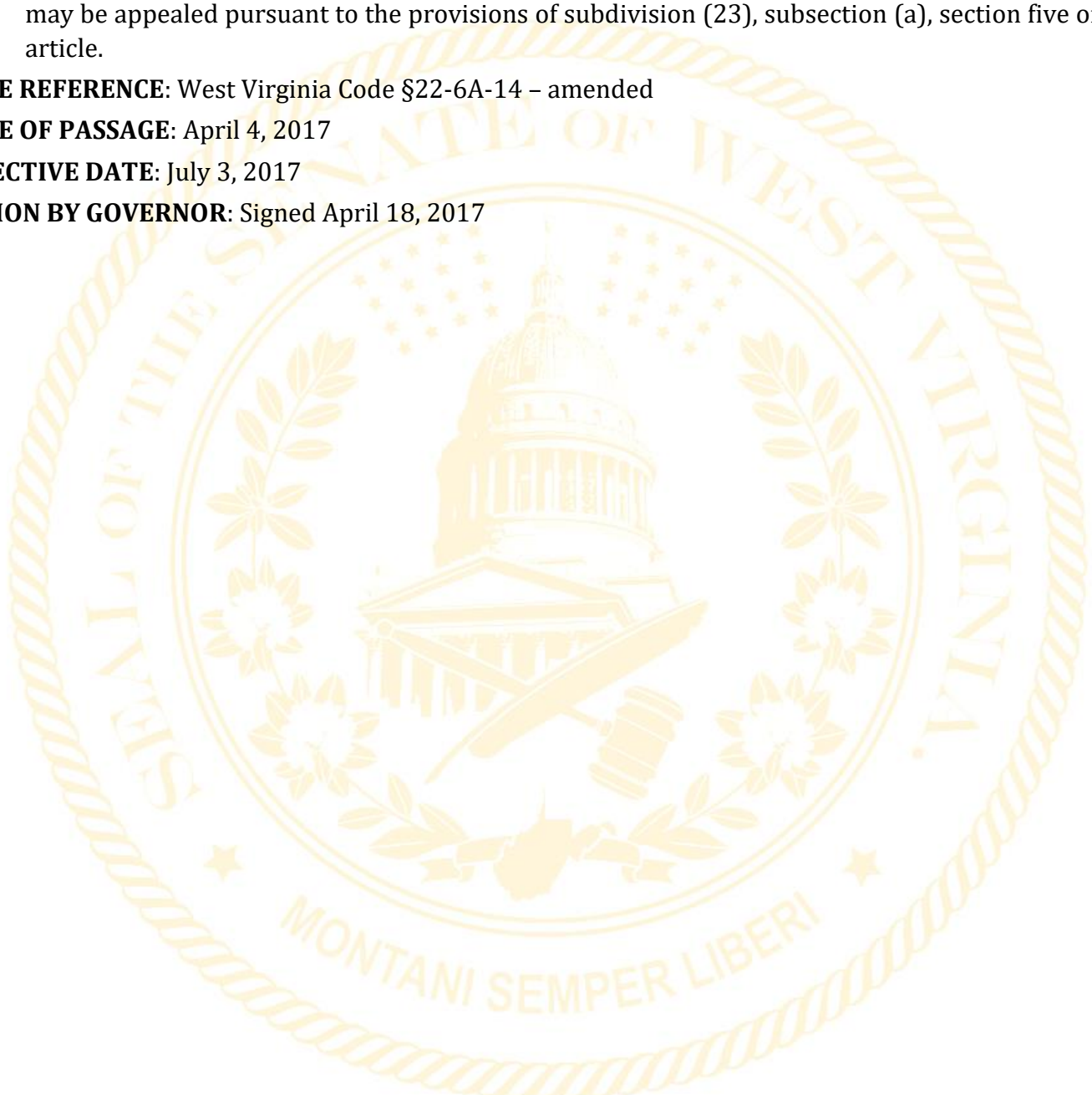
- The operator shall reclaim the area of land disturbed in siting, drilling, completing or producing the horizontal well in accordance with the erosion and sediment control plans approved by the secretary or the secretary's designee pursuant to this article.
- The secretary, upon written application by an operator showing reasonable cause, may extend the period within which reclamation must be completed, but not to exceed a further six-month period.
- If the secretary refuses to approve a request for extension, the refusal shall be by order, which may be appealed pursuant to the provisions of subdivision (23), subsection (a), section five of this article.

CODE REFERENCE: West Virginia Code §22-6A-14 – amended

DATE OF PASSAGE: April 4, 2017

EFFECTIVE DATE: July 3, 2017

ACTION BY GOVERNOR: Signed April 18, 2017



Senate Bill 687

Relating generally to coal mining, safety and environmental protection (Coal Jobs and Safety Act III)

COAL

This bill updates and revises a number of mine health and safety and environmental sections of West Virginia Code.

Environmental Provisions

- Reclamation Funds
 - The originating bill makes a few changes to the surface coal mining and reclamation act bonding requirements. Moneys paid from special reclamation water trust fund shall be paid to help assure a reliable source of capital and operating expenses for the treatment of water discharges from forfeited sites where the secretary has applied for or obtained an NPDES permit. The changes also strike the requirement that the secretary of DEP develop a long-range planning process for selection and prioritization of sites to be reclaimed.
- Preblast Survey Requirements
 - The standard for notifying owners and occupants of manmade dwellings and structures of blasting at surface mining operations is expanded in distance from within five tenths of a mile within of the permitted area or areas to within one-half mile of those areas. The distinction between surface mining operations that are less than 200 or 300 acres is also removed, and the statute now only references surface mining operations.
 - For blasting related to permitted surface disturbances of underground mines, blasting activities associated with specified construction activities is also added to the statutory language and the notification requirement is now limited to all owners and occupants of man-made dwellings and structures within one-half mile (not five-tenths of a mile) of the proposed blasting area.
 - A provision of the statute that required additional preblast surveys and referenced the receipt by the operator of a written waiver or affidavit from residents is removed, as well as language distinguishing the waiver from an occupant of a structure as opposed to an owner of a structure (no waiver is necessary for an occupant).
 - The statutory requirement that the operator file notice of the preblast survey or waiver in the office of the county clerk where the structure is located is also removed.
- Bonding Release
 - The bill also changes the code section applicable to release of bond or deposits related to reclamation work performed and a permittee's approved reclamation plan. Language is removed that requires a minimum bond of \$10,000 be retained after grade release, after 60% of the bond or collateral is released for the applicable bonded area once an operator completes backfilling, regrading and drainage control.
 - Language is also removed regarding an additional bond release of 25% two years after the last augmented seeding, fertilizing, irrigation or other work. Language is added regarding bond releases after successful revegetation has been established, and that notes no bond shall be fully released until all reclamation requirements of this article are fully met.
 - Language is removed from the code that applies to operations with an approved variance from approximate original contour. The bill requires the Secretary to propose new rules to

implement revisions to the statute related to the releases of bond or deposits and directs the Secretary to specifically consider adopting corresponding federal standards.

- **Well Plugging**
 - The bill proposes a change to the Office of Oil and Gas duties as to the methods of plugging wells. Additional language is added to the code that applies to instances in which the well to be plugged is an abandoned well and the well operator is also a coal operator that intends to mine through the well.
 - The language that is added notes that with respect to wells that are less than 4,000 feet, a mine cooperators need only fill the well to at least 200 feet below the base of the lowest workable coal bed. As to wells that are 4,000 feet or greater, the operator must fill the well to at least 400 feet below the base of the lowest workable coal bed. The change is proposed to make well plugging of abandoned mines in WV consistent with Mine Safety Health Administration (MSHA) regulations, rather than require plugging of wells to a greater depth that the state Office of Oil and Gas currently mandates.
 - The bill notes that the secretary may require filling to a greater depth based on excessive pressure within the well.
- **Water Quality Standards**
 - The bill proposes a change to W.Va. Code §22-11-7b regarding water quality standards and the procedure to determine compliance with the biologic component of the narrative water quality standard.
 - As to rule proposals by the secretary of the DEP that measure compliance with the narrative water quality standard, the new language replaces the term “biologic” with “aquatic life” in qualifying the component to be measured for compliance. The revised bill also removes the following criteria from being considered by the DEP in evaluating the holistic health of the aquatic ecosystem: “Supports a balanced aquatic community that is diverse in species composition.”
 - The code still states that rules promulgated may not establish measurements for biologic components of WV’s narrative water quality standards that would establish standards less protective than legislatively-approved rules.

Mine Safety Provisions

- The bill retains all inspection and enforcement authority of the Office of Miners’ Health, Safety and Training (OMHS&T). It does not transform the OMHS&T into a compliance assistance office. The bill does not make changes to the state’s mine rescue teams.
- Currently, the Office of Miners’ Health, Safety and Training includes the following separate boards and commissions: Board of Coal Mine Health and Safety; Coal Mine Safety and Technical Review Committee; Board of Miner Training, Education and Certification; Mine Inspectors’ Examining Board; Board of Appeals; and, the Mine Safety Technology Task Force
- The above boards and commissions will be collapsed to eliminate the duplication of responsibilities, as follows: The Board of Coal Mine Health and Safety will assume all duties and responsibilities of the Board of Miner Training, Education and Certification, the Mine Inspectors’ Examining Board, and the Mine Safety Technology Task Force. Those three boards/task force will be abolished under the proposed language of the originating bill.
- In addition to the Board of Coal Mine Health and Safety, the Coal Mine Safety and Technical Review Committee and the Board of Appeals remain intact.

- The bill adds an automated external defibrillator (AED) to the list of mandatory first-aid equipment that an underground coal mine must have at certain locations within the mine.
- The bill proposes a change to the code language that applies to the use of diesel-powered equipment in underground coal mines. The changes reflect the 2015 abolishment of the WV Diesel Equipment Commission, and the transfer of that commission's duties to the director of the OMHS&T.
- The changes also direct OMHS&T to revise the diesel equipment commission's legislative rules, found at 196 C.S.R. §1.1, et seq. to reflect the technological advances that have been made in diesel equipment currently operating in underground mines, and to recognize the scope of existing annual retraining and task training standards that are already mandated by MSHA.
- The bill also directs the Office of Miners' Health, Safety and Training to promulgate rules consistent with the changes proposed in the bill.

CODE REFERENCE: West Virginia Code §22-3-11, §22-3-13a, §22-3-23, §22-6-24, §22-11-7b, §22A-1-2, §22A-1-5, §22A-2-59, §22A-6-3, §22A-6-4, §22A-6-6, §22A-7-3, § 22A-7-5, §22A-7-5a, §22A-7-7, §22A-9-1, §22A-11-1, §22A-11-2, §22A-11-3, §22A-11-4, §22A-7-1, §22A-7-2, §22A-2A-1001, §22A-7-2, §22A-11-6 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: April 8, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2506

Relating to the permit limit calculations and allowing overlapping mixing zones for calculating permit limits for drinking water criteria

ENVIRONMENT

This bill allows water quality NPDES permit limits to be calculated using an average design flow as recommended by the United States Environmental Protection Agency (EPA) for the protection of human health, rather than the more restrictive low flow standard that is currently used by the WV Department of Environmental Protection (DEP). Specifically, the bill requires the DEP to calculate a permittee's limit on pollutant discharge by using the harmonic mean flow, a critical design flow that is used to determine the amount of pollution a stream can hold without posing a threat to human health.

The bill also allows for overlapping mixing zones, a practice that has been prohibited in West Virginia. In order to comply with water quality standards set forth by the Federal Clean Water Act (CWA), the WV DEP allows permitted dischargers to use a mixing zone, where concentrations of an emitted pollutant in wastewater are higher than would normally be allowed under the standards because they are allowed to mix with the receiving river or stream. By mixing with the receiving body of water, the pollutant is diluted to an acceptable level. The bill also allows for mixing zones to overlap, which means that permitted dischargers may be located closer in proximity to one another. Even with passage of the bill, the law still mandates that no mixing zone – whether or not it overlaps – reach a point that is less than one-half mile upstream of any water intake.

CODE REFERENCE: West Virginia Code §22-11-7b – amended

DATE OF PASSAGE: March 28, 2017

EFFECTIVE DATE: June 26, 2017

ACTION BY GOVERNOR: Signed April 8, 2017

House Bill 2619

Risk Management and Own Risk and Solvency Assessment Act

This is an agency bill and accreditation requirement for the Insurance Commissioner. This bill adopts the National Association of Insurance Commissioners' Risk Management and Own Risk Solvency Assessment Model Act (Model #505; Model Regulation Service Oct. 2012), for implementation by West Virginia insurers, so that they are better equipped to assess their financial conditions and remain solvent.

The bill provides requirements for an insurer (including an insurance group of which the insurer is a member) to maintain a risk management framework and for completing an own risk and solvency assessment (ORSA). The article applies to all insurers domiciled in this state, subject to certain exemptions.

Section one expresses the purpose and scope of the article. Section two states definitions. "Owns risk and solvency assessment" or "ORSA" means a confidential internal assessment, appropriate to the nature, scale and complexity of an insurer or insurance group, conducted by that insurer or insurance group of the material and relevant risks associated with the insurer or insurance group's current business plan and the sufficiency of capital resources to support those risks. Section three requires insurers to maintain a risk management framework.

Section 4 requires an ORSA annually and at any time when there are significant changes to the risk profile. Section 5 provides that, upon the Insurance Commissioner's (IC) request, and no more than once each year, an insurer shall submit to the IC an ORSA summary report. An insurer may comply with this section by providing the most recent and substantially similar report(s) provided by the insurer to another jurisdiction.

Section six provides exemptions from the ORSA requirements. Notwithstanding these exemptions the IC may require an insurer to comply with the article requirements based on unique circumstances if the insurer meets one or more standards of an insurer considered to be in hazardous financial condition or otherwise exhibits qualities of a troubled insurer.

Section seven provides that the ORSA summary report shall be prepared consistent with the ORSA Guidance Manual, subject to certain requirements.

Section 8 provides that documents or other information in the possession of the IC or obtained via any other person under this article, including the ORSA summary report, are recognized as being proprietary and to contain trade secrets and shall be confidential and privileged. This section also sets forth several requirements and limitations related to confidentiality of information provided pursuant to this article. Section nine provides sanctions. Any insurer failing to timely file the ORSA summary report, without just cause, shall, after notice and hearing, pay a penalty of \$2,500 for each day's delay, up to a maximum penalty of \$75,000. The IC may reduce the penalty if the insurer demonstrates to the commissioner that the penalty would constitute a financial hardship to the insurer.

Section ten sets forth a severability clause and Section 11 states that the requirements of this article shall become effective on January 1, 2018.

CODE REFERENCE: West Virginia Code §33-40B-1 through §33-40B-11 – new

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: January 1, 2018

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2683

Relating to West Virginia Insurance Guaranty Association Act

The West Virginia Insurance Guaranty Association Act has not been amended since its enactment in 1970. The Act provides a mechanism for payment of covered claims under certain insurance policies to avoid excessive delay and financial loss to claimants or policyholders resulting from the insolvency of an insurer. The Act does not apply to life, title, surety, disability, credit, mortgage guaranty and ocean marine insurance. The bill updates the provisions of the Act based on two model insurance acts. Excluded insurance now additionally includes the following: annuity and health; fidelity or surety bonds; insurance of warranties or service contracts; and insurance provide by or guaranteed by a government entity or agency.

Current law and the bill do not cap workers' compensation claims. This bill caps a claim for deliberate intention at \$300,000. The bill maintains the current \$300,000 cap for all non-workers' compensation claims. The bill states that the Association is not obligated to pay a claimant an amount in excess of the obligation of the insolvent insurer. The bill also specifies a cap of \$10,000 per policy for a covered claim for the return of unearned premiums.

CODE REFERENCE: West Virginia Code §33-26-2, §33-26-3, §33-26-4, §33-26-5, §33-26-8, §33-26-9, §33-26-10, §33-26-11, §33-26-12, §33-26-13, §33-26-14 and §33-26-18 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

House Bill 2734

Authorizing a method for the collection and remittance of property taxes related to dealers' heavy equipment inventory

This bill allows a dealer of heavy equipment rental inventory to assign a fee to each item of heavy equipment rental inventory in an amount not greater than 2.5% of the rental charge. This fee must be held separately from the dealer's remaining revenue and remitted to the proper sheriff before September 30th of each year for the payment of the dealer's personal property taxes. If the amount of remittances exceeds the tax obligation, the excess is retained by the sheriff. This bill exempts the fee from municipal sales or use taxes.

CODE REFERENCE: West Virginia Code §11-5-15 – new

DATE OF PASSAGE: April 6, 2017

EFFECTIVE DATE: July 5, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2811

Relating to the definition of above ground storage tanks

ENVIRONMENT

This bill creates two new exemptions for the Aboveground Storage Tanks Act.

Subsection (M) carves out an exemption for “Tanks having the capacity of two hundred ten barrels or less, containing brine water or other fluids produced in connection with hydrocarbon production activities, that are not located in a zone of critical concern.”

Subsection (N) creates an exemption for “Tanks having a capacity of 10,000 gallons or less, containing sodium chloride or calcium chloride water for roadway snow and ice pretreatment, that are not located in a zone of critical concern.”

The zone of critical concern defined in the act as one thousand feet measured horizontally from each bank of the principal stream and five hundred feet measured horizontally from each bank of the tributaries draining into the principal stream.

This legislation retrains the registration provision, signage provision, and notice requirements for these classes of storage tanks.

CODE REFERENCE: West Virginia Code §22-30-3 – amended

DATE OF PASSAGE: March 25, 2017

EFFECTIVE DATE: June 23, 2017

ACTION BY GOVERNOR: Signed April 4, 2017

House Bill 2857

West Virginia Safer Workplaces Act

This bill creates a new article entitled the “West Virginia Safer Workplace Act”, a short title that is given to the article in §21-3E-1.

§21-3E-2 defines a number of terms. “Alcohol” means ethanol, isopropanol or methanol. “Drugs” is defined as any substance considered unlawful for nonprescribed consumption or use under the United States Controlled Substances Act, 21 U.S.C. 812. For purposes of this article, an “employer” includes any person, firm, company, corporation, labor organization, employment agency or joint labor-management committee, which has one or more full-time employees. The term “employer” expressly excludes the United States, the state or other public-sector incorporated municipalities, counties or districts or any Native American tribes. Other terms defined include “employee,” “good faith,” “prospective employee,” “sample,” and “split sample.”

In §21-3E-3, the article sets forth the public policy of the act. It includes a legislative declaration that the State’s public policy is to advance the confidence of workers that they are in a safe workplace and to enhance the viability of their workplaces by permitting employers to require mandatory drug testing of both applicants and current employees. This section includes language to preserve the right to privacy, but to state that the public policy of drug testing outweighs the right to privacy in this area under certain circumstances. The article is made applicable to employers who are not otherwise subject to drug and alcohol testing provisions in other areas of the Code.

§21-3E-4 declares it lawful for employers to test employees or prospective employees for the presence of drugs or alcohol as a condition of continued employment or hiring, but requires employers to adhere to certain safeguards in order to qualify for a bar from being subjected to legal claims for acting in good faith on the results of those tests.

§21-3E-5 permits employers to require samples from employees and prospective employees, and sets forth requirements for the collection of samples to test reliably. An employer may require individual identification, and the collection of samples must be done in conformity with the provisions of this article. The employer may designate the type of sample to be used for testing.

In §21-3E-6, the article imposes obligations on the employer with respect to timing and costs of any testing conducted under the new article. Testing shall occur during, immediately before or after a regular work period. Testing time is work time for purposes of compensation and benefits for current employees. Employers must pay all actual costs for drug and/or alcohol testing for current and prospective employees. Finally, if required tests are conducted at a location other than the normal work site, the employer must provide transportation or pay reasonable transportation costs to current employees.

Testing procedures are set forth in §21-3E-7. Collection of samples must be performed under reasonable and sanitary conditions. Any observer of urine sample collection must be of the same sex as the employee from whom the sample is being collected. Sample collections must be documented. The documentation requirements include labeling to reasonably preclude the possibility of misidentification and the handling of samples in accordance with reasonable chain of custody and confidentiality procedures. Employees must also be afforded an opportunity to provide notification of any information which may be considered relevant to the test, such as identification of currently or recently used prescription drugs, nonprescription drugs or other relevant medical information. Sample collection, storage and transportation shall be performed in a manner to preclude the possibility of sample

contamination, adulteration or misidentification. Confirmatory drug testing must be conducted at a laboratory either certified by the United States Department of Health and Human Services' Substance Abuse and Mental Health Services Administration, approved by the Department of Health and Human Services under the Clinical Laboratory Improvement Acts, or approved by the College of American Pathologists. Drug and alcohol testing must include confirmation of any positive test results. For drug testing, confirmation will be conducted by use of a chemical process different than the one used in the initial drug screen. The second confirming test must be a chromatographic technique. An employer may take adverse employment action based only on a confirmed positive drug or alcohol test. Should a person wish to challenge the results of the initial test, the employee has a right to a split sample, but he or she will be responsible for the associated costs.

§21-3E-8 addresses the requirements of testing policies. Testing or retesting must be carried out within the terms of a written policy which has been distributed to every employee subject to testing and available for review by prospective employees. Upon request or as otherwise appropriate, employers must provide information about the existence and availability of counseling, employee assistance, rehabilitation and/or other drug abuse treatment programs which the employer offers, if any. However, the bill does not require any such programs to be offered.

Within the terms of the written policy, employers may require the collection and testing of samples for 1) deterrence or detection of possible illicit drug use, possession, sale, conveyance, or distribution or manufacture of illegal drugs, intoxicants or controlled substances in any amount or in any manner or on or off the job or the abuse of alcohol or prescription drugs; 2) investigation of possible individual employee impairment; 3) investigation of accidents in the workplace or incidents of theft or other employee misconduct; 4) maintenance of safety for employees, customers, clients or the public at large; or, 5) maintenance of productivity, quality of products or services or security of property or information. The collection of samples and testing of samples shall be conducted in accordance with the Act and need not be limited to circumstances where there are indications of individual, job-related impairment of an employee or prospective employee. The employer's use and disposition of all drug or alcohol test results are subject to the limitations of this article and applicable federal and state law. Language is included in subsection (f) to clarify that nothing in the article may be construed to encourage, discourage, restrict, limit, prohibit or require on-site drug or alcohol testing.

After a confirmed positive drug or alcohol test result that indicates a violation of the employer's written policy, or an employee's refusal to provide a testing sample, the provisions of §21-3E-9 permits the employer to then use the test result or refusal to submit as a valid basis for disciplinary and/or rehabilitative action. Such actions may include a requirement that the employee enroll in an approved counseling or treatment program, suspension of the employee, termination of employment, refusal to hire a prospective employee or other adverse employment action in conformity with the employer's written policy including any applicable collective bargaining agreement.

§21-3E-10 addresses employees in sensitive positions where an accident could cause loss of human life, serious bodily injury or significant property or environmental damage. After a confirmed positive test of an employee in a sensitive position, the employer may permanently remove the employee from the sensitive position and transfer or reassign the employee to an available nonsensitive position with comparable pay and benefits or may take other action consistent with the employer's policy provided there are not applicable contractual provisions that expressly prohibit such action. Employers obligated

to perform drug testing under a federal or state mandated drug testing statute will be required to follow any additional requirements mandated under those laws.

§21-3E-11 provides legal protections from civil claims to employers who comply with the provisions of the West Virginia Safer Workplace Act. No cause of action can be brought against any employer who has established a policy and initiated a testing program in accordance with the new article for: 1) actions based on the results of a positive drug or alcohol test or the refusal of an employee or job applicant to submit to a drug test; 2) failure to test for drugs or alcohol or failure to test for a specific drug or other controlled substance; 3) failure to test for, or if tested for, failure to detect, any specific drug or other substance, any medical condition or any mental, emotional or psychological disorder or condition; or, 4) termination or suspension of any substance abuse prevention or testing program or policy.

In §21-3E-12, the bill provides that no cause of action exists against an employer who has an established drug or alcohol testing program in accordance with this new article unless the employer's action was based on a "false positive" test result and the employer had actual knowledge the result was in error and ignored the true test result because of disregard for the truth and/or the willful intent to deceive or be deceived. Should a claim be made under this article where the allegation is based on a claim of a false positive test, there is a rebuttable presumption that the test was valid if the employer complied with the provisions of the article, and the employer is not liable for monetary damages if it relied on a false positive test reasonably and in good faith. No liability exists for any action taken based on a "false negative" drug or alcohol test. Likewise, §21-3E-13 provides that no cause of action for defamation or similar claims exists against employers with an established testing program under this article, unless the results of a test were disclosed to a person other than the employer, an authorized agent or representative, the tested employee or the tested prospective employee and all elements of the cause of action are satisfied.

§21-3E-14 clarifies that this article does not create a cause of action against an employer who does not establish a program or policy on substance abuse prevention or implement drug or alcohol testing.

§21-3E-15 addresses confidentiality, providing that all communications related to the drug or alcohol testing program are confidential and may not be used in any proceeding except in a proceeding related to an action taken by an employer under this new article.

Finally, §21-3E-16 provides that employees who test positive at levels above those set forth in the employer's policy may be terminated and forfeit his or her eligibility for unemployment compensation benefits and indemnity benefits under the Workers' Compensation Laws. The drug-free workplace program must notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in his or her body and that policy must also state that employees risk forfeiture of unemployment and/or workers' compensation benefits. Employers who fail to provide this notice waive their right to assert that eligibility for benefits is entirely forfeited.

CODE REFERENCE: West Virginia Code §21-3E-1 through §21-3E-16 – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2948

Establishing timelines for taking final action on certain permits

This bill establishes timeline requirements for the granting of numerous permit applications. Currently, the permit applications addressed in the bill do not have time requirements.

The bill mandates that final action must be taken on all completed permit applications within thirty days if the application is uncontested, or within ninety days if the application is contested.

The following entities and permits are covered by the bill and would be subject to the new timeliness requirements:

- Public Service Commission
 - Permits regarding the regulation of the commercial transport of coal;
 - Permits to operate as a commercial contract carrier by motor vehicle.
- Division of Forestry
 - Permits for dealers and growers of ginseng.
- Commission of Agriculture
 - Permits to operate public markets where livestock, poultry, and other agricultural or horticultural products are received and sold;
 - Permits to feed garbage to swine;
 - Permit to move, transport, deliver, ship or offer for shipment noxious weed, which means any living plant declared to be detrimental to crops, other desirable plants, waterways, livestock, land or other property, or to be injurious to public health or the economy; and
 - Permits/application for registration to manufacture or distribute fertilizer.
- Dangerous Wild Animals Board
 - Permit to possess a dangerous wild animal.
- Local Health Department
 - Permits to be a vendor at a farmers market selling farm and food products that requires a food establishment permit.
- Division of Natural Resources
 - Burn permits which authorize a person to burn or set fire to any forest land during the designated forest fire season; and
 - Permits to excavate or remove archaeological, paleontological, prehistoric and historic features.
- Division of Labor
 - Permits to operate amusement rides or attractions;
 - Permits to operate a commercial bungee jumping site;
 - Permits to operate a zipline or canopy tour; and
 - Permits for the sterilization of bedding and upholstery.
- State Fire Marshal
 - All permits issued by the State Fire Marshal, including blasting permits.
 - Nonprofit youth organizations

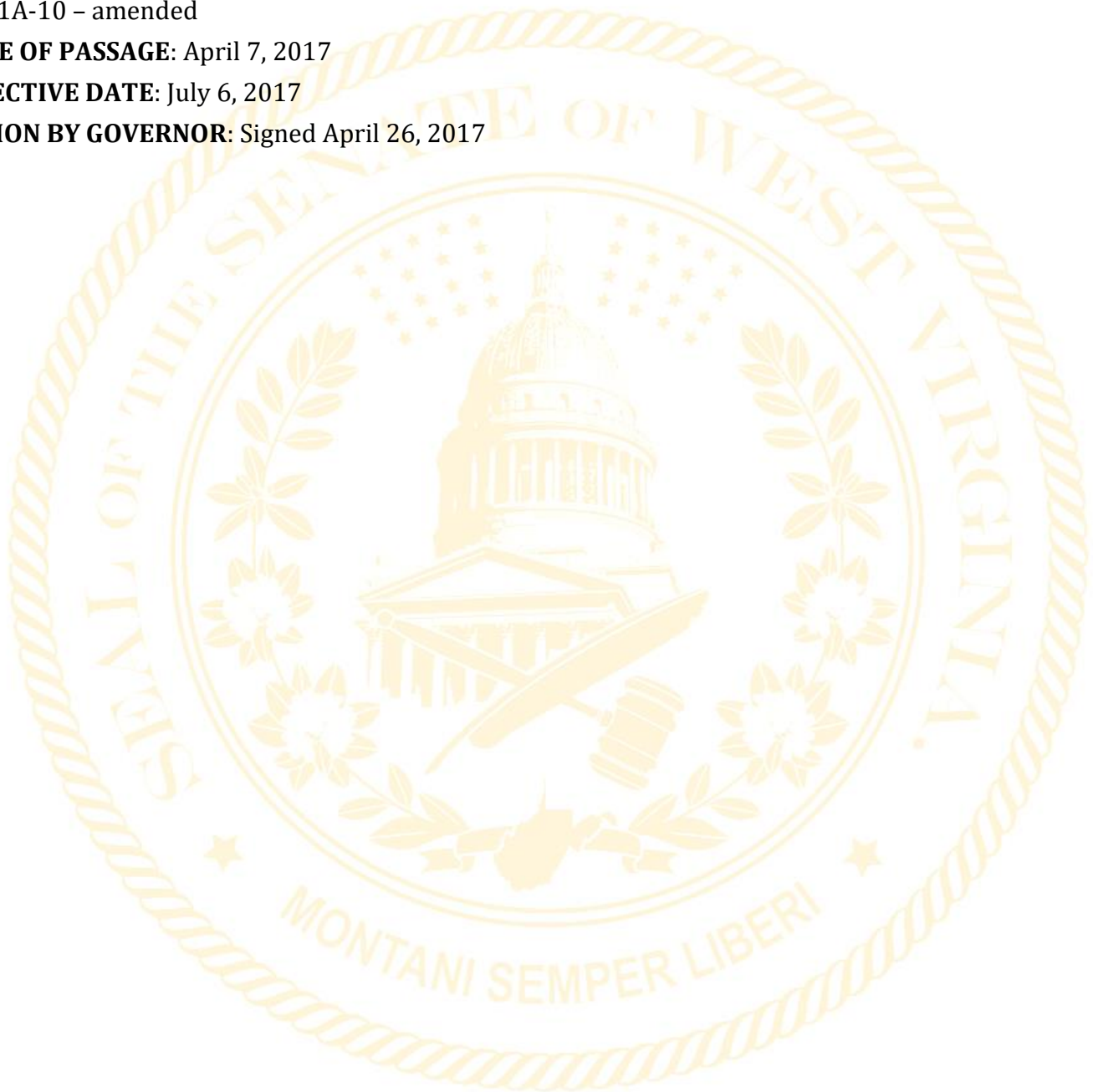
- Permits issued by nonprofit volunteer programs to a registered and non-compensated volunteer which exempts the person from obtaining an authorization to practice from a professional licensing agency while providing services within the limits of his or her authorization to practice.

CODE REFERENCE: West Virginia Code §17C-17A-7, §19-1A-3a, §19-2A-4, §19-9A-3, §19-12D-7, §19-15-2, §19-34-6, §19-35-3, §20-3-5, §20-7A-5, §21-10-7, §21-12-7, §21-15-10, §24A-3-3, §29-3-12, §29-29-4, §47-1A-10 – amended

DATE OF PASSAGE: April 7, 2017

EFFECTIVE DATE: July 6, 2017

ACTION BY GOVERNOR: Signed April 26, 2017



2016 Regular Session



Senate Bill 1

Establishing WV Workplace Freedom Act

This bill establishes the West Virginia Workplace Freedom Act and makes changes to two sections of the West Virginia Labor-Management Relations Act to make those sections consistent with the new Act. The bill prohibits requiring a person, as a condition or continuation of employment, to become or remain a member of a labor organization, pay any dues or other fees or charges, however denominated, of any kind to any labor organization, or pay any charity or third party in lieu of those payments any amounts equivalent to or a pro rata portion of dues or other fees required of members of a labor organization.

The bill makes any contract or other understanding or practice, whether written or oral, which excludes from employment any person because of membership with or refusal to join any labor or employee organization unlawful, null and void, and of no legal effect. Violations of the West Virginia Workplace Freedom Act carry criminal penalties. Any labor organization, employer, public body or other person directly or indirectly violating the Act is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$500 nor more than \$5,000. Each day of violation is considered a separate and distinct offense. The bill creates avenues of civil relief and damages.

In addition to the criminal penalties set forth in the Act, any person injured as a result of any violation or threatened violation of the Act has a cause of action, and, if proven in a court of competent jurisdiction, may be entitled the following relief against a person or persons violating or threatening to violate the Act: (1) compensatory damages; (2) costs and reasonable attorney fees, which shall be awarded if the injured person substantially prevails; (3) punitive damages; (4) preliminary or injunctive relief; and (5) any other appropriate equitable relief.

The bill specifically excludes from its scope any employee or employer covered by the federal Railway Labor Act, 45 U.S.C. 151 et seq., any employee of the United States or a wholly owned corporation of the United States, any employee employed on property over which the United States government has exclusive jurisdiction for purposes of labor relations and where the provisions of this article would otherwise conflict or be preempted by federal law. This bill addresses its construction and applicability. The bill states it is neither intended nor should it be construed to change or affect any collective bargaining or collective bargaining agreements in the building and construction industry. It applies to any written or oral contract or agreement entered into, modified, renewed or extended after July 1, 2016. The provisions of this bill do not otherwise apply to or abrogate a written or oral contract or agreement in effect on or before June 30, 2016.

CODE REFERENCE: West Virginia Code § 21-1A-3 and §21-1A-4 – amended; §21-5G-1 through §21-5G-7 – new

DATE OF PASSAGE: February 5, 2016

EFFECTIVE DATE: May 5, 2016

ACTION BY GOVERNOR: Vetoed February 11, 2016; Overridden February 12, 2016

Senate Bill 7

Establishing wrongful conduct rule prohibiting recovery of damages in certain circumstances

This bill amends West Virginia Code §55-7-13d, specifically subsection (c), which addresses a plaintiff's involvement in a felony criminal act. The bill provides a defendant is not liable for damages as a result of negligence or gross negligence, if a plaintiff's damages arise out of that plaintiff's commission, attempted commission or immediate flight from the commission or attempted commission of a felony. The plaintiff's injuries must have been suffered as a proximate result of those actions for the bar to apply. However, in some cases, such as wrongful death or adjudicated incompetency, the plaintiff may not be the actual injured person. The bill provides that it is the conduct of the injured person that generates the defense and not necessarily the named plaintiff.

The bill clarifies that the burden of proof for this defense rests on the party seeking to assert the defense. The bill provides that if the plaintiff has been convicted of, pleaded guilty or pleaded no contest to a felony, the court shall dismiss the claim, if the court determines as a matter of law, that the person's damages were suffered as a proximate result of the felonious conduct to which the plaintiff pleaded guilty or no contest, or upon which the plaintiff was convicted. The bill also offers a definition of damages. It includes all damages which may be recoverable for personal injury, wrongful death, property damage and also damages recoverable in a wrongful death action, including damages suffered by family members, such as loss of companionship and loss of income or services of the decedent. Further, the bill provides that if a criminal action is pending, the court shall stay the action at the request of the defendant until resolution of the criminal matter, including appeals, unless the court finds that the conviction would not constitute a valid defense under the bill.

The bill also establishes that the amendments to West Virginia Code §55-7-13d apply to causes of action accruing on or after its effective date. The bill also amends West Virginia Code §55-7B-5(d) of the Medical Professional Liability Act. It establishes that an action related to the prescription or dispensation of controlled substances may not be maintained against a health care provider pursuant to this article by or on behalf of a person whose damages arise as a proximate result of a violation of the Uniform Controlled Substances Act as set forth in §60A, the commission of a felony, a violent crime which is a misdemeanor, or any other state or federal law related to controlled substances. Additionally, the bill provides that an action may be permitted if the health care provider dispensed or prescribed a controlled substance in violation of state or federal law that proximately caused injury or death.

CODE REFERENCE: West Virginia Code §55-7-13d & 55-7B-5 – amended

DATE OF PASSAGE: February 24, 2016

EFFECTIVE DATE: May 24, 2016

ACTION BY GOVERNOR: Signed March 2, 2016

Senate Bill 14

Limiting successor corporation asbestos-related liabilities

This bill limits the asbestos liability exposure of companies that acquired a business entity that previously produced asbestos or asbestos-containing products. This limitation on liability is available only in certain instances. First, the acquisition, whether through merger or consolidation or other legal process, must have occurred prior to May 13, 1968. Second, the successor must have been an “innocent” purchaser, meaning that the corporation did not continue to produce the same goods or products that the transferor asbestos company produced. Finally, the limitation of liability only applies once the total amount that the successor company has paid out in asbestos- related claims exceeds the value of the acquired transferor company, as adjusted and appreciated from the time of the merger. The bill sets the parameters for the calculation of the “fair market value” of the corporation at the time of acquisition, as well as the method of annually adjusting that value for purposes of the cap. The new article is to be construed liberally in favor of innocent successors.

CODE REFERENCE: West Virginia Code §55-7I-1, §55-7I-2, §55-7I-3, §55-7I-4, §55-7I-5, §55-7I-6 & §55-7I-7 – new

DATE OF PASSAGE: February 22, 2016

EFFECTIVE DATE: May 22, 2016

ACTION BY GOVERNOR: Signed March 2, 2016

Senate Bill 15

Adopting learned intermediary doctrine as defense to civil action due to inadequate warnings or instructions

This bill reestablishes and codifies the “learned intermediary” doctrine which was abrogated by a Supreme Court of Appeals’ decision in 2007. The learned intermediary doctrine provides an exception to the general rule imposing a duty on manufacturers to warn consumers about the potential risks of their products because a prescribing physician or healthcare provider acts as a “learned intermediary” between the manufacturer and the ultimate consumer. This bill provides that a manufacturer or seller of a prescription drug or medical device may not be held liable in a products liability action for a claim based on inadequate warning or instruction, unless the manufacturer or seller of a prescription drug or medical device acted unreasonably in failing to provide reasonable instructions or warnings regarding foreseeable risks of harm to prescribing or other health-care providers who are in a position to reduce the risks of harm in accordance with the instructions or warnings. Failure to provide reasonable instructions or warnings must have been a proximate cause of harm. The bill sets forth the Legislature’s intent to adopt and allow the development of a “learned intermediary” doctrine as a defense in cases based upon claims of inadequate warning or instruction for prescription drugs or medical devices.

CODE REFERENCE: West Virginia Code §55-7-30 – new

DATE OF PASSAGE: February 17, 2016

EFFECTIVE DATE: May 17, 2016

ACTION BY GOVERNOR: Signed February 25, 2016

Senate Bill 29

Tolling statute of limitations in certain cases

This bill creates an exception to §55-2-21 for third party complaints. Currently, after a civil action is commenced, the statute of limitations on any claim that can be asserted in that civil action is tolled for the pendency of that civil action, including the statutory period on third-party complaints. The bill provides that this section tolls the running of any statute of limitation with respect to any claim for which the statute of limitation has not expired on the effective date of this section, but only for so long as the action tolling the statute of limitations is pending. This bill shortens the period during which the statute of limitations is tolled for bringing third party claims during the pendency of a law suit to the longer of 180 days following service of process of the original suit or the time remaining on the applicable statute of limitations. The bill provides a third- party defendant the same time period to bring a third-party complaint against any non-party person or entity (180 days from the date of service of process of the original complaint, or the time remaining on the applicable statute of limitations, whichever is longer).

Third party complaints are claims filed by a defendant against some person or entity that was not made a party to the original suit. This bill gives such entities the benefits of repose bestowed by any applicable statutes of limitation that they would enjoy but for the fact that a law suit, of which they may or may not have any knowledge at all, is pending. This bill preserves the ability of a defendant to bring a third party complaint even after the limited tolling period expired if that defendant did not discover any cause of action it might have against a third party until after the expiration of the limited tolling period. This bill specifically preserves that so-called “discovery rule” as well as the doctrine of equitable tolling sometimes used by courts in such situations.

CODE REFERENCE: West Virginia Code §55-2-21 – amended

DATE OF PASSAGE: March 7, 2016

EFFECTIVE DATE: June 5, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Senate Bill 351

Dedicating severance tax proceeds

SEVERANCE TAXES

The bill amends the provisions of the West Virginia Code relating to the dedication of severance taxes to the West Virginia Infrastructure General Obligation Debt Service Fund. Current law requires that the first \$22.5 million of severance tax collected be deposited in the West Virginia Infrastructure General Obligation Debt Service Fund. The bill requires that the amount deposited into the fund be only the amount necessary to pay principal and interest, and to ultimately retire bonds over their scheduled amortization life, but in no fiscal year may the deposit exceed \$22.25 million. The annual debt service amount is to be determined in accordance with a debt amortization table to be published by the Treasurer by April 1, 2016. The Treasurer may amend the table from time to time as the Treasurer considers necessary.

CODE REFERENCE: West Virginia Code §31-15A-16 – amended

DATE OF PASSAGE: February 24, 2016

EFFECTIVE DATE: May 24, 2016

ACTION BY GOVERNOR: Signed March 2, 2016

Senate Bill 419

Relating to Workers' Compensation Debt Reduction Act

The bill revises statutory measures that provide funding to pay the legacy costs of the state's Workers' Compensation system incurred before the system was privatized in 2005. Changes to those statutes affect the flow of revenues into the state General Revenue Fund, authorize the future termination of additional severance taxes imposed on coal, natural gas and timber, and the future severance tax on timber, among others. Specifics of the changes include:

§4-11A-18 – This section is amended to end the annual transfer of \$50.4 million dollars of Personal Income Tax revenues to the Workers' Compensation Debt Reduction Fund effective February 1, 2016. This revision would effectively restore the flow of that amount of Personal Income Tax revenues to the State General Revenue Fund permanently.

§11-13A-3b – This section is amended to provide that on and after July 1, 2016, the regular severance tax imposed on timber (that is currently suspended until the additional Workers' Compensation 2.78% severance tax on timber is terminated) will be reestablished and imposed at the rate of 1.50%.

§11-13V-4 – This section is amended to:

- Authorize the Governor to redirect the deposit of revenues from additional severance taxes imposed on coal, natural gas and timber from the Workers' Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order from February 29, 2016 through June 30, 2016.
- Terminate those taxes beginning July 1, 2016.
- Authorize the Governor to terminate those taxes before July 1, 2016, by Executive Order if he chooses to do so.
- Remove language that would terminate these taxes only when the Governor certifies to the Legislature that an independent certified actuary has determined that the unfunded liability of the Workers' Compensation system's "Old Fund" has been paid or provided for in its entirety.

§11-21-96 – This section is amended to end the annual transfer of a separate \$45 million dollars of Personal Income Tax revenues to the Workers' Compensation Debt Reduction Fund effective February 1, 2016. This revision would effectively restore the flow of that full amount of Personal Income Tax revenues to the State General Revenue Fund until July 1, 2016. Thereafter, \$30 of that amount will be distributed annually as required by current law into the West Virginia Retiree Health Benefit Trust Fund, also known as the OPEB fund. However the current law requirement that \$5 million of those Personal Income Tax revenues be deposited into a separate fund known as the Post-July 1, 2010, Employee Trust Fund would change. That transfer will not be made and the \$5 will remain in the State General Revenue Fund permanently.

§23-2C-3 – This section is amended to:

- Authorize the Governor to redirect the deposit of revenues from surcharges and assessments derived from Workers' Compensation insurance premiums from the Workers' Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order from February 29, 2016, through June 30, 2016.
- Authorize the Governor to redirect one-half of the deposit of revenues from surcharges and assessments derived from Workers' Compensation insurance premiums from the Workers'

Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order during FY 2017.

§29-22A-10d – This section is amended to:

- Authorize the Governor to redirect the deposit of revenues derived from racetrack video lottery net terminal income from the Workers' Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order from February 29, 2016, through June 30, 2016.
- Authorize the Governor to redirect one-half of the deposit of revenues from racetrack video lottery net terminal income from the Workers' Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order during FY 2017, until the Governor certifies to the Legislature that an independent certified actuary has determined that the unfunded liability of the Workers' Compensation system's "Old Fund" has been paid or provided for in its entirety. Current law directing that, after the certification, these net terminal income revenues are to be redirected into the State Excess Lottery Fund is retained.

§29-22A-10e – This section is amended to:

- Authorize the Governor to redirect the deposit of revenues derived from racetrack video lottery net terminal income from the Workers' Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order from February 29, 2016, through June 30, 2016.
- Authorize the Governor to redirect one-half of the deposit of revenues from racetrack video lottery net terminal income from the Workers' Compensation Debt Reduction Fund to the State General Revenue Fund during any period directed by Executive Order during FY 2017, until the Governor certifies to the Legislature that an independent certified actuary has determined that the unfunded liability of the Workers' Compensation system's "Old Fund" has been paid or provided for in its entirety. Current law directing that, after the certification, these net terminal income revenues are to be redirected into the State Excess Lottery Fund is retained.

Notes: The Workers' Compensation Debt Reduction Fund was created in 2005 in WVC §23-2D-5 to serve as a transfer fund into which are collected revenues from various sources to pay the legacy costs of the state's Workers' Compensation system incurred before the system was privatized in 2005. The West Virginia Retiree Health Benefit Trust Fund, also known as the OPEB (Other Post Employment Benefits) fund, was created in 2006 to provide for and administer public employee post-employment health care benefits. [WVC §5-16D-2.] The Post-July 1, 2010, Employee Trust Fund was created in 2012 to provide an incentive to public retirees who were hired on and after July 1, 2010. [WVC §5-16-5b.]

CODE REFERENCE: West Virginia Code §4-11A-18, §11-13A-3b, §11-13V-4, §11-21-96, §23-2C-3, §29-22A-10d and §29-22A-10e – amended

DATE OF PASSAGE: February 26, 2016

EFFECTIVE DATE: February 26, 2016

ACTION BY GOVERNOR: Signed February 29, 2016

Senate Bill 426

Continuing Office of Coalfield Community Development

COAL

This bill authorizes the continuation of the Office of Coalfield Community Development, transferring the office from the Division of Energy to the Department of Commerce. The bill provides that the Secretary of the Department of Commerce may appoint a chief administrator to the office who serves at the will and power of the Secretary.

CODE REFERENCE: West Virginia Code §5B-2A-3 and §5B-2A-4 – amended

DATE OF PASSAGE: March 8, 2016

EFFECTIVE DATE: June 6, 2016

ACTION BY GOVERNOR: March 15, 2016

Senate Bill 545

Relating to asbestos abatement on oil and gas pipelines

OIL AND GAS/
PIPELINES

This bill addresses asbestos abatement on oil and gas pipelines. The bill defines certain terms and revises certain definitions already in code. Specifically, it states that an asbestos abatement project does not include removal, repair and maintenance of intact oil and gas pipeline asphaltic wrap which contains asbestos fibers encapsulated or coated by bituminous or resinous compounds as described in subsection (d), section eleven of this article.

Removal, repair and maintenance of oil and gas pipeline asphaltic wrap which contains asbestos fibers is not subject to the requirements of this article if (1) the wrap is not friable prior to disturbance along the length of the pipeline being removed, repaired or maintained, (2) the area disturbed in preparing the pipeline for cutting does not extend 260 linear feet of removed friable asbestos, (3) before and as needed during the job, a competent person conducts an inspection of the worksite and determines the material is intact and will likely remain intact, (4) all employees performing work covered are trained in accordance with OSHA standards and all other workers must remain at a safe distance, (5) the material is not sanded abraded or ground – manual methods which do not render the material non-intact must be used, (6) all removal or disturbance of the pipeline wrap is performed using wet methods, and (7) all pipeline and asbestos removed is disposed of in a lawful manner.

CODE REFERENCE: West Virginia Code §16-32-2, §16-32-11 – amended

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 29, 2016

Senate Bill 567

Providing protection against property crimes committed against coal mines, railroads, utilities and other industrial facilities

ENERGY
INFRASTRUCTURE

Current law provides that it is a crime to destroy certain commercial and industrial property. This bill adds oil, timber and timber processing facilities to the list. It creates the offense of knowingly and willfully damaging or destroying property of protected entities and hindering, impairing or disrupting directly or indirectly the normal operation, with a penalty of \$5,000 to \$10,000, plus the cost to repair, or 1-5 years incarceration, or both.

In addition, the bill contains a new subsection to allow a railroad company, public utility, business or owner of the property that is damaged or disrupted to seek restitution, if ordered by the court.

CODE REFERENCE: West Virginia Code §61-3-29 – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

Senate Bill 592

Relating to pipeline safety

OIL AND GAS/
PIPELINES

This bill:

- Changes the method used to calculate the amount of special licensing fees paid by pipeline companies to the PSC in order to fund the Pipeline Safety Fund.
- Establishes that the new pipeline special licensing fee be applied at a rate of \$18.60 per mile instead of at a rate based on the volume of pipe. This makes it easier for companies to predict the amount of the fee that will be paid in a year. It also allows the amount to more accurately reflect the growth in pipeline mileage within the state.
- The bill also removes the cap in the current law (\$385,000 annually).
- The PSC has been limited by this cap and wish to erase the cap in order to hire more pipeline safety inspectors.

CODE REFERENCE: West Virginia Code §24B-5-3 – amended

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: March 11, 2016

ACTION BY GOVERNOR: Signed March 21, 2016

Senate Bill 601

Relating to exception from jurisdiction of PSC for materials recovery facilities or mixed waste processing facilities

ENVIRONMENT

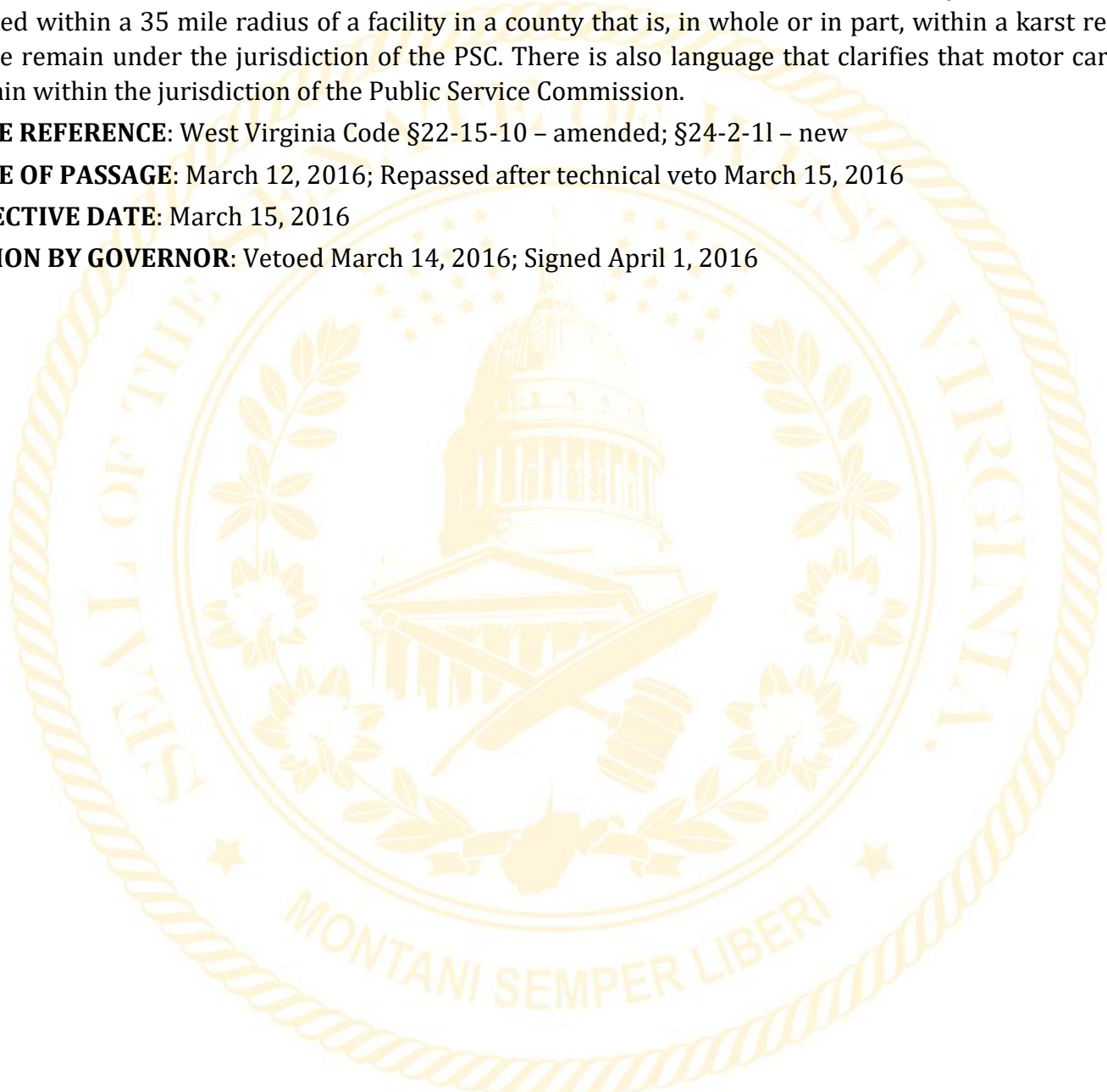
This bill removes materials recovery facilities and mixed waste processing facilities from the jurisdiction of the Public Service Commission. It provides for an exception for facilities that have received a certificate of need from the Public Service Commission as of July 1, 2016, and are located within a 35 mile radius of a facility in a county that is, in whole or in part, within a karst region. These remain under the jurisdiction of the PSC. There is also language that clarifies that motor carriers remain within the jurisdiction of the Public Service Commission.

CODE REFERENCE: West Virginia Code §22-15-10 – amended; §24-2-11 – new

DATE OF PASSAGE: March 12, 2016; Repassed after technical veto March 15, 2016

EFFECTIVE DATE: March 15, 2016

ACTION BY GOVERNOR: Vetoed March 14, 2016; Signed April 1, 2016



Senate Bill 619

2016 Regulatory Reform Act

The bill provides for a comprehensive regulatory reform regarding the state's rulemaking process. The bill does the following:

First of all, under §29A-3-5, the bill requires all agencies proposing legislative rules to respond to public comments received during the rulemaking process. The agency must also explain why comments were incorporated or not incorporated into the rule. Failure to do so adequately is grounds for rejection of the proposed rule.

Under §29A-3-11(a), the bill removes the requirement that agencies submit 15 copies of the proposed rules to the Legislative Rule-Making Review Committee (LRMRC); instead, the Committee may request any number of copies. Along with the rule, an agency must also submit a detailed description of the objective or purpose of the rule and the proposed changes to the rule and an explanation of the statutory authority for the rule, including a detailed summary of the effect of each provision with citation to the specific statute which empowers the agency to enact such a provision. The agency must also submit an economic impact statement addressing the probable effect of the rule on the economy, which they prepare in coordination with the WVU and Marshall business and economic centers.

§29A-3-11(b) addresses what the LRMRC must determine while reviewing proposed rules. The bill adds that the committee must make a determination as to whether the proposed rule will be overly burdensome on business and industry, and it provides a non-exhaustive list of criteria to consider. It also requires the Committee review whether the agency has complied with the public comment requirements.

§29A-3-11(c) gives the Committee the option of recommending to the legislature that the full body reject the proposed rule. Currently, the Committee may recommend complete or partial authorization, authorization with amendments or that the rule be withdrawn.

§29A-3-19 is a newly proposed section that mandates expiration provisions be incorporated into all rules newly proposed or modified after April 1, 2016. Newly proposed rules shall include a 5 year expiration provision and all modified rules shall include an expiration provision setting forth some termination date. Emergency rules and rules promulgated by the Department of Environmental Protection are exempted from this requirement. The section also gives the Committee the authority to establish a procedure for timely review of rules prior to the expiration of rules promulgated by agencies that have affirmatively sought renewal prior to expiration. This may include a requirement that the agency show cause as to why the expiring rule is required and necessary to be continued. All rules are to remain in effect after the expiration date and until the rule is reauthorized or modified.

§29A-3-19 also requires the Secretary of State to provide notice to a promulgating agency 18 months prior to a rule's expiration. The agency shall respond with certain information about the rule, and shall include such response in documents required for reauthorization.

§29A-3-20 is a newly proposed section, which requires all executive agencies with rule making authority to review all rules, guidelines, policies and recommendations under their jurisdiction which have federal counterparts, and determine whether the state equivalent is more stringent than the federal. The agency must also provide for a comment period and submit a report to the Joint Committee on Government and Finance on or prior to November 1, 2017. The report shall include a description of the

state rules, guidelines, policies and recommendations that are more stringent than their federal counterparts and comments received from the comment period.

§29A-3-20 also requires each agency review all rules within four years to determine whether the rules should be continued without change, modified or repealed to minimize the economic impact of the rules on small businesses. It requires the agency submit a report on or before July 1, 2020, to the LRMRC, which must include a description of each rule, a determination as to whether the rule should be continued or modified and the reasoning for said determination.

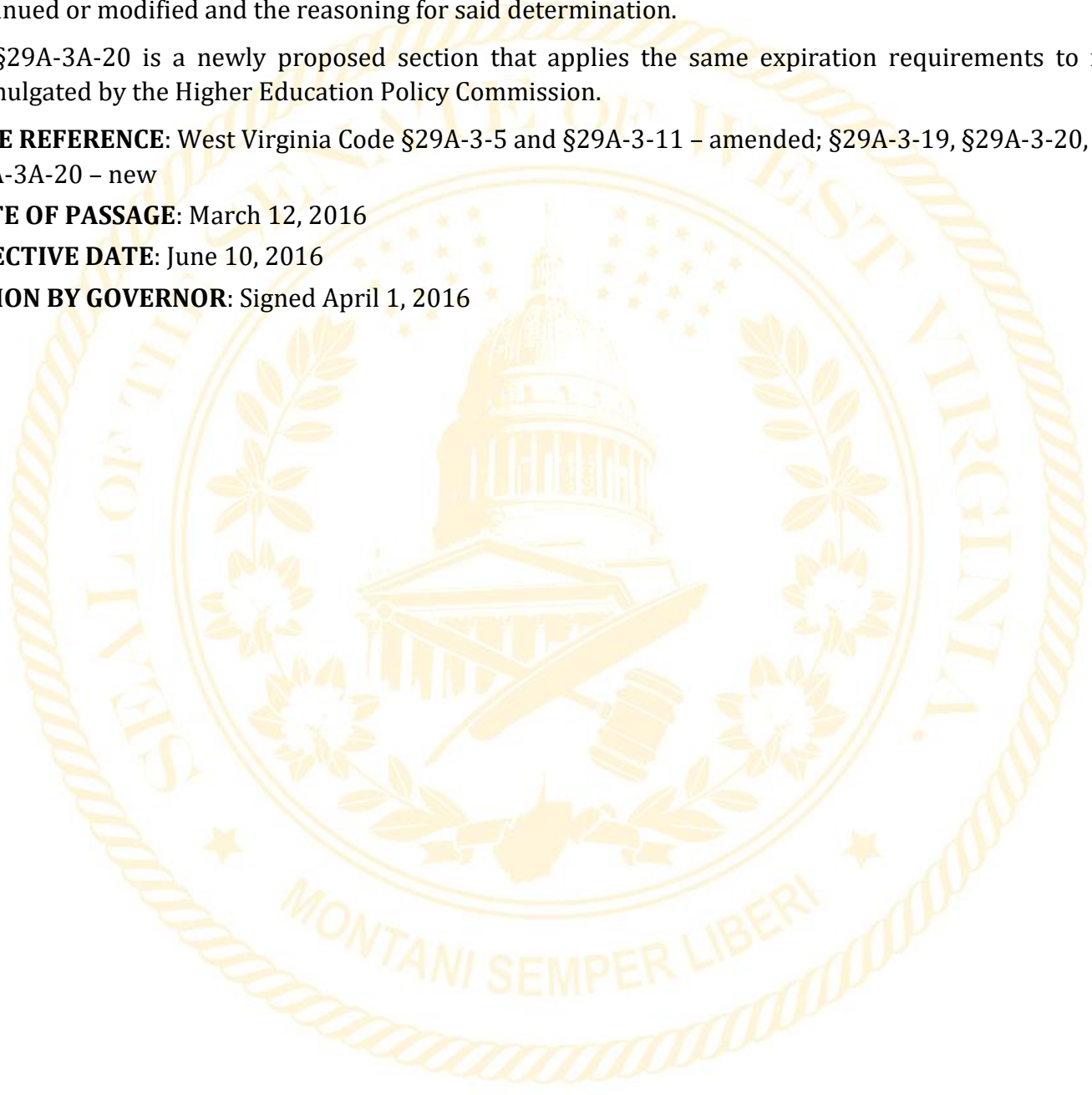
§29A-3A-20 is a newly proposed section that applies the same expiration requirements to rules promulgated by the Higher Education Policy Commission.

CODE REFERENCE: West Virginia Code §29A-3-5 and §29A-3-11 – amended; §29A-3-19, §29A-3-20, and §29A-3A-20 – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016



Senate Bill 625

Revising exceptions from FOIA provided for in Aboveground Storage Tank Act

ENVIRONMENT

This bill clarifies what information the public has access to with respect to above ground storage tanks. Current law provides a great deal of public access unless, the information has been designated as restricted by the Division of Homeland Security and Emergency Management or is a trade secret or proprietary. Current law also provides that a list of potential sources of significant contamination may only be disclosed to the extent consistent with protection of trade secrets and proprietary information. This bill carves out an exception and provides that disclosure is permitted on any location, characteristics and approximate quantities of potential sources of significant contamination within the zone of critical concern to the extent they are in the public domain through a state or federal agency.

CODE REFERENCE: West Virginia Code §16-1-9c – amended

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: June 8, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

Senate Bill 691

Modifying certain air pollution standards

ENVIRONMENT

This bill makes technical clean-ups to one section of code that was modified substantially during the 2015 legislative session by passage of House Bill 2004, and requires the Department of Environmental Protection to submit its proposed plan to comply with the EPA's Clean Power Plan to the Legislature for approval prior to its submission. In subsection (c), the bill changes the word "shall" to "may" in two places – first to permit, rather than require, the plan to be on a "unit- specific performance basis," and secondly, to permit either a rate-based or mass-based model to be utilized. The term "meter-based" is also modified to "mass-based."

CODE REFERENCE: West Virginia Code §22-5-20 – amended

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: March 10, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

House Bill 4323

Relating to the reporting of emergency incidents by well operators and pipeline operators

OIL AND GAS

This bill requires well and pipeline operators to report certain emergency incidents to the Division of Homeland Security and Emergency Management within fifteen minutes. A number of terms are defined, chief among them “incident,” which includes (1) an injury that results in death or serious bodily injury or that has a reasonable potential to cause death, (2) an unintended confinement of an individual in an enclosed space for longer than fifteen minutes, (3) the unintended ignition or explosion of oil, natural gas or other substance, (4) an unintended fire in or about a well, well pad or pipeline facility not extinguished within fifteen minutes of discovery, and (5) an unintended release of poisonous or combustible substances with a reasonable potential to cause death.

This bill creates a new reporting requirement, under which pipeline operators and well operators are required to report to the Division of Homeland Security and Emergency Management within fifteen minutes of “ascertaining the occurrence of an incident at a well, well pad or pipeline facility.” The requirements of this section are satisfied if the person contacts the local emergency telephone system and reports the incident orally. The information required to be reported includes: (1) the name and affiliation of the person making the report, (2) the location of the incident, and (3) a statement that an incident has occurred. Additional information shall be provided if available, including (A) the nature and extent of the incident, (B) information regarding the substance involved in a fire, and (C) information for the operator’s designated contact.

A local emergency telephone system that receives notice is directed to forward that information to the Division of Homeland Security and Emergency Management. The bill calls for documentation of all calls received by the Division, including both recordings and transcripts of calls. Those records are accessible via a Freedom of Information Act request.

Lastly, the bill requires the Director of the Division of Homeland Security and Emergency Management to impose a civil penalty of between \$2,500 and \$50,000 on the operator for failure to comply. That penalty can be waived if the failure to report (1) was due to circumstances outside the operator’s control, (2) was due to the operator’s attempt to stabilize the incident, (3) was due to the operator’s rendering of emergency assistance, or (4) was caused by the incident occurring in an area with little or no wireless communications coverage, so long as notice was provided within fifteen minutes of regaining such communication ability restored. Any civil penalty imposed may be appealed to the Director of the Division of Homeland Security and Emergency Management, and then to the Circuit Court of Kanawha County.

CODE REFERENCE: West Virginia Code §15-5C-1 and §15-5C-2 – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

House Bill 4435

Authorizing the Public Service Commission to approve expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects

COAL/
UTILITIES

The bill amends the provisions of the West Virginia Code relating to the powers and duties of the Public Service Commission (PSC). The bill adds a new section to the code authorizing expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects. The procedure created in the bill by which the PSC would approve the modernization and improvement plan would be in lieu of the current requirement for a certificate of convenience and necessity for improvements to utilities.

Pursuant to the new procedure provided in the bill, an electric utility would file a multiyear comprehensive plan for modernizing and improving the coal-fired boilers at the utility's power plants with the PSC. The plan would describe the improvement plan, the projected costs and how the costs would be paid for, the timeline for the improvements and evidence demonstrating the need for the improvements and that they will better provide and maintain adequate, efficient, safe, reliable and reasonably priced electric generation. The electric utility must also publish a notice of the application, as a Class 1 legal advertisement, which includes the anticipated rate increase by average percentage and money amount for customers within a class of service, that the PSC is to hold a hearing regarding the application within 180 days of the notice and that a final order will be entered within 270 days of the filing date. After the notice and hearing, the PSC shall approve the program and allow expedited recovery of costs related to the expenditures for the modernization program if it finds the plan to be just, reasonable, based upon prudent investments that are used and useful to the utilities' West Virginia ratepayers, not contrary to the West Virginia public interest and will allow for the provision and maintenance of adequate, efficient, safe, reliable and reasonably priced electricity generated from coal.

CODE REFERENCE: West Virginia Code §24-2-1I – new

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: Signed March 24, 2016

House Bill 4726

Relating to coal mining generally (Coal Jobs and Safety Act II)

COAL

This bill is otherwise known as the Coal Jobs and Safety Act of 2016 and is in two parts: 1) Environmental and 2) Health, Safety and Training. The intent of the bill is to continue the reform efforts of the Coal Jobs and Safety Act of 2015 and make regulatory changes to both the Department of Environmental Protection (DEP) and the Office of Miners' Health Safety and Training (WVMHS&T) in order to create more efficiencies in carrying out the duties of both offices, while creating more certainty for the coal industry.

The environmental part of the bill would do the following: Update and make new legislative findings; Eliminate the DEP's Office of Explosives and Blasting (those duties are now transferred to the Division of Mining and Reclamation; Mandates that the DEP revise and promulgate rules on hydrologic protection and stormwater runoff analyses on mining operations and to promulgate rules that conform with the federal regulation requirements to minimize the disturbances to the prevailing hydrologic balance at a mine site and in associated off-site areas; Requires the DEP to follow deadlines for taking action on applications for site-specific water quality criteria (requiring a decision within 90 days); and Requires the DEP to conduct hydrologic impact assessments.

The miners' health, safety and training part of the bill would do the following: Transfer certification authority for mining emergency medical technicians (EMTs) to the Office of Miners' Health, Safety and Training; Modify certain ventilation and roof or rib requirements; Provide that state mine rescue teams may serve as a backup team to mine company teams; Requires the State Board of Appeals to allow evidence of substance abuse testing procedures and test results be introduced through notarized affidavits from Medical Review Officers and testify if necessary; Provide for testimony by telephone under oath, that the penalty for not reporting accidents in 15 minutes to the Office of Miners' Health, Safety and Training be modified to "up to \$100,000" from \$100,000; Provide that the Director of Office of Miners' Health, Safety and Training shall have the authority to modify assessed penalties and penalties may be modified by the State Board of Appeals based on a vote of two Board members, and allowing company input into state supervisory training and how it is scheduled during the year; and Provide that if a miners' wireless emergency communications device fails, that a miner shall be assigned to be in sight or sound of a certified miner until such time that the device is replaced.

CODE REFERENCE: West Virginia Code §22-3A-1, §22-3A-2, §22-3A-3, §22-3A-4, §22-3A-5, §22-3A-6, §22-3A-7, §22-3A-8, §22-3A-9, §22-3A-10, §16-4C-6c, §22-3-2, §22-3-4, §22-3-13, §22-3-13a, §22-3-22a, §22-3-30a, §22-3-34, §22-3-35, §22-3-36, §22-3-37, §22-3-38, §22-3-39, §22-11-6, §22A-1-13, §22A-1-14, §22A-1-15, §22A-1-31, §22A-1-35, §22A-1A-2, §22A-2-3, §22A-2-8, §22A-2-14, §22A-2-20, §22A-2-25, §22A-2-36, §22A-2-55, §22A-2-66, §22A-2-77, §22A-7-7 – amended

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION BY GOVERNOR: April 1, 2016

House Bill 4734

Relating to mine subsidence insurance

COAL

This bill increases available coverage for mine subsidence coverage to \$200,000.00 by increasing the total value that BRIM can reinsure from \$75,000.00 to \$200,000.00. The bill also deletes the provision that restricts loss coverage; the bill strikes language stating that loss coverage is the loss in excess of 2% of the policy's total insured value. As such, the bill would expand mine subsidence insurance coverage to cover lower amounts and higher amounts.

Under current West Virginia law, insurers issuing policies to cover structures in the state (with the exception of certain designated counties) are required to provide mine subsidence insurance unless such coverage is waived by the insured. The premium charged is set by the Board of Risk and Insurance Management ("BRIM"). The coverage is the amount of loss in excess of 2% of the policy's total insured value, and the total insured value is currently limited to \$75,000. The deductible may not be less than \$250 nor more than \$500. The amount of mine subsidence insurance may not exceed the amount of the fire insurance on the structure.

BRIM is a reinsurer on this program. When the carrier sells the mine subsidence coverage, it collects the premium and sends that, less a ceding commission (30%), to BRIM to go into the fund. The process for a claim is that the carrier presents BRIM with a claim notice and documentation that the insured has the coverage and in what amount. BRIM then investigates the claim and if it is payable, the insurer pays the loss based on the proof BRIM gets signed. The insurer then provides BRIM with a copy of both sides of the cashed check and then BRIM reimburses the carrier the amount it paid the insured. BRIM incurs the adjustment expense and will deny the claim if it is not mine subsidence. See §33-30-1 et seq.; 115 CSR 1.

CODE REFERENCE: West Virginia Code §33-30-6 and §33-30-8 – amended

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: October 1, 2016

ACTION BY GOVERNOR: Signed March 25, 2016

2015 Regular Session



Senate Bill 3

Relating to liability of possessor of real property for harm to trespasser

This bill codifies the duty that possessors of real property owe to trespassers under the common law of the State of West Virginia. It does nothing to alter the duty owed and does not disturb any statutes that limit the liability of land possessors under various circumstances. This bill insulates the laws of West Virginia from a provision of the new Restatement (Third) of Torts §51, which departs substantially from the common law duty owed to trespassers as it currently exists and, if adopted, would extend to trespassers the same duty of reasonable care owed to invitees and licensees, and makes an exception to that duty only for what it terms “flagrant trespassers.”

To foreclose the adoption of this new standard into the common law of West Virginia, this bill codifies the existing common law of the State as it relates to duties of landowners to trespassers, which provides that landowners generally owe to trespassers only a duty to refrain from willful or wanton injury. The situations already identified at common law where a land possessor may also be subject to liability for the injury or death of a trespasser, including (1) the possessor discovers the trespasser in a position of peril and fails to exercise ordinary care not to cause injury to the trespasser, (2) he maintains a highly dangerous condition or instrumentality on the property under certain circumstances or (3) a child trespasser is injured or killed due to a dangerous instrumentality or condition on the property under certain circumstances, are preserved.

CODE REFERENCE: West Virginia Code §55-7-27 – new

DATE OF PASSAGE: January 29, 2015

EFFECTIVE DATE: April 29, 2015

ACTION BY GOVERNOR: Signed February 9, 2015

Senate Bill 12

Relating to payment of separated employee's outstanding wages

This bill requires employers to pay outstanding wages due to separated employees by the next regular payday on which the wages would otherwise be due and payable. Under current law, employers must pay discharged employees their final paychecks no later than the next regular payday or four (4) business days, whichever comes first, but must pay employees who quit or resign no later than the next regular payday, unless the employee resigns providing one pay period's written notice of the intention to quit, in which case the final wages are required to be paid at the time of quitting.

The bill makes that time frame for payment of final wages uniform regardless of form of separation from employment, requiring that final paychecks be delivered no later than the next regular payday on which the wages would otherwise be due and payable. An exception is made for fringe benefits that are provided to an employee pursuant to an employment agreement but "to be paid at a future date or upon additional conditions which are ascertainable," which wages are to be paid pursuant to the terms of the agreement between employer and employee.

Final paychecks may be delivered in person through any manner proscribed in §21-5-3, which allows for payment in lawful money, by cash order (including checks), by deposit or electronic transfer or any other manner agreed to between employer and employee, as well as through regular pay channels, direct deposit or, if requested by the employee, by mail. The bill establishes the date final paychecks would be considered paid as the date the mailed payment is postmarked if the employee requests to be paid via mail. The bill reduces the liquidated damages available for violation of this section from three (3) times the unpaid amount to two (2) times the unpaid amount.

Lastly, the bill clarifies that §21-5-4 only regulates the timing of wage payments upon separation from employment and does not regulate whether overtime pay is due. It also clarifies that liquidated damages are not available for employees claiming they were misclassified as exempt from overtime under any state or federal wage and hour laws.

CODE REFERENCE: West Virginia Code §21-5-1 and §21-5-4 – amended

DATE OF PASSAGE: March 13, 2015

EFFECTIVE DATE: June 11, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

Senate Bill 13

Relating to liability of a possessor of real property for injuries caused by open and obvious hazards

This bill reinstates and codifies the open and obvious doctrine of landowner liability as it existed in the State of West Virginia prior to the decision of the West Virginia Supreme Court of Appeals in the case of *Hersh v. E-T Enterprises, Limited Partnership*, 752 S.E.2d 336 (Nov. 12, 2013). The open and obvious doctrine is a common law rule of liability which imposes upon landowners, lessees or other lawful occupants a duty to either warn of, or mitigate, hazards upon their property which are not “open and obvious” to any entrant upon a property; that is, those dangers which may be concealed, hidden, or otherwise not obvious to a reasonable person or not within open view. The Court’s decision explicitly abolished the open and obvious doctrine in West Virginia; this bill restores it through codification. To that end, the bill states that a possessor of real property owes no duty of care to protect others against dangers that are “open, obvious, reasonably apparent or as well known to the person injured as they are to the owner or occupant.” The new section of code also clarifies no new causes of action are created by this section, and states the legislative intent of the section to reinstate the law on open and obvious as it existed prior to the *Hersh* decision. Lastly, the bill directs the court to take into consideration, as a matter of law, the “nature and severity, or lack thereof, of violations of any statute relating to a cause of action.”

CODE REFERENCE: West Virginia Code §55-7-27 – new

DATE OF PASSAGE: February 18, 2015

EFFECTIVE DATE: February 18, 2015

ACTION BY GOVERNOR: Signed March 3, 2015

Senate Bill 37

Creating Revised Uniform Arbitration Act

This bill amends, reenacts and expands the current law in West Virginia concerning arbitration by adopting a modified version of the Revised Uniform Arbitration Act into article 10 of Chapter 55. As background for the act, the bill sets forth certain legislative findings concerning arbitration, namely that arbitration frequently offers a more efficient and cost-effective alternative to court litigation, acknowledges the federal policy favoring arbitration and defines a number of terms.

- §55-10-4 sets forth the requirements for giving notice to a party to an arbitration proceeding.
- §55-10-5 limits the applicability of this article to arbitration agreements made on or after July 1, 2015, and allows arbitration agreements entered into prior to that date to become subject to the new provisions of Article 10 if they are subsequently ratified or continued, or if the parties mutually agree to make the arbitration agreement subject to this article.
- §55-10-6 sets forth the provisions of the article that serve as default may not be waived by agreement of the parties. These include:
 - the involvement of the court in determining whether an agreement to arbitrate is valid
 - the authority of the arbitrator to award provisional remedies
 - the use of witnesses, subpoenas, depositions and other discovery during the arbitration
 - venue of the state courts
 - appeals of adverse court determinations concerning arbitration agreement
 - unreasonable restrictions on notice requirements
 - unreasonable restriction of right to disclosure of certain facts by an arbitrator
 - right to representation by an attorney in arbitration proceedings.
 - This section also sets out the sections that cannot be waived after the arbitration proceeding has commenced.
- §55-10-7 provides the parties to an arbitration agreement with a right to seek judicial relief from the circuit courts of this State under certain circumstances as spelled out in the article.
- §55-10-8 allows a court to determine the validity and enforceability of an arbitration agreement and whether a particular controversy is covered by an agreement to arbitrate, but reserves to the arbitrator the determination as to whether a condition precedent to arbitration has been fulfilled and whether a contract containing a valid arbitration agreement is enforceable. This section allows an arbitration to continue pending a court's determination unless the court issues a stay.
- §55-10-9 describes the procedures to be used by the courts to evaluate motions to compel or stay arbitration, and requires that a court "proceed summarily to decide the issue" and that a decision on arbitrability be made before the judicial proceeding goes forward.
- §55-10-10 grants a court the authority to award provisional remedies before the arbitration proceedings commence and allows the arbitrator to do so after the arbitrator has been appointed.
- §55-10-11 describes the steps required to initiate an arbitration proceeding, including a requirement that service be accomplished in an agreed manner, service authorized for the commencement of the action or, by certified or registered mail, return receipt requested and obtained.
- §55-10-12 allows for separate arbitration proceedings to be consolidated by a court.
- §55-10-13 provides that, in the event the parties are unable to select an arbitrator, or an arbitrator becomes unable to fulfill his duties, the court can appoint an arbitrator. An arbitrator so

appointed has all the powers of an arbitrator appointed pursuant to the parties' arbitration agreement. This section also provides that, if an arbitration agreement calls for arbitrator neutrality, then no one with a "known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party" may serve as an arbitrator.

- §55-10-14 requires disclosure by an arbitrator of any facts that "a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding," and lays out the steps to be taken if the arbitrator does disclose a conflict that merits disqualification or fails to do so.
- §55-10-15 provides that, when panels of arbitrators sit, their powers must be exercised by a majority.
- §55-10-16 grants arbitrators the same civil immunity as that afforded to judges of the State of West Virginia, and provides that arbitrators are not competent to testify in a judicial proceeding, unless certain conditions exist, such as when the arbitrator's testimony is necessary to determine the claim of an arbitrator against a party to a proceeding or on a party's motion to vacate. If a party commences an action against an arbitrator that seeks to compel actions that are prohibited by the arbitrator or arbitration organization is entitled to attorney's fees and reasonable expenses of litigation.
- §55-10-17 lays out the arbitration process generally, granting the arbitrator broad discretion to conduct the arbitration in a manner appropriate "for a fair and expeditious disposition of the proceeding." This section permits summary disposition under certain circumstances, sets the manner in which an evidentiary hearing is to be convened and lays out certain necessary elements of that hearing.
- §55-10-18 guarantees a right to representation by a West Virginia licensed attorney.
- §55-10-19 addresses procedural matters concerning witnesses, subpoenas, depositions and discovery. Specifically, this section permits an arbitrator to issue subpoenas for the attendance of witnesses and provision of records and evidence for an arbitration hearing, grants the arbitrator discretion to permit appropriate discovery, to compel a party to comply with a discovery order, and to issue a protective order if appropriate. Any order issued by an arbitrator under this section may be enforced by a court if necessary.
- §55-10-20 allows a party to submit an arbitration award to a circuit judge for enforcement and to incorporate any pre-award ruling therein. This section also requires the court to confirm the award "unless the court vacates, modifies or corrects the award" as provided under later sections of the article.
- §55-10-21 requires an arbitrator to make a record of the award. Such award must set forth findings of fact and conclusions of law that support the award, and must be done within the time specified within the agreement, or within the time ordered by the court.
- §55-10-22 identifies certain limited circumstances in which an arbitrator, on motion by a party, may modify or correct an award. A party making such a motion must provide notice to all parties, and any objections by other parties must be given within ten days. This section also allows a court to resubmit a claim to an arbitrator under certain circumstances if the award is before the court for confirmation, vacatur or modification under later provisions of the article.
- §55-10-23 permits an arbitrator to award punitive damages and/or reasonable attorney's fees if those are permitted in a civil action concerning the same cause of action, and further permits the

arbitrator to award “such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding.” This section requires a statement by the arbitrator justifying in both fact and law the award of any attorney’s fees or punitive damages. An additional provision requires that any expenses and fees that are ordered paid as part of the arbitrator’s award must be awarded pursuant to the terms of the parties’ arbitration agreement.

- §55-10-24 permits a party to apply to the court to confirm an award ordered by an arbitrator.
- §55-10-25 addresses vacating an arbitration award, and sets forth limited circumstances in which a court may vacate an award made in an arbitration proceeding, including:
 - corruption, fraud or other undue means
 - evident partiality, misconduct or corruption by an arbitrator
 - exceeding an arbitrator’s powers, among others.
 - Procedures for challenging an award and steps to be taken after an award is vacated are also laid out and include a provision that allows the court to order a rehearing.
- §55-10-26 identifies limited circumstances in which a court may modify or correct an award made by an arbitrator. A motion seeking this relief must be made within ninety days after the movant receives notice of the award or notice of a modified or corrected award.
- §55-10-27 directs court to enter judgment in conformity with the arbitration award, which allows for the judgment to be recorded, docketed and enforced. Lists certain costs that may be allowed for judicial proceedings subsequent to arbitration, including attorney’s fees in certain cases.
- §55-10-28 grants jurisdiction to enforce arbitration agreements and enter conforming judgments to courts with jurisdiction over the controversy.
- §55-10-29 specifies the appropriate venue for making application to courts.
- §55-10-30 permits appeals to be taken of certain circuit court actions, including:
 - denying a motion to compel arbitration
 - granting or denying a motion to compel arbitration issued in an action filed pursuant to the provisions of the West Virginia Consumer Credit Protection Act
 - granting a motion to stay arbitration
 - confirming or denying confirmation of an award
 - modifying or correcting an award
 - vacating an award without directing a rehearing
 - final judgment
- §55-10-31 provides that the Act will be interpreted in such a way as to “promote uniformity of the law with respect to its subject matter among states that enact it.”
- §55-10-32 confirms that the provisions in this article comply with Section 102 of the Electronic Signatures in Global and National Commerce Act, which ensures the validity of contracts entered into electronically.
- §55-10-33 clarifies that the article does not retroactively affect actions already in process at the time of its adoption, nor does not affect rights that have already accrued to the parties.

CODE REFERENCE: West Virginia Code §55-10-1, §55-10-2, §55-10-3, §55-10-4, §55-10-5, §55-10-6, §55-10-7 and §55-10-8 – amended; §55-10-9, through §55-10-25, §55-10-26 through §55-10-33 – new

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: July 1, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

Senate Bill 280

Allowing well work permit transfers

OIL AND GAS

This bill permits the transfer of well work permits, such as in the case of an asset purchase, upon approval of the Secretary of the Department of Environmental Protection. This changes the current law, under which well work permits are nontransferable and purchasers of assets must begin the application process over upon transfer of title. Approval of the secretary of DEP must be obtained prior to the transfer of the permits, must be in written form and must be supported by a finding that the proposed transferee meets all requirements for holding a well work permit. The transfer application shall be made upon forms prescribed by the secretary of DEP and must be accompanied by a permit transfer fee of \$500.00. Additionally, the transferee must provide notice to all parties entitled to notice of the original permit application and must update the “emergency point of contact” information required by §22-6A-7(b)(13).

CODE REFERENCE: West Virginia Code §22-6A-7 – amended

DATE OF PASSAGE: January 28, 2015

EFFECTIVE DATE: January 28, 2015

ACTION BY GOVERNOR: Signed February 4, 2015

Senate Bill 344

Relating to duty to mitigate damages in employment claims

This bill creates a new article of code to address certain damages available in employment claims and to codify a duty on the part of an employee to mitigate his or her damages, even in instances where that discharge is determined to be malicious.

First, the bill defines the terms “front pay” and “back pay.” It sets forth legislative findings and states that the purpose of the bill is to “provide a framework for adequate and reasonable compensation to those persons who have been subjected to an unlawful employment action, but to ensure that compensation does not far exceed the goal of making a wronged employee whole.”

Finally, the bill places an affirmative duty on the employee or former employee to mitigate past and future lost wages. The malice exception to the duty to mitigate damages is explicitly abolished, and the bill states that unmitigated or flat back pay and front pay awards are not an available remedy. It remains the defendant’s burden to prove the lack of reasonable diligence. With respect to the available remedies, the bill vests the trial judge with the duty to make a preliminary ruling on whether front pay or reinstatement is the appropriate remedy. If front pay is determined to be appropriate, then the judge is to determine the appropriate amount.

CODE REFERENCE: West Virginia Code §55-7E-1, §55-7E-2 and §55-7E-3 – new

DATE OF PASSAGE: March 10, 2015

EFFECTIVE DATE: June 8, 2015

ACTION BY GOVERNOR: Signed March 26, 2015

Senate Bill 357

The Coal Jobs and Safety Act of 2015

COAL

This bill creates the Coal Jobs and Safety Act of 2015. Legislative findings related to the Act are contained in §22A-1-41.

First, the bill permits construction of a coal waste pile or other coal waste storage area using demonstrated technologies or measures consistent with good engineering practices to prevent acid mine drainage discharge in §22-3-13.

The bill directs the state Department of Environmental Protection (DEP) to promulgate rules relating to contemporaneous reclamation (see §22-3-13) and the granting of inactive status with respect to a permit previously issued (see §22-3-19), giving consideration in both cases to the adoption of federal standards.

With respect to the state's Water Pollution Control Act, the bill amends §22-11-6 to extend the Clean Water Act safe harbor for compliance with National Pollutant Discharge Elimination System (NPDES) permits to Section 303 of the Clean Water Act, and with all applicable state and federal permit conditions, with certain limitations. The bill also authorizes the Secretary of DEP to promulgate an emergency rule revising aluminum water quality values using a hardness-based equation. The bill requires, in §22-11-8, that NPDES permit water quality standards be based upon the qualities of the individual discharge point and the receiving stream, and not a wholesale incorporation of state and federal water quality standards. A new section, §22-11-22a, sets forth civil penalties for violations of the provisions of any permit issued under this article.

The bill amends provisions related to the drug testing of miners. In §22A-1A-1, the bill extends the requirement for immediate temporary suspension of miners' cards in the case of a positive test for substance abuse to miners represented by a collective bargaining agreement, where it previously applied only to miners who were not so represented. Positive tests for prescription drugs cannot be excused with a prescription dated more than one year prior to the date of the drug test result.

§22A-2-6, relating to the moving of mining equipment in areas of active working, is completely rewritten by the bill. This section now requires that mining equipment being transported or trammed underground, other than ordinary sectional movements, shall be transported or trammed by qualified personnel. If it is transported in an area where trolley wire is energized, the bill prohibits anyone from being in by the equipment in the ventilating split that is passing over such equipment, except for those directly involved with transporting or tramping the equipment and shall be under the supervision of a certified foreman. To avoid accidental contact with power lines, face equipment shall be insulated and assemblies removed, if necessary, so as to provide clearance.

A proviso is added to §22A-2-28 and §22A-2-37 to permit the use of sideboards on shuttle cars on which cameras are installed. Also, §22A-2-37 is amended to extend the distance from which track may stop from the nearest working face from five hundred to fifteen hundred feet, require shelter holes to be spaced no more than one hundred five feet apart and authorizes the mine foreman to permit persons to ride on a locomotive when safe riding facilities are provided.

Finally, the bill abolishes the Diesel Equipment Commission, transferring its duties and powers to the director of the Office of Miners' Health Safety and Training (see §22A-2A-301, §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and §22A-2A-307).

Additional references to the Diesel Equipment Commission are modified throughout the code to eliminate references to the Diesel Equipment Commission give the Director of the Office of Miners' Health, Safety and Training (defined as "director" in §22A-2A-204a) the authority previously given to the Commission (see §22A-2A-101; §22A-2A-308; §22A-2A-309; §22A-2A-310; §22A-2A-402; §22A-2A-403; §22A-2A-404; §22A-2A-405; §22A-2A-501; §22A-2A-601; §22A-2A-602; §22A-2A-603; and §22A-2A-604).

CODE REFERENCE: West Virginia Code §22A-2A-302 through §22A- 2A-307 – repealed; §22-3-13, §22-3-19, §22-11-6, §22-11-8, §22A-1A-1, §22A-2-6, §22A-2-28, §22A-2-37, §22A-2A-101, §22A-2A-301, §22A-2A-308, §22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405, §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603, and §22A-2A-604 – amended; §22-11-22a, §22A-1-41, and §22A-2A-204a – new

DATE OF PASSAGE: March 3, 2015

EFFECTIVE DATE: June 1, 2015

ACTION BY GOVERNOR: Signed March 12, 2015

Senate Bill 411

Creating Asbestos Bankruptcy Trust Claims Transparency Act and Asbestos and Silica Claims Priorities Act

This bill creates two acts – the Asbestos Bankruptcy Trust Claims Transparency Act (§55-7E-1 et seq.) and Asbestos and Silica Claims Priorities Act (§55-7F-1 et seq.).

The Asbestos Bankruptcy Trust Claims Transparency Act

Broadly speaking, this portion of the bill provides mechanisms to allow defendants, juries and the courts to be informed of all of the possible trust claims that a plaintiff in an asbestos action has or could bring. To do that, this Act requires disclosures of existing and potential asbestos bankruptcy trust claims. It establishes legal standards and procedures for the handling of asbestos claims. It provides for sanctions for failing to make the required disclosure. It provides for set-offs against any award of damages in the amount of any payment that has been or reasonably could have been obtained from an asbestos bankruptcy trust.

§55-7E-1 provides the short title for the Act. §55-7E-2 sets forth legislative findings related to the existence of asbestos bankruptcy trusts outside the tort system and the lack of coordination and transparency between the two systems, and further states the purpose of the act to provide transparency and reduce fraud. §55-7E-3 defines a number of terms.

The next section, §55-7E-4, requires certain disclosures be made by plaintiffs in asbestos actions filed in the State. First, a plaintiff must provide all parties with a sworn statement identifying all asbestos trust claims that have been filed or potentially could be filed by the plaintiff or by anyone on the plaintiff's behalf, including claims with respect to asbestos-related conditions other than those that are the basis for the asbestos action. The section sets forth what information shall be included in such statement, and that it shall include an attestation under penalty of perjury that it is complete and is based on a good faith investigation of all potential claims against asbestos trusts. A plaintiff must make available to all parties all trust claims materials for each trust claim, and the plaintiff has a continuing duty to supplement those disclosures. Failure to follow the requirements of the article shall constitute grounds for the court to decline to extend the trial date in an asbestos action.

Other provisions govern the procedural aspects of the asbestos litigation. §55-7E-5 includes provisions related to the use and admissibility of trust claims documents. §55-7E-6 provides that a court shall stay an asbestos action if it finds that plaintiff has failed to make the required disclosures within 120 days prior to the trial date. It also provides that if, in its disclosures the plaintiff identifies potential trust claims, the court action shall be stayed until plaintiff files those trust claims and provides all parties with all trust claims materials for the claim. A plaintiff must also disclose the procedural posture of the claim.

§55-7E-7 lays out the actions that defendants can take if they identify an asbestos trust claim the plaintiff has not identified, and provides mechanisms for those actions. Once the defendant has made the showing required in this section, the plaintiff has 10 days to either (1) file the asbestos trust claim; (2) file a written response with the court describing why there is insufficient evidence to support the claim; or (3) file a response with the court requesting a determination that the plaintiff's anticipated expenses in filing the claim exceed his reasonably anticipated recovery from the trust. If the court determines the trust claim should have been filed, it shall order the plaintiff to file the claim and stay the asbestos action pending filing and distribution of trust claim materials to the defendants. However, if the court determines the claim is not economically worth filing, the court shall stay the action until the plaintiff

provides all parties a verified statement of his history of exposure, usage or other connection to asbestos covered by the trust. Not less than 30 days prior to trial, the court shall enter into the record a trust claims document that identifies each claim the plaintiff has made against an asbestos trust.

The next section, §55-7E-8, provides that filing of a trust claim that has not yet been resolved may be considered relevant and admissible evidence, that trust claim materials sufficient to entitle a claim to consideration for payment under the applicable trust governance documents may support a jury finding that plaintiff was exposed to products that are the subject of the trust, and that such exposure may be a substantial factor in causing plaintiff's injury at issue in the asbestos civil action. Defendants are entitled to a setoff or credit in §55-7E-9 against any judgment in the amount of the valuation established under applicable trust governance documents. If multiple defendants are found liable, the court shall distribute the amount of setoff or credit proportionately among the defendants according to their percentage of liability.

A plaintiff who fails to provide all information required by this article is, pursuant to §55-7E-10, subject to sanctions under the West Virginia Rules of Civil Procedure and any other relief the court considers just and proper. Finally, §55-7E-11 makes this Act applicable to all asbestos actions filed on or after the effective date of the article.

The Asbestos and Silica Claims Priorities Act

This portion of the bill establishes medical criteria and procedures for asbestos and silica claims. It prohibits consolidation of cases for trial except for those relating to the exposed person and members of their household, but does not prohibit consolidation of cases for pretrial and discovery purposes. It prohibits class actions and also prohibits causes of action against manufacturers of non-asbestos containing products that were then sold to a third party who added asbestos to the final product, even where such third parties are not amenable to suit due to insolvency or immunity. The Act prohibits any award of damages for fear of increased risk of future disease, and further prohibits causes of action against premises owners for off-premises exposure or any punitive damages. The Act applies to both future and pending claims.

The short title is set forth in §55-7F-1, and §55-7F-2 contains a number of legislative findings detailing the history of asbestos and silica claims in West Virginia, and states the purposes of the Act. A number of terms are defined in §55-7F-3.

§55-7F-4 requires a plaintiff in an asbestos or silica action alleging a nonmalignant condition to file a "detailed narrative medical report and diagnosis," which is signed by a qualified physician who does not work for or on behalf of the plaintiff's attorney or law firm, and accompanied by supporting documentation. A defendant must be afforded a reasonable opportunity to challenge the adequacy of the prima facie evidence, and if a prima facie case is not made, the case shall be dismissed upon a finding of failure to establish a prima facie showing. This section also identifies the information that plaintiffs must provide with their complaint and requires that asbestos and silica actions must be filed separately.

The elements required to be proven in an asbestos action alleging a nonmalignant asbestos-related condition are enumerated in §55-7F-5. Likewise, §55-7F-6 identifies the elements to be proven in an silica action alleging silicosis. In §55-7F-7, the bill sets standards that evidence of physical impairment offered in any action governed by this legislation must satisfy.

The bill lays out the procedures to govern these actions in §55-7F-8. Specifically, the bill requires that evidence relating to the required prima facie showing does not create any presumption that the exposed

person has an asbestos or silica-related injury or impairment and shall not be conclusive as to the liability of any defendant. No evidence may be introduced at trial and no jury shall be informed of the grant or denial of a motion to dismiss for failure to establish a prima facie case as defined in this bill, or the elements required to present a prima facie showing of asbestos or silica-related impairment. No discovery may take place until the plaintiff has established a prima facie case, as evidenced by the entry of an order by the court to that effect, unless the court so orders upon motion of a party and for good cause shown. This section also allows for consolidation of cases only upon consent of the parties, except that cases may be consolidated for pretrial and discovery purposes. No class actions of these claims are permitted.

§55-7F-9 provides that the statute of limitations shall not begin to run on an exposed person's cause of action before the earlier of the date the person receive the relevant medical diagnosis, the date when the person discovered facts that would lead a reasonable person to obtain a medical diagnosis, or the date of death of the exposed person. This section also provides that an asbestos or silica related action arising out of a non-malignant condition is a distinct cause of action from one for an asbestos or silica related cancer, and states that no damages shall be awarded for fear of increased risk of future disease in an asbestos or silica action.

Finally, like the Asbestos Bankruptcy Trust Claims Transparency Act, this Act is made applicable to all asbestos actions filed on or after the effective date of the article by §55-7F-17.

CODE REFERENCE: West Virginia Code §55-7E-1 through §55-7E-11 – amended; §55-7F-1 through §55-7F-10 – new

DATE OF PASSAGE: March 11, 2015

EFFECTIVE DATE: June 9, 2015

ACTION BY GOVERNOR: Signed March 18, 2015

Senate Bill 423

Amending Aboveground Storage Tank Act

ENVIRONMENT

This bill made significant modifications to the Aboveground Storage Tank Act passed by the Legislature during the 2014 session. Overall, the bill now focuses enforcement and regulatory efforts on tanks with a capacity of 10,000 gallons or above within zones of critical concern of public water utilities. Certain definitions are amended and new ones have been added. The bill provides that the owner or operator of a tank must certify its compliance with an approved industry standard or program, or to the standards developed by the Department of Environmental Protection (DEP) by rule. Releases are defined in the same way as in other programs administered by the Department of Environmental Protection. Spill prevention and response plans are required. Much of Article 31 of Chapter 22 has been deleted, although key provisions have been moved to Article 30.

The bill adds a new section of code to the chapter relating to public health. §16-1-9f directs the Secretary of the Department of Health and Human Resources, in coordination with DEP and the Division of Homeland Security and Emergency Management, to compile an inventory of all potential sources of significant contamination within a public water system's zone of critical concern, and then to identify which of those sources are not currently permitted or subject to regulation by DEP.

Within the Aboveground Storage Tank Act itself (Article 30), slight modifications were made to the legislative findings set forth in §22-30-2.

The bill amends the definition of an "aboveground storage tank" ("AST") in §22-30-3.

The substance of the definition is maintained, but the definition now acknowledges that certain tanks, specifically those that contain hazardous waste that are regulated pursuant to 40 CFR §§ 264 and 265 (excluding those subject to regulation under 40 CFR § 265.201), fall within the definition of an AST but are not regulated tanks. Twelve categories of tanks are specifically exempted from the definition of an AST:

- Shipping containers already subject to federal law or regulation governing hazardous materials including railroad freight cars;
- Barges or boats;
- Swimming pools;
- Process vessels;
- Devices containing drinking water, surface or groundwater, demineralized water, non-contact cooling water or water stored for fire or emergency purposes;
- Devices containing food for human or animal consumption that are regulated under the Federal Food, Drug and Cosmetic Act;
- Devices located on a farm used exclusively for farm, but not commercial, purposes, except where that device is located in a zone of critical concern;
- Devices holding wastewater that is actively being treated or processed;
- Empty tanks in inventory or being offered for sale;
- Pipeline facilities including gathering lines regulated under the Natural Gas Pipeline Safety Act (1968) or Hazardous Liquid Pipeline Safety Act (1979), or intrastate pipeline regulated by the West Virginia Public Service Commission or other state law comparable to the NGPSA or HLPSCA;

- Liquid traps, atmospheric and pressure vessels or associated gathering lines related to oil and gas production or gathering lines; and
- Electrical equipment.

New definitions are added for “first point of isolation,” “regulated level 1 aboveground storage tank,” “regulated level 2 aboveground storage tank,” “regulated aboveground storage tank,” and “zone of peripheral concern,” while additional definitions, such as “process vessel,” “public water system,” “release” and “zone of critical concern” are modified.

In §22-30-4, the bill deletes the requirement that an inventory of tanks include all tanks, “regardless of whether it is an operational or nonoperational storage tank.” Tank owners or operators are required to submit a registration form for their tanks no later than July 1, 2015, even if the tank is placed into service after the effective date of this section. The information required to be included in the registration form is modified to delete the requirement that the tank owner or operator identify the nearest groundwater public water supply intake or surface water downstream public water supply intake, and to add information concerning the circumstances under which the registration must be updated. The Secretary of DEP is no longer required to make certain determinations about the tank’s design, construction and leak performance. Finally, new fees are codified: \$40 registration fee for all ASTs placed in service before July 1, 2015, and \$20 per tank for those placed into service thereafter.

The AST regulatory program is detailed in §22-30-5, and has been substantially modified by the bill. This section directs DEP to develop a regulatory program for new and existing regulated ASTs and secondary containment that takes into account the size, location and contents of the tanks. This program must set out “tiered requirements” for regulated tanks, with Level 1 tanks being regulated to a higher standard than Level 2 tanks due to their proximity to an intake. The rules promulgated by DEP must include:

- criteria for the design, construction and maintenance of ASTs
- criteria for the design, construction, maintenance or methods of secondary containment
- criteria for the design, operation, maintenance or methods of leak detection including visual inspections, and inventory control system, together with tank testing or comparable system designed to identify AST leaks
- record keeping requirements
- requirements for the development of maintenance and corrosion prevention plans
- requirements for closure of ASTs, and necessary remediation resulting from an AST release
- assessment of registration fee, annual operation and response fees
- the issuance of a certificate to operate (“CTO”) after submission of an application, with review and approval by WVDEP, and,
- a procedure for administrative resolution of violations including assessment of civil penalties.

Additionally, Section 5 gives the Secretary of DEP authority to, at the request of the permittee, modify portions of permits and other plans issued pursuant to other provisions of Chapter 22 in order to include conditions pertaining to the management and control of regulated tanks.

The plans and permits that may be so amended include those issued pursuant to (1) the Surface Coal Mining and Reclamation Act, (2) the Office of Oil and Gas’s authority found in W. Va. Code §§22-6 and 22-6A, or plans required under 35 CSR 1, (3) the National Pollution Discharge Elimination System, and (4) the Solid Waste Management Act, as well as any groundwater protection plans developed pursuant to W.

Va. Code §22-12. If a plan or permit is so modified to conform to the requirements of this Act, it is deemed to comply with the requirements of the Act, so long as the registration requirements are met.

The bill amends §22-30-6 to require regulated ASTs to be evaluated by a qualified individual (as defined in the bill), and to require owners and operators of ASTs to submit certifications of that evaluation to DEP. Initial certifications of evaluation must be completed within 180 days of the effective date of the rules promulgated by DEP.

These evaluations are no longer required to be done annually, and the bill now permits DEP to set the timeline for subsequent review by legislative rule, but provides that the time in between evaluations may be no less than one year.

In §22-30-7, the provisions concerning financial responsibility are modified to limit the applicability of the section to owners and operators of regulated ASTs, and it gives the secretary of DEP authority to determine which bonds and other guarantees of performance satisfy the requirements of this section, which generally requires evidence of adequate financial resources to undertake any necessary corrective action.

With respect to corrective action, §22-30-8 is amended to eliminate the requirement that the operator or owner of an AST develop a “preliminary corrective action plan” considering the types of fluids and tanks. Further, the Secretary of DEP is authorized to use money from the Protect Our Water Fund to undertake corrective action in the event of an actual release from an AST.

The requirement to prepare and submit a spill prevention and response plan, or SPRP, as required by §22-30-9, is limited to regulated ASTs, and may be submitted for a facility or location. SPRPs must be submitted no less frequently than every five years, a change from the three year submission timetable under current law, unless an event occurs that requires updating sooner. The bill modifies the specific contents of the SPRP as well, and the requirements that these plans be site-specific and developed in consultation with the Bureau for Public Health are removed. In lieu of an SPRP meeting these requirements, AST owners or operators may certify that their AST is subject to a groundwater protection plan or spill prevention control and countermeasures plan, and such plan must be made available for review by the Secretary of DEP.

§22-30-10 directs owners and operators of regulated ASTs to give notice to the applicable public water system and relevant emergency response organizations of the contents of the ASTs, as well as provide the location of the Safety Data Sheets associated with the stored fluids. An alternative disclosure method is also provided. In both cases, the information provided is protected from disclosure under §22-30-14, which addresses public access to information provided under this article.

§22-30-11 permits the signage required under the Act to be “displayed nearby.” Minor changes are made to §22-30-12 to provide for the collection of an annual operating fee in addition to an initial registration fee.

The bill modifies the section, §22-30-13, that creates the Protect Our Water Fund. This section has been amended to allow monies from this fund to be expended to address “releases” from ASTs, and not merely leaks, and to limit the applicability of the section to regulated ASTs, rather than all ASTs. A cap is placed on the contents of the fund, and thereby the fees that can be collected, of \$1 million at the end of three years, and \$1 million in the aggregate thereafter.

The provisions of §22-30-14, addressing public access to information, are modified to restrict public access to information designated by the Division of Homeland Security and Emergency Management as

restricted from public access, including trade secrets and proprietary business information, and requires that such information be “secured and safeguarded” by the department. A criminal misdemeanor penalty for unauthorized disclosure is added that carries penalties of up to 1 year in prison and a \$5,000 fine if convicted. If there is a release into the waters of the State that could affect a public water supply, information about the release must be promptly made available to emergency responders.

In §22-30-15, the bill changes the inspection schedule, providing that “level 1” ASTs be inspected at least once every five years, and that a schedule for inspection of “level 2” ASTs be established by legislative rule. In §22-30-16, authority is given to the Environmental Quality Board to stay orders entered by the Secretary of DEP alleging violations of the Act. Appeal to the Environmental Quality Board is authorized, pursuant to §22-30-18, to challenge any “action, decision or order of the secretary,” whereas current law allows for appeals only from an “order.”

Civil and criminal penalties are modified in §22-30-17. First, the language in the section is amended to refer to “certificates to operate” rather than “permits.” Similar changes are made in §22-30-24. The misdemeanor for “knowingly and intentionally violat[ing] any provision of this article” is expanded to also cover violation of “any rule or order issued under or subject to the provisions of this article,” while felony charges are reserved only for subsequent willful violations.

A person cannot be subject to criminal prosecution for pollution when carrying out a corrective action plan approved by the secretary of DEP. Finally, civil penalties collected may be deposited either in the Protect Our Water Fund or in the AST Administrative Fund. Technical changes are made to §22-30-19, which addresses duplicative enforcement.

In §22-30-21, the bill directs the Division of Homeland Security and Emergency Management, rather than the Secretary of DEP, to coordinate with state and local emergency response agencies to facilitate a coordinated emergency response and incident command. The requirement that the Secretary of DEP coordinate with the State Fire Marshal concerning National Incident Management System Training provisions is eliminated.

§22-30-22 expands the venue in which the Secretary of DEP may bring suit to either the circuit court of the county in which the “imminent and substantial danger exists” or the circuit court of Kanawha County. In the event of such a danger, the Secretary of DEP shall require the owner or operator of the AST to provide immediate notice to appropriate governmental authorities.

The bill amends §22-30-25 to permit the secretary of DEP to designate via legislative rules additional categories of ASTs for which one or more of the requirements of the Act may be waived. Waiver will be permitted only when those categories of ASTs “do not represent a substantial threat of contamination or they are currently regulated under standards that are consistent with the protective standards and requirements set forth in this article.”

A new section, §22-30-26, which was originally contained in Article 31, provides that any person who holds an NPDES general permit for a facility containing regulated ASTs may be required by the secretary to obtain an individual permit, a change from the current law that makes such individual permit mandatory.

Article 31 of Chapter 22 is substantially repealed. This includes the repeal of §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12. The Public Water System Supply Study Commission initially contained in §22-31-12 has been relocated to §22-31-2, replacing the Act’s legislative findings. The composition of the Study Commission is modified, and will

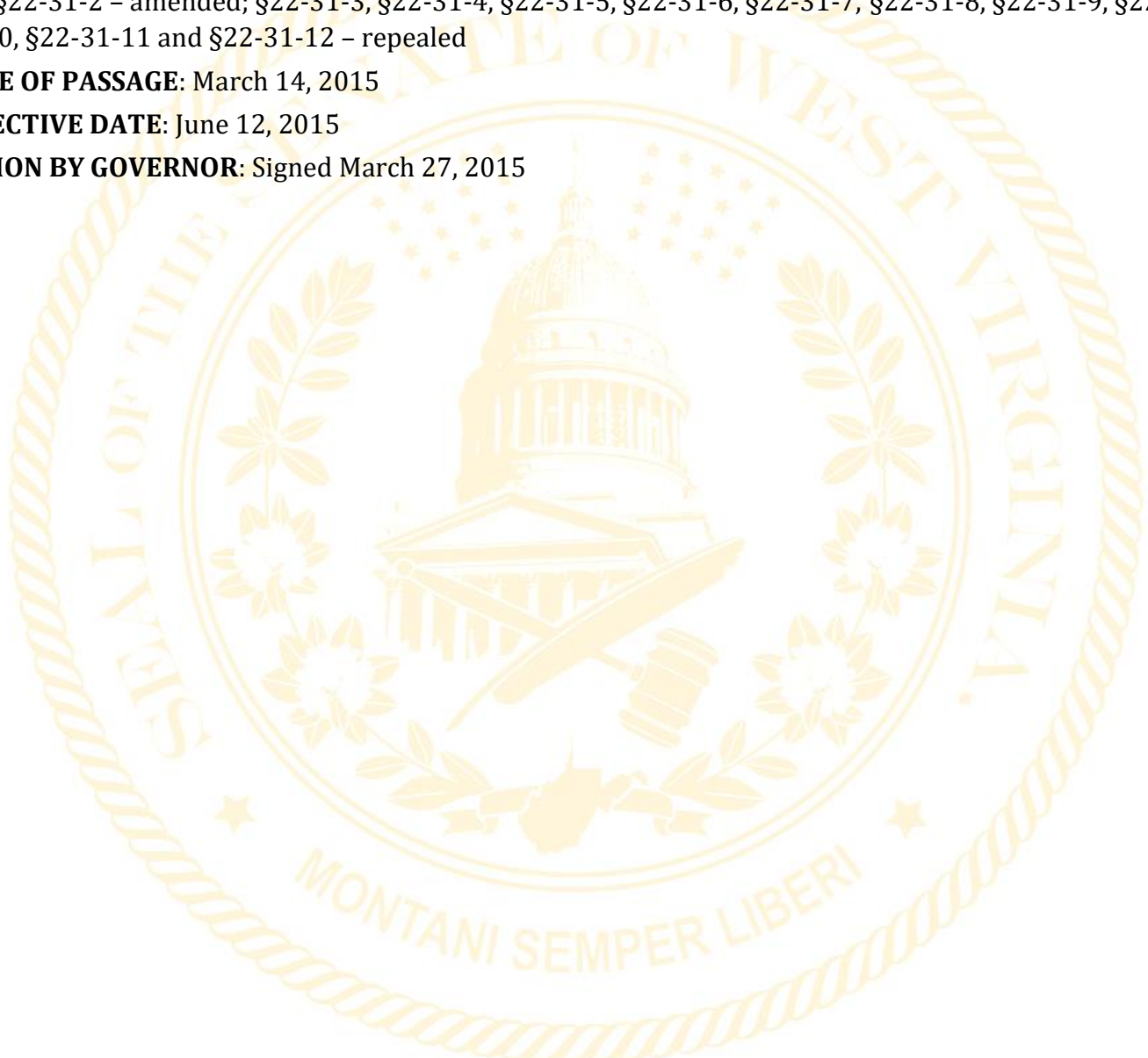
now contain three members appointed by the Governor, the designation of the Commissioner of the Bureau for Public Health as chair, the elimination of the nonvoting members appointed by the President of the Senate and the Speaker of the House, the inclusion of two representatives designated by the Business Industry Council, and one representative designated by the West Virginia Rivers Coalition. The Study Commission shall terminate on June 30, 2019.

CODE REFERENCE: West Virginia Code §16-1-9f and §22-30-26 – new; §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11, §22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16, §22-30-17, §22-30-18, §22-30-19, §22-30-21, §22-30-22, §22-30-24, §22-30-25 and §22-31-2 – amended; §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12 – repealed

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 27, 2015



Senate Bill 489

Imposing statute of limitations on civil actions derived from surveying of real property

The bill adds actions relating to the actual surveying of real property to the 10-year statute of repose on actions for damages arising from activities related to improvements to real property.

CODE REFERENCE: West Virginia Code §55-2-6a – amended

DATE OF PASSAGE: March 10, 2015

EFFECTIVE DATE: June 8, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

Senate Bill 578

Relating to occupational disease claims

Under current law, the claimant, the employer and the Workers' Compensation Commission, other private insurance carriers and self-insured employers, whichever is applicable, may negotiate a final settlement of any and all issues in a claim, wherever the worker's compensation claim is in the administrative or appellate processes, except for medical benefits for nonorthopedic occupational disease claims. This bill removes the exception for settlements of medical benefits for nonorthopedic occupational disease claims, which would permit the negotiation of final settlements of all components of worker's compensation claims, permitting settlements of medical benefits for nonorthopedic occupational disease claims, including settlements of occupational pneumoconiosis claims. The bill requires that a claimant in a settlement of medical benefits for a nonorthopedic occupational disease claims be represented by legal counsel.

The bill specifies that the amendments enacted during the current 2015 regular session of the Legislature apply to all settlement agreements executed after the effective date of the legislation.

CODE REFERENCE: West Virginia Code §23-4-8d – amended

DATE OF PASSAGE: March 10, 2015

EFFECTIVE DATE: June 8, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

House Bill 2001

Repealing portions of the Alternative and Renewable Energy Portfolio Act

ENERGY
PORTFOLIO

This bill repeals, in its entirety, the Alternative and Renewable Energy Portfolio Act, Article 2F of Chapter 24. This Act passed the House in the Regular Session of 2009 in a slightly different form, but was later passed in a Special Session in the late Spring of that year. Various minor changes were made between the two versions.

The provisions to be repealed mandate the Public Service Commission to establish a system of tradable credits stemming from the established, verified and monitored generation and sale of electricity generated from alternative and renewable energy resource facilities, as defined by section three of the article. The credits thus established were to be available for electrical power generators to trade, sell or otherwise be used to meet the portfolio standards established by section five of the article. Under the provisions of that section, each electric utility in this state is required to own an amount of credits equal to a certain percentage of electricity, sold by the electric utility in the preceding year to retail customers in West Virginia. These credits are to be phased in over a ten year period. For the period beginning January 1, 2015, and ending December 31, 2019, each utility is to own credits in an amount equal to at least ten percent of the electric energy sold by the electric utility. For the period beginning January 1, 2020, and ending December 31, 2024, an electric utility is to own credits in an amount equal to at least fifteen percent of the electric energy sold to retail customers. Commencing on January 1, 2025, this percentage is to equal 25% of all electrical energy sold.

Functionally, this means power generators have to either generate the mandated percentage from a renewable source themselves, or, alternatively, purchase the credits from power generators who have an excess of the mandated percentage generated from power generation operations derived from alternative and renewable energy resource facilities. On or before January 1, 2011, each electric utility subject to the provisions of the article was required to prepare an alternative and renewable energy portfolio standard compliance plan and to file an application with the Public Service Commission seeking approval of such plan. On or after January 1, 2015, and each year thereafter, the Commission is required to determine whether each electric utility doing business in this state is in compliance with these requirements. If, after notice and a hearing, the Commission determines that an electric utility has failed to comply with an alternative and renewable energy portfolio standard, the Commission is required by the article to impose a compliance assessment on the electric utility, in amounts delineated by guidelines contained in the article.

In furtherance of the provisions of the article, a regime of cost recovery and rate incentives is currently provided. These are designed to stimulate electric utility investment in alternative and renewable energy resources.

Additionally, and importantly, as shall be seen, the Public Service Commission was required to adopt a rule requiring that all electric utilities provide a rebate or discount at fair value, to be determined by the commission, to customer-generators for any electricity generation that is delivered to the utility under a net metering arrangement; to, further, consider adopting, by rule, a requirement that all sellers of electricity offer net metering rebates or discounts to customer-generators, and to institute a general investigation for the purpose of adopting rules pertaining to net metering.

The Public Service Commission was permitted by the article to enter into interagency agreements with the Department of Environmental Protection and the Division of Energy to carry out the responsibilities mandated by the article, including conducting an ongoing alternative and renewable energy resource planning assessment for this state, including recommending to the Legislature additional compliance goals for alternative and renewable energy portfolio standards beyond 2025. The Public Service Commission was required to consider adopting, by rule, alternative and renewable energy portfolio requirements for rural electric cooperatives, municipally owned electric facilities or utilities serving less than thirty thousand residential electric customers in this state.

The article also established in the state Treasury a special revolving fund to be jointly administered by the Public Service Commission and the Division of Energy designated the “Alternative and Renewable Energy Resources Research Fund.” Moneys in the fund are to be used to award matching grants for demonstration, commercialization, research and development projects relating to alternative and renewable energy resources and energy efficiency technologies. Rulemaking authority was also provided to the Public Service Commission for the making of all rules required by the article.

The effect of the bill is to completely repeal all of the provisions of this article.

This Committee Substitute was drafted to address concerns raised in the Energy Committee regarding the effect of repeal of the entire article on net metering and interconnectivity; according to reports in the media this morning, the “Senate Energy Committee members delayed advancing their version of the bill Thursday, to allow a rewrite that will repeal most of the Alternative Energy Portfolio Act — but retain the net metering provisions.”

CODE REFERENCE: West Virginia Code §24-2F-1 through §24-2F-12 – repealed

DATE OF PASSAGE: January 28, 2015

EFFECTIVE DATE: January 28, 2015

ACTION BY GOVERNOR: Signed February 3, 2015

House Bill 2002

Predicating actions for damages upon principles of comparative fault

This bill changes the law in West Virginia concerning the apportionment of fault in tort actions. It repeals two sections of code. The first, §55-7-13, established a statutory claim for contribution by joint judgment debtors, while §55-7-24 set out the manner in which Courts are to apply joint and several liability to judgment debtors in West Virginia.

Four new sections of code are added by the bill. First, §55-7-13a establishes the modified comparative fault standard by defining the term “comparative fault” as “the degree to which the fault of a person was a proximate cause of an alleged personal injury or death or damage to property, expressed as a percentage” and directs recovery in tort actions to be based on principles of comparative fault whereby the fault and damages should be apportioned “in direct proportion to that person’s percentage of fault.” In §55-7-13b, a number of terms are defined, including “compensatory damages,” “defendant,” “fault” and “plaintiff.”

§55-7-13c requires in subsection (a) that in any action for damages, liability shall be several, rather than joint, and that each defendant is only liable for the amount of damages in direct proportion to that defendant’s percentage of fault. The bill allows joint liability to be imposed when two or more defendants “consciously conspire and deliberately purpose a common plan or design to commit a tortious act or omission.”

The procedure for the sitting judge to use in apportioning damages is spelled out in subsection (b), requiring the percentage of fault to be multiplied by the total damages to determine a defendant’s maximum liability.

Subsection (c) allows a plaintiff to recover, even if partially at fault, so long as the plaintiff’s fault is less than the combined fault of all other persons. An exception to a defendant’s maximum liability is provided in subsection (d), which allows a plaintiff who is unable to collect from one of the defendants to file a motion to collect the uncollectible amount from the other defendants, but the defendant’s apportionment is limited to his own percentage of fault multiplied by the uncollectible amount. This section also identifies a number of situations in which defendants shall continue to be jointly and severally liable, and a number of sections of Code to which this provision does not apply.

Finally, in §55-7-13d, the bill spells out, in subsection (a), how fault is to be determined. In particular, the bill requires that the fault of all persons who contributed be considered, regardless of whether the person was or could have been named as a party to the litigation. Under certain circumstances the fault of a nonparty can be considered, such as if the plaintiff entered into a settlement agreement with the nonparty or if a defendant gives notice identifying that nonparty. If a nonparty is assessed fault, or if a plaintiff has settled with a nonparty, then the plaintiff’s possible recovery is reduced by that percentage. The subsection clarifies that assignments of fault for nonparties are not binding in subsequent actions. Special interrogatories are to be used by the triers of fact to determine fault.

In subsection (b), the bill clarifies that a party may still be held liable for another person’s fault if that person was acting as an agent of the party or by any other applicable provision of statutory or common law. Subsection (c) provides that a defendant is not liable for damage suffered by a plaintiff in the commission of, or while attempting to flee from the commission of, a felony criminal act, so long as the plaintiff has been convicted or the jury makes a finding that the plaintiff committed the felony. The

burden of proof established in subsection (d) rests with the person seeking to establish fault. Subsection (e) clarifies that no independent cause of action is created by this section.

CODE REFERENCE: West Virginia Code §55-7-13 and §55-7-24 – repealed; §55-7-13a, §55-7-13b, §55-7-13c and §55-7-13d – new

DATE OF PASSAGE: February 24, 2015

EFFECTIVE DATE: May 25, 2015

ACTION BY GOVERNOR: Signed March 5, 2015



House Bill 2004

Providing a procedure for the development of a state plan under section 111(d) of the Clean Air Act

ENVIRONMENT

This bill requires the involvement and approval of the Legislature in the development of the State's plan as required by section 111(d) of the Clean Air Act. First, the bill establishes a new subsection setting forth legislative findings that details how the plan "necessitates establishment and creation of law affecting the economy and energy policy of this State," and declaring a compelling state interest to require legislative review and passage of law prior to submission of the plan to the Environmental Protection Agency (EPA).

Subsection (b) prohibits the Department of Environmental Protection (DEP) from submitting a plan to the EPA without specific legislative action granting such authority. This subsection clarifies that DEP is permitted to develop a proposed state plan in consultation with the DEP Advisory Council and other entities, in accordance with this section.

In subsection (c), the bill sets forth the timing of a proposed state plan to the Legislature, including requiring DEP to make certain determinations of feasibility of a state plan. The plan must be on a unit-specific performance basis, and must also be based upon either a rate-based model or a meter-based model. In addition to submitting the plan to the Legislature, DEP is also directed to publish the report and any proposed state plan on its website. The Legislature may approve the state plan in either regular session or special session.

If the EPA fails to issue, or withdraws, its federal rules or guidelines for reducing carbon dioxide, then the requirements of this section are void, and no state plan is necessary. If the Legislature refuses to approve DEP's proposed state plan, DEP must submit a modified plan for reconsideration by the Legislature.

CODE REFERENCE: West Virginia Code §22-5-20 – amended

DATE OF PASSAGE: February 19, 2015

EFFECTIVE DATE: February 19, 2015

ACTION BY GOVERNOR: Signed March 3, 2015

House Bill 2011

Relating to disbursements from the Workers' Compensation Fund where an injury is self inflicted or intentionally caused by the employer

This bill amends West Virginia's deliberate intent statute in an effort to clarify and clearly articulate the liability standards applicable to such a claim.

Subsection (a) adds additional specificity to the provisions permitting an employer to require an employee to undergo a blood test to determine if he or she is intoxicated by establishing a drug and alcohol testing procedure. The test must be a blood test and, if an employee tests positive as defined, then the intoxication is deemed the proximate cause of any injury.

The bill modifies subsection (c) by bifurcating the provisions related to employee injury from those related to employee death and lays out the specific rights to recovery in each case. A new provision is added to require that, unless good cause is shown, the employee or his or her representative file a claim for workers' compensation benefits.

In subsection (d), which spells out the specific factual findings that must be shown for an employer to lose the immunity provided under the workers' compensation code, the bill clarifies and adds to these findings. With respect to the second of the five findings, that the employer had actual knowledge of the specific unsafe working condition, the bill adds the requirement that actual knowledge be specifically proven by the employee or individual seeking to recover and sets forth the manner in which such actual knowledge can and cannot be proven. To satisfy the third element, the bill lays out the evidentiary standards for showing that the specific unsafe working condition was a violation of a safety statute, rule or regulation, or of a commonly accepted and well-known safety standard within the industry or business. Clarifying language is added to the fourth finding to ensure that the employer being sued under the deliberate intent exemption must be a person who has "actual knowledge" as required by the second of the five findings.

The bill also modifies the fifth of the findings in subsection (d), which requires a showing that the employee suffered "serious compensable injury or compensable death . . . as a direct and proximate result of the specific unsafe working condition." New language limits the factual circumstances supporting this finding to four:

- The injury results in a permanent physical and/or psychological impairment of at least thirteen percent, or that otherwise causes permanent serious disfigurement, permanent loss or significant impairment of a bodily function, or objectively verifiable dermatomal radiculopathy;
- The injury, as verified by a written certification by a licensed physician, is likely to result in death within eighteen months or less from the date of the filing of the complaint;
- The injury causes permanent serious disfigurement, permanent loss or significant impairment of a bodily function, or objectively verifiable dermatomal radiculopathy; or
- In the case of occupational pneumoconiosis claims, a verification from a board certified pulmonologist must be submitted showing that the employee is suffering from complicated pneumoconiosis or pulmonary massive fibrosis that has caused pulmonary impairment of at least fifteen percent, as confirmed by valid and reproducible ventilatory testing.

Certain procedural requirements for making a deliberate intent claim are also provided, including filing a verified statement from a person with "knowledge and expertise of the workplace safety statutes, rules, regulations and consensus industry safety standards" applicable to the particular injury. The

employer may request, and the court must duly consider, a request to bifurcate discovery related to liability from that related to damages.

Finally, in subsection (e), the bill provides that venue is appropriate in the circuit court of the county where the alleged injury occurred, or in the circuit court of the county where the employer has its principal place of business.

CODE REFERENCE: West Virginia Code §23-4-2 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015



House Bill 2201

Requiring the Public Service Commission to adopt certain net metering and interconnection rules and standards

UTILITIES/
ELECTRICITY

This bill amends the net metering provisions remaining in Chapter 24, Article 2F the code following the enactment of HB 2001, which repealed all of Article 2F except for section eight. The bill defines three new terms: “net metering,” “customer-generator” and “cross-subsidization.” Subsection (d) requires that the Public Service Commission (PSC), in adopting rules concerning electric utilities providing rebates or discounts for customer-generated electricity, ensure that any net metering tariff does not create a cross-subsidization between customers within one class of service. Subsection (g) requires electric utilities to offer net metering to customer-generators that generate electricity on the customer-generator side of the meter. This net metering will be offered on a first-come, first-served basis, and the total generation capacity is capped at 3 percent of aggregate customer peak demand in the state during the previous year of which one-half percent is reserved for residential customer-generators. Subsection (h) directs the PSC to adopt a rule requiring compliance with the National Electrical Code and the Institute of the Electrical and Electronics Engineers, including disconnect readily available to utility lineworkers.

CODE REFERENCE: West Virginia Code §24-2F-8 – amended

DATE OF PASSAGE: February 28, 2015

EFFECTIVE DATE: February 28, 2015

ACTION BY GOVERNOR: Signed March 12, 2015

House Bill 2626

Use of the Abandoned Land Reclamation Fund

COAL

The bill modifies limitations on the use of federal grant funds allocated to this State to address water and land reclamation needs arising from the effects of coal mining that occurred predominantly before 1977. These funds arise from federal reclamation fees imposed upon current coal production. The grants are deposited into the State's Abandoned Land Reclamation Fund.

The changes made by the bill mirror changes to those limitations that have been made in federal law. Specifically, the bill would remove the 30% limitation that once existed in federal law upon the expenditure of funds allocated to the state "for the purpose of protecting, repairing, replacing, constructing or enhancing facilities relating to water supply, including water distribution facilities and treatment plants, to replace water supplies adversely affected by coal surface mining practices." Also in conformance with federal law, the bill would increase from 10% to 30% the limitation that once existed in federal law upon the use of the grant funds for distribution by the Secretary of the State's Department of Environmental Protection into either the State's Reclamation and Restoration Fund or the State's Acid Mine Drainage Abatement and Treatment Fund. The purposes for these two funds are described in the bill and would remain unchanged.

CODE REFERENCE: West Virginia Code §22-2-4 – amended

DATE OF PASSAGE: March 9, 2015

EFFECTIVE DATE: June 7, 2015

ACTION BY GOVERNOR: Signed March 25, 2015

House Bill 2627

Providing protection against property crimes committed against coal mines, utilities and other industrial facilities

ENERGY
INFRASTRUCTURE

The purpose of this bill is to increase fines and criminal penalties for those who knowingly and willfully damage certain personal property. This bill does the following:

- Adds facilities that “store oil, timber, timber processing” to the existing list: natural gas, coal, water, wastewater, stormwater, and telecommunications or cable service.
- This section contains offenses with associated penalties:
- Knowingly and willfully damage or destroy property (with added facilities above): \$2,000 fine or one year in jail or both.
- Knowingly and willfully damage or destroy property and creates substantial risk of serious bodily harm: Felony, \$5,000 or one to three years in jail or both.
- Knowingly and willfully damage or destroy property and causes serious bodily injury: \$5-50,000 or one to three years in jail or both.
- Knowingly and willfully damage or destroy property and hinders, impairs or disrupts, directly or indirectly the normal operation: \$5-10,000 plus the cost to repair or one to three years in jail or both).

CODE REFERENCE: West Virginia Code §61-3-29 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Vetoed April 1, 2015

House Bill 3006

Relating to the determination of the adjusted rate established by the Tax Commissioner for the administration of tax deficiencies

The bill provides that for tax years beginning after December 31, 2016, the Tax Commissioner would fix the interest rate that is applicable to overpayments and deficiencies as the adjusted prime rate charged by banks plus three percentage points. The rate would be set based upon the adjusted prime rate on the first business day of December of the preceding year, and would be effective January 1st.

Currently, the interest rate for underpayments and deficiencies is based upon the adjusted prime rate charged by banks or 8%, whichever is higher. For the past several years, the prime rate charged by banks has been below 8%, so the effective tax rate for deficiencies has been 8%.

CODE REFERENCE: West Virginia Code §11-10-17a – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed April 2, 2015

Legislative Rulemaking



Senate Bill 279

Authorizing the Department of Environmental Protection to promulgate legislative rules

This bill is the Department of Environmental Protection bundle. It contains 8 rules.

Department of Environmental Protection – Ambient Air Quality Standards, 45 CSR 08

The rule amends a current legislative rule which establishes and adopts standards of ambient air quality in West Virginia, specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, and incorporates by reference the national primary and secondary ambient air quality standards, as promulgated by the United States Environmental Protection Agency (EPA).

The changes to the rule adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2021.

The updates to the rule maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State.

Department of Environmental Protection – Standards of Performance for New Stationary Sources, 45 CSR 16

The rule amends a current legislative rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2021. These amendments maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State.

Department of Environmental Protection – Control of Air Pollution from Combustion of Solid Waste, 45 CSR 18

This rule amends an existing DEP rule which establishes and adopts national standards of performance and other requirements for air pollution caused by the combustion of solid waste, as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2021. These modifications maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State.

Department of Environmental Protection – Emission Standards for Hazardous Air Pollutants, 45 CSR 34

The rule amends a current legislative rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Clean Air Act (CAA).

The amendments incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2021.

These amendments are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in this State for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA.

Department of Environmental Protection – Requirements for the Management of Coal Combustion Residuals, 33 CSR 1B

This rule is new and is promulgated under the Solid Waste Management Act which governs solid waste management and disposal. Specifically, this rule governs Coal Combustion Residuals, such as bottom ash and fly ash, produced when coal is burned for electric power generation.

The rule simply adopts by reference the Federal Regulation, 40 CFR Part 257, Subpart D, Standards for the Disposal of Coal Combustion Residuals in Landfills and Surface Impoundments. This is necessary to obtain and maintain closure and permitting primacy. DEP already regulates operations, and the rule will provide DEP with jurisdiction over cleanup and closure also.

The rule applies to owners and operators of new and existing landfills and surface impoundments, including any lateral expansions, who engage in solid waste management of residuals generated from the combustion of coal at electric utilities and independent power producers. These requirements also apply to disposal located off-site of the power producer.

The rule establishes minimum national criteria to determine which solid waste disposal facilities and solid waste management practices do not pose a reasonable probability of adverse effects on health or the environment under the Resource Conservation and Recovery Act.

Department of Environmental Protection – Requirements Governing Water Quality Standards, 47 CSR 02

The rule is the result of the Water Pollution Control Act found in W.Va. Code §22-11-1, et seq, which provides rule-making authority to the DEP to establish rules necessary to carry out the requirements of the Act.

The rule amends the previous legislative rule which establishes requirements governing the discharge of sewage, industrial wastes, and other wastes into the waters of the state and establishes water quality standards for the waters standing or flowing over the surface of the state. The stated public policy of the State of West Virginia is to maintain reasonable standards of purity and quality of water consistent with (1) public health and public enjoyment; (2) the propagation and protection of animals, birds, fishes, and other aquatic life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture, and the provision of a permanent foundation for healthy industrial development.

New Subsection 8.2.c was added to the rule for the evaluation of factors related to human health on a case-by-case basis as part of the NPDES permitting process. CWA 303(c) is the water quality standards. The process begins with a regulated party investing in an environmental study. This study will be reviewed for proper protocols and water quality standards first by DEP and then by the EPA. Once approved by both the state and federal regulators, a permit may be issued with different criteria. This permit is not subject to legislative review.

Subsection 8.6. in the rule which required DEP to create a work group to analyze and recommend updates to human health criteria is being deleted from the rule because it is no longer necessary.

The most significant amendments are to the Requirements Governing Water Quality Standards to adhere to the federal requirement for Triennial Review of Water Quality Standards, as required by the

Clean Water Act, Section 303(c)(1). This will be the third rule change in the last few years. These updates match West Virginia with the US EPA 2015 updates for nationally recommended criteria.

The rule includes changes to the human health criteria in Appendix E recommended by the Human Health Criteria Work Group. In this rule, the DEP is revising 31 substances and adding 4 substances to the human health criteria. Once authorized, 28 criteria will become more stringent and 7 will become less stringent. If authorized, these 35 criteria will then be consistent with nationally recommended criteria. The units of measure for the substances in the table are also being revised to have the same units of measure for the various substances. The legislature has now updated or added in total 59 of the EPA's 96 recommended criteria.

Finally, the rule is amended in Appendix A, Category B-2 – Trout Waters by adding language regarding the Summersville tailwaters above Collision Creek which states that the water temperature is limited to no more than 5 degrees above the natural temperature, not to exceed 72 degrees any time during the year. This change effectively increases the allowable water discharge temperature from the dam.

Department of Environmental Protection – Underground Injection Rule, 47 CSR 13

The rule amends a current legislative rule and is promulgated under the Water Pollution Control Act which governs the discharge and disposal of pollutants into the waters of the state to maintain reasonable standards of quality to ensure public health and enjoyment. Specifically, this rule governs the Underground Injection Control Program (UIC). The UIC program regulates underground injections of waste into five classes of wells. The rule updates these five classes and adds a sixth classification for carbon capture and sequestration wells.

The rule sets forth criteria and standards which apply to the UIC program. All owners and operators of these wells must be authorized by DEP to make injections. The classes are as follows:

- Class 1 wells are for disposal of hazardous wastes below the water table;
- Class 2 wells are for injection fluids associated with oil and gas production such as brine water;
- Class 3 wells are used to inject fluids to dissolve and extract minerals such as salt mining;
- Class 4 wells cover radioactive materials that do not meet the Class 1 criteria. Note: Class 4 wells are no longer allowed under the federal rule, but nationally some are grandfathered for long term closure; and
- Class 5 wells are shallow wells above the water table, which are not Class 1 through 4 or Class 6. These include wells such as commercial sewage leach fields.
- The new Class 6 wells are for carbon capture and sequestration.

West Virginia currently has primary enforcement authority for the first five classes of wells, but the rule must be updated to maintain this primacy. Currently, federal rules apply to Class 6 wells. Once the rule is updated and approved, DEP intends to seek primacy over Class 6 wells.

Subsection 4.6 describing Class 6 wells is new. Subsection 5.4 is new and describes the area of review for Class 6 wells. Paragraph 6.2.c.5. is new and relates to the mechanical integrity of Class 6 wells.

Section 8 relating to criteria and standards applicable to Class 1 wells has been amended regarding construction requirements, monitoring and closure requirements, and post-closure care.

Section 9 relating to criteria and standards applicable to Class 2 wells has amendments relating to construction, abandonment, operating, monitoring and reporting requirements and information to be considered by the Director prior to issuing a permit.

New Section 13 contains the criteria and standards for Class 6 wells. It contains minimum criteria for siting; construction requirements; abandonment; logging, sampling and testing prior to injection well operation; operating, monitoring and reporting requirements; emergency and remedial response; required permit information; and post injection site care and site closure.

Section 14 relating to the injection well permitting program has been amended to contain requirements relating to loss of mechanical integrity, release of infected wastes into an unauthorized zone, plugging and abandonment, financial responsibility, waiver of requirements by the Director, corrective actions regarding Class 6 wells, and applications for Class 6 permits.

Department of Environmental Protection – Administrative Proceedings and Civil Penalty Assessment, 47 CSR 30B

The rule amends a current legislative rule which was promulgated under the Water Pollution Control Act which governs the discharge and disposal of pollutants into the waters of the state to maintain reasonable standards of quality to ensure public health and enjoyment. Specifically, the rule governs the Administrative Proceedings and Civil Penalty Assessment for operators who may not be in compliance with their permits. This rule establishes the procedure for the resolution of enforcement actions and the assessment of civil penalties in lieu of the institution of civil actions as provided in the code.

The rule addresses these issues to make the West Virginia rule more comparable to the Clean Water Act by addressing the Court's concerns. The rule requires an administrative hearing whether the operator chooses to participate or not, empowers the secretary to unilaterally assess a civil penalty even if an operator does not resolve the issue by voluntary agreement, and deletes the provision allowing an operator to terminate a proceeding at any time for any reason. Finally, the rule also deletes the provision allowing an operator to reject a modification of a proposed consent order made by the secretary which is based on public comments or other information received during a public hearing.

CODE REFERENCE: West Virginia Code §64-3-1 et seq. – amended

DATE OF PASSAGE: February 11, 2022

EFFECTIVE DATE: February 11, 2022

ACTION BY GOVERNOR: Signed February 21, 2022

House Bill 4242

Authorizing the Division of Labor to promulgate a legislative rule relating to Child Labor

This Committee Substitute contains the Department of Commerce rules. It is known as Bundle 10 and contains 10 rules, including three rules relating to the Office of Miners' Health, Safety and Training.

Office of Miners' Health, Safety and Training – Rule Governing the Safety of Those Employed In and Around Surface Mines in West Virginia, 56 CSR 03

The rule amends a current legislative rule. The Office of Miners' Health, Safety and Training, in consultation with the Board of Coal Mine Health and Safety has updated the electrical safety rules found in 56 CSR 3, concerning lock-out, tag-out procedures; troubleshooting procedures; and the use of electrically insulated gloves on surface mines. These changes correspond with the electrical safety rule changes the Board made to Electrical Provisions for Underground Mining 36 CSR 12, which became effective on February 11, 2021.

- §56-3-37. Electricity.

The amendments to this section:

- Specify when equipment must be locked-out and tagged-out, by whom, and who should keep the keys;
- Require the use of electrically insulated gloves and specify standards and testing requirements for gloves;
- Require hot sticks to be tested every 12 months;
- Require the overload protection for transformers and conductors to be in accordance with the National Electric Code in effect at the time of installation;
- Replace "Certified electrician" with "qualified person" under the maintenance and repair section;
- Removes the requirement that circuits to be deenergized on idle days and shifts;
- Requires ground fault interrupters on portable hand-held tools;
- Alters the minimum distances from overhead powerlines where machinery may be operated by adding a table; and
- Adds a new section governing low and medium voltage for portable equipment with grounding requirements and circuit breaker requirements.

Office of Miners' Health, Safety and Training – Rules Governing First-Aid Training of Shaft and Slope Employees, 56 CSR11

This rule repeals a current legislative rule. The first-aid training requirements for shaft and slope employees has been moved to the Board of Coal Mine Health and Safety's rule, Shaft and/or Slope Operations in the State of West Virginia 36 CSR 1, which went into effect March 27, 2021.

Office of Miners' Health, Safety and Training – Substance Abuse Screening Standards and Procedures, 56 CSR 19

The rule amends a current legislative rule. The Office of Miners' Health, Safety and Training (Office) has found that coal miners who fail a drug test for THC are now claiming that their failed drug test is because of their use of over-the-counter CBD products. The Office believes that when medical marijuana becomes available for use by West Virginia residents, coal miners will begin to use that as a defense also.

The Office believes that THC in any form should be a prohibited substance in the interest of mine safety. This rule prohibits THC in any form.

The Office is also seeing an increase in the reluctance of coal operators, drug testing collectors, laboratories, and medical review officers to participate in permanent revocation hearings and contested case hearings in front of the Board of Appeals. Without having the necessary witnesses available to testify at a hearing, the Office has difficulty proving that the coal miner did, in fact, fail a drug test. If the Office of Miners' Health, Safety and Training is unable to prove that coal miners failed the drug test, the entire coal mine drug program could be jeopardized. The rule removes defenses to any individual failing a drug test for THC because of medical marijuana, CBD products, and the procedural failure of the employer to notify the Director within seven days after a failed drug test.

This rule requires drug testing vendors to become registered drug testing contractors who have agreed ahead of time to appear and provide the needed evidence. A drug testing contractor must register with the Office as a contractor and pay the \$100.00 annual registration fee. Drug testing contractors are subject to assessments if they fail to follow the requirements of this rule.

The rule requires employers to ensure that all breath alcohol tests and drug tests are performed by drug testing contractors and that the drug testing contractors comply with Subsections 7.1. and 7.2. of the rule.

Under the current rule an individual who refuses a drug test, possesses, or submits an adulterated or substituted sample must complete 18 months of counseling and 18 monthly random drug tests. The requirement in the updated rule is six months of counseling and six monthly random drug and alcohol tests. The individual's suspension time remains 18 months.

CODE REFERENCE: West Virginia Code §64-10-1 et. seq – amended

DATE OF PASSAGE: March 8, 2022

EFFECTIVE DATE: March 8, 2022

ACTION BY GOVERNOR: Signed March 30, 2022

2021 Regular Session

Senate Bill 216

Authorizing Department of Commerce to promulgate legislative rules

This is a Department of Commerce rules bundle, which includes a rule that affects comprehensive mine safety programs.

Miners Health Safety and Training - Rule Governing the Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia, 56 CSR 08

Language set forth in 36 CSR 31, pertaining to a coal mines comprehensive mine safety program, has been moved to 56 CSR §8.

The section has been in effect since 1984 and gives the Director the authority to require a mine operator, who has experienced a substantial number of injuries due to materials handling, to identify a procedure to reduce such injuries and add that procedure to the mines comprehensive mine safety program.

CODE REFERENCE: West Virginia Code §64-10-1 – amended

DATE OF PASSAGE: March 11, 2021

EFFECTIVE DATE: March 11, 2021

ACTION BY GOVERNOR: Signed March 15, 2021

House Bill 2382

Authorizing the Department of Environmental Protection to promulgate a legislative rule relating to ambient air quality standards

This bill is rules Bundle 7, Department of Environmental Protection (DEP) which contains seven Air Quality Rules, two Water and Waste Management Rules, and one Secretary's Office rule.

DEP-Air Quality – Ambient Air Quality, 45 CSR 8

The rule amends a current DEP rule which establishes and adopts standards of ambient air quality in West Virginia, specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, incorporating by reference the national primary and secondary ambient air quality standards, as promulgated by the U. S. Environmental Protection Agency (EPA).

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2020. The amendments to the rule are necessary to maintain primacy.

DEP-Air Quality – Standards of Performance for New Stationary Sources, 45 CSR 16

The rule amends a current DEP rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the EPA pursuant to the federal Clean Air Act (CAA).

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2020. These amendments to the rule are necessary to maintain primacy.

DEP-Air Quality – Control of Air Pollution from Combustion of Solid Waste, 45 CSR 18

The rule amends a current DEP rule which establishes and adopts national standards of performance and other requirements for air pollution caused by the combustion of solid waste, as promulgated by the EPA pursuant to the federal Clean Air Act (CAA).

The amendments adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2020. These amendments to the rule are necessary to maintain primacy.

DEP-Air Quality – Control of Air Pollution from Municipal Solid Waste Landfills, 45 CSR 23

The rule modifies a current DEP rule which establishes and adopts emission standards for controlling air pollution from Municipal Solid Waste Landfills, as promulgated by the EPA in accordance with the federal Resource Conservation and Recovery Act (RCRA).

The amendments incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2020. These modifications are necessary to maintain consistency with applicable federal laws and allow West Virginia to maintain primacy.

Section 7 of the rule was amended to allow an owner or operator to meet operational standards for collection and control systems, compliance systems, monitoring requirements, annual reporting requirements, corrective action, and recordkeeping by complying with federal regulations as opposed to state rules. If they choose the federal route, they may not return to regulation under the state rule.

DEP-Air Quality – Acid Rain Provisions and Permits, 45 CSR 33

The rule amends an existing DEP rule which establishes and regulates the Acid Rain Program as promulgated by the EPA pursuant to the Clean Air Act (CAA).

The amendments incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2020.

The amendments are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to maintain primacy.

DEP-Air Quality – Emission Standards for Hazardous Air Pollutants, 45 CSR 34

This rule amends a current DEP rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the EPA pursuant to the CAA.

The amendments incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2020.

The amendments are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in this State for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA.

DEP-Air Quality – Control of Greenhouse Gas Emissions from Existing Coal- fired Electric Utility Generating Units, 45 CSR 44

This rule is a new DEP rule which establishes and regulates the Affordable Clean Energy rule, consisting of emission guidelines for greenhouse gas emissions from existing Electric Utility Generating Units (EGUs). The proposed rule implements the federal emission guidelines established at 40 C.F.R. 60, Subpart UUUUa, commonly referred to as the Affordable Clean Energy (ACE) rule.

The federal emission guidelines establish the best systems of emission reduction (BSER) which, in the judgment of the U.S. EPA Administrator, have been adequately demonstrated and provide information on the degree of emission limitation achievable for the designated pollutant. The federal emission guidelines are heat rate improvements which target achieving lower carbon dioxide emission rates at designated facilities. The federal emission guidelines were developed pursuant to section 111(d) of the CAA.

This rule will regulate greenhouse gas emissions, in the form of carbon dioxide, from existing coal-fired EGUs that commenced construction on or before January 8, 2014, that meet the definition of a designated facility. This rule establishes applicability criteria, permit application requirements, permit requirements, standards of performance requirements, and monitoring, recordkeeping, and reporting requirements for designated facilities for control carbon dioxide emission rates based on the heat rate improvements analysis that can be applied to or at the affected steam generating unit.

DEP-Water and Waste Management – Requirements Governing Water Quality Standards, 47 CSR 2

The rule amends a current legislative rule. It establishes requirements governing the discharge of sewage, industrial wastes, and other wastes into the waters of the state and establishes water quality standards for the waters standing or flowing over the surface of the state. The stated public policy of the State of West Virginia is to maintain reasonable standards of purity and quality of water consistent with (1) public health and public enjoyment; (2) the propagation and protection of animals, birds, fishes, and other aquatic life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture, and the provision of a permanent foundation for healthy industrial development.

These changes to the Requirements Governing Water Quality Standards are being made to adhere to the federal requirement for Triennial Review of Water Quality Standards, as required by the Clean Water Act (CWA), Section 303(c)(1).

Subsection 8.6. in the rule required DEP on or before April 1, 2020, to propose updates to the numeric human health criteria found to be presented to the 2021 Legislative Session. These proposed changes include revisions to human health criteria in Appendix E, subsections 8.23 and 8.25, in order to adhere to a mandate from the 2019 Legislature.

In the change, the DEP is revising 24 of the human health criteria. In the proposed rule from 2018/19, the DEP recommended changes to 56 different criteria. If authorized, these 24 criteria will then be consistent with nationally recommended criteria.

The remaining human health criteria will be studied by a work group including DEP personnel and the DEP Advisory Council. This work group began meeting monthly for one year beginning in June 2020. The group will research and recommend additional revisions to the numeric human health criteria, if necessary, to be presented to the 2022 Legislature. The group may also recommend revising bioaccumulation factors, a West Virginia specific fish consumption rate, and other factors which establish state specific criteria.

Finally, the rule is being amended to remove Section 7.2.d.19.2. This provision was disapproved by EPA under its authority in the CWA §303(c)(3) and 40 CFR §131.21(a)(2). The Charleston Sanitary Board submittal was not approved and never went into effect, rendering this subsection unnecessary.

DEP-Water and Waste Management – Hazardous Waste Management System, 33 CSR 20

The rule regulates the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of public health and safety and the environment. The rule adopts and incorporates by reference the federal regulations set forth in 40 CFR Parts 260 through 279 that are in effect as of September 8, 2020. The previous rule adopted regulations in effect on August 21, 2019.

The federal rule amendments adopted by this rule change are:

- Increased Recycling: Adding Aerosol Cans to the Universal Waste Regulations: Federal Register 84 FR 67202 published December 9, 2019, effective February 7, 2020.
- Modernizing Ignitable Liquids Determinations: Federal Register 85 FR 40594 published July 7, 2020, effective September 8, 2020.

The amendments add aerosol cans to a classification of hazardous waste known as universal waste. Universal waste also includes batteries, lightbulbs, and pesticides. These materials have lower toxicity levels and are managed differently with a more relaxed regulatory framework. This change will only have an effect on commercial and industrial facilities. Households are exempt.

DEP amended the rule to adopt the most current federal hazardous waste regulations to maintain consistency with the federal program and the state program. The adoption is necessary to maintain primacy.

DEP-Secretary's Office – Voluntary Remediation and Redevelopment Rule, 60 CSR 3

The rule amends a current legislative rule and it establishes the eligibility, procedures, standards, and legal documents required for voluntary remediation activities and brownfield revitalization. The rule sets the administrative process for the Voluntary Remediation Program (VRP), which encourages voluntary cleanup and redevelopment of abandoned or under-utilized contaminated properties by providing certain environmental liability protections.

The rule has two changes. First, the De Minimis Table has been removed from the rule. This table lists the default concentrations of contaminants that may remain in residential soil, industrial soil, and

groundwater at a remediation site because the residual contaminants do not present an unacceptable risk to human health.

The table has been relocated to the VRP Guidance Manual. DEP will then be able to update the voluntary remediation standards annually or immediately following significant regulatory changes using the scientific sources outlined within the rule. The time spent requiring the agency to amend the legislative rule every legislative session will be eliminated, streamlining the process. The agency believes this change will lead to increased efficiency and increased responsiveness.

Within Subdivision 9.2.d. of the purposed rule the DEP outlines an updated process to ensure transparency and public participation. The section provides 1) a formal scientific process to calculate and review the changes to the De Minimis Standards, 2) describes a communication process for the updates, 3) requires a public notice and comment period, and 4) provides a means for appeal. The public notice and comment period and appeal section is the subject of an agency agreed to modification which ultimately makes the table part of an interpretive rule.

The method of scientifically determining how the De Minimis Standards are calculated is not changed; however, the process for making changes are rewritten to fall within DEP's authority, no longer requiring legislative approval. The agency believes human health and the environment will remain protected. The rule change simply removes the De Minimis Table from the rule and empowers the DEP to insert it into the VRP Guidance Manual.

The current legislative rule-based process takes over a year when the standards require updating. DEP estimates the proposed process will take less than three months, including review, development, verification, public comment, and final publication. DEP believes this will eliminate the need to amend the legislative rule on an annual basis to remain current with published science. DEP states that toxicity information evolves over time with research and a faster process will help to ensure that remediation standards reflect current science. The agency indicates that the data in the table can regularly change as often as twice a year and is out of date before a new legislative rule is ultimately approved. Under the current process, voluntary remediators may be required to remediate to a more stringent standard than necessary, burdening the applicant with unnecessary costs and a prolonged cleanup. Alternatively, applicants may receive Certificates of Completion and liability protections even when remediating to a level that current science has proven is not protective of human health and the environment.

In the second rule change, DEP updates the requirements for monitored attenuation. Currently, applicants are required to collect eight (8) semiannual samples to demonstrate successful attenuation. The change allows for the current process, but alternately allows for eight (8) quarterly samples. Data to be used in a statistical attenuation demonstration may be collected more frequently over a shorter period of time. Therefore, applicants will have more flexibility, potentially reducing the amount of time required to ensure a site has been remediated.

Again, the current system of semiannual and longer sampling frequencies is still available, as long as no more than fifty percent (50%) of samples are collected during the same season. This change may prevent unnecessary collection of data when the data is adequate to make a satisfactory demonstration.

CODE REFERENCE: West Virginia Code §64-3-1 et seq. – amended

DATE OF PASSAGE: March 26, 2021

EFFECTIVE DATE: March 26, 2021

ACTION BY GOVERNOR: Signed April 7, 2021

Senate Bill 449

Authorizing Department of Commerce promulgate legislative rules

This bill is known as the Department of Commerce Rules bundle, which authorizes and directs the promulgation of 19 rules, including two related to the Office of Miners' Health, Safety and Training.

- **Senate Bill No. 454 Office of Miners' Health, Safety and Training, Substance Abuse Screening, Standards and Procedures, 56 CRS 19**
 - This rule is in response to Senate Bill 635, which passed during the 2019 Regular Session. The change requires the Board of Appeals to suspend a miner's certification for a minimum of six months, if the miner tests positive on a drug or alcohol test. The previous rule for alcohol and THC was a minimum of three months of suspension.
 - The rule is also amended to include the requirement that an employee involved in an accident that results in physical injuries or damage to equipment or property may be subject to a drug test by his or her employer. Additionally, the rule removes the types of drug and alcohol test failures that an employer reports to the Director, and now simply requires the employer to report all positive drug and alcohol tests to the Director.
 - The rule is amended to increase the suspension period from nine months to 18 months for those miners who refuse a drug test or possess or submit an adulterated or substituted urine sample.
- **Senate Bill No. 455 Office of Miners' Health, Safety and Training, Rules Governing the Certification, Recertification and Training of EMT Miners and the Certification of EMT-Instructors, 56 CSR 22**
 - This rule closes loopholes that allow EMT-Ms to miss the required annual training modules but still maintain their certification. The amendments to this rule also change who may become an EMT-M-Instructor. The applicants must possess a current certification that is equal to or greater than an EMT-M in order to become an Instructor. The current EMT-M-Instructors are grandfathered and allowed to continue to teach even though they may not possess a certification equal to or greater than an EMT-M.
 - The rule also adds a definition of the term "recertified or recertification" which requires the taking of either an eight-hour module of continuing education each year or a 32-hour module every three years. However, the terms do not include recertification for a person who lost the original certification by not completing two continuing education modules.

CODE REFERENCE: West Virginia Code §64-10-1 et seq. – amended

DATE OF PASSAGE: February 12, 2020

EFFECTIVE DATE: February 12, 2020

ACTION BY GOVERNOR: Signed March 5, 2020

House Bill 4217

Authorizing Department of Environmental Protection promulgate legislative rules

This bill is known as the Department of Environmental Protection Rules bundle which authorizes and directs the promulgation of 10 rules, constituting Bundle 3.

Department of Environmental Protection, Division of Air Quality, Ambient Air Quality Standards, 45 CSR 08

This rule modifies a current legislative rule which establishes and adopts standards of ambient air quality in West Virginia, specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead. The rule incorporates, by reference, the national primary and secondary ambient air quality standards promulgated by the United States Environmental Protection Agency (EPA).

The modifications adopt and incorporate, by reference, annual updates to the federal counterpart promulgated by the EPA as of June 1, 2019. These incorporate EPA modifications on the retention of standards for the various oxides of nitrogen.

These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in the state.

Department of Environmental Protection, Division of Air Quality, Standards of Performance for New Stationary Sources, 45 CSR 16

This rule modifies a current legislative rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the EPA pursuant to the federal Clean Air Act (CAA).

The modifications adopt and incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2019. These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in the state.

Department of Environmental Protection, Division of Air Quality, Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities, 45 CSR 25

This rule modifies a current legislative rule which establishes and adopts emission standards for controlling air pollution from Hazardous Waste Treatment, Storage, and Disposal Facilities, as promulgated by the EPA in accordance with the federal Resource Conservation and Recovery Act (RCRA).

The modifications incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2019. These modifications are necessary to maintain consistency with applicable federal laws and allow West Virginia to continue as the primary enforcement authority of the federal hazardous waste management system (RCRA) in the state.

The modifications also incorporate, by reference, annual updates to provisions contained in the State Hazardous Waste Management System Rule, 33 CSR 20, promulgated as of June 1, 2019, and establish the general procedures and criteria necessary to implement air emissions standards.

Department of Environmental Protection, Division of Air Quality, Emission Standards for Hazardous Air Pollutants, 45 CSR 34

This rule modifies a current legislative rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the EPA pursuant to the Clean Air Act (CAA).

The modifications incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2019.

These modifications are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in the state for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA.

Department of Environmental Protection, Division of Air Quality, Control of Ozone Season Nitrogen Oxides Emissions, 45 CSR 40

This rule modifies a current legislative rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the EPA pursuant to the Clean Air Act (CAA).

The modifications incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2019.

These modifications are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in the state for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA.

The rule updates definitions and adds extensive provisions for monitoring, recordkeeping, and reporting requirements.

Division of Mining and Reclamation, West Virginia Surface Mining Reclamation Rule, 38 CSR 02

This rule modifies a current legislative rule. This rule governs surface mining reclamation, including permit applications; property access; water drainage and erosion; land use; wildlife and revegetation; insurance and bonding; performance standards; subsidence control; and inspection and enforcement.

The rule changes are being made in response to Senate Bill 635 which passed during the 2019 Regular Session. Senate Bill 635 amended W. Va. Code §22-3-14, which is a part of the Surface Coal Mining Reclamation Act regulating surface effects of underground mining. Senate Bill 635 added a new subsection (e) requiring the Secretary to promulgate a rule before the 2020 Regular Session pertaining to surface owner protection from material damage due to subsidence. Under the bill, the Secretary is instructed to consider the adoption of certain specified federal standards.

The objective of the rule change is to clarify the agency's limitations in adjudicating property rights disputes brought on by subsidence damage.

The House amended two sections in the rule. The first amendment clarifies language in paragraph 11.3.a.3, providing that companies electing to execute bonds must diligently pursue listing on the United States Treasury Department's list of approved sureties. Paragraph 16.2.c.2 currently allows an operator to correct material damage caused by subsidence to any structures or facilities or compensate the owner in the full amount of the diminution in value of the structures or facilities resulting from the subsidence. The House adopted an amendment to allow the owner to make the election, with a limitation on compensation to repair the damage, not to exceed 120% of the pre-mining value of the structure or facility. A statement is added that the paragraph does not create any additional property rights, nor may it be construed to vest the Secretary with the jurisdiction to adjudicate property rights disputes.

Division of Mining and Reclamation, Groundwater Protection Rules for Coal Mining Operation, 38 CSR 02F

This rule modifies a current legislative rule. It establishes practices for groundwater protection which are to be followed by any person who conducts coal mining operations. The rule is established

under the Groundwater Protection Act, the Water Pollution Control Act, and the Surface Coal Mining and Reclamation Act.

The changes are being made in response to Senate Bill 635 which passed during the 2019 Regular Session. The statutory change added a subsection (g) to W. Va. Code §22-30-24, the Aboveground Storage Tank Act. The added subsection (g) states that the Secretary of Department of Environmental Protection (DEP) shall promulgate legislative rules for consideration by the Legislature in its 2020 Regular Session to incorporate the relevant portions of the Aboveground Storage Tank Act into the Groundwater Protection Rules for Coal Mining for tanks located at coal mining operations.

The purpose of the changes is to vest all enforcement authority in one division of the DEP with respect to coal mines, rather than having two divisions responsible for enforcement. The Division of Mining and Reclamation will take over, from the Division of Water and Waste Management, enforcement of rules pertaining to storage tanks at coal mining sites.

The changes incorporate the entirety of the Above Ground Storage Tank Act into the rule by reference.

Department of Environmental Protection, Division of Water & Waste Management, Hazardous Waste Management System, 33 CSR 20

This rule amends a current legislative rule regulating the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of public health, safety, and the environment. The rule adopts and incorporates, by reference, the federal regulations set forth in 40 CFR Parts 260 through 279 that are in effect as of August 21, 2019. The new rule adopts the most recent hazardous waste regulations and is necessary to maintain the West Virginia program's approval, primacy, and consistency with the federal program.

Department of Environmental Protection, Voluntary Remediation and Redevelopment Rule, 60 CSR 03

This rule amends a current legislative rule. It is the result of the Voluntary Remediation and Redevelopment Act, located in West Virginia Code §22-22-1 et seq.

The changes will update and modernize the existing rule based on current science and current practice. Many of the changes are the result of comments and feedback from years of implementation of the rule.

Most of the changes are to the Risk Protocol and Remediation Standards section, which clarify the requirements related to performing risk assessments. Additionally, language will be added to clarify that presumptive remedies can be considered in the exposure assessment to eliminate the need to perform a more costly site-specific risk assessment.

Several changes are to the Licensed Remediation Specialist Program. The Voluntary Remediation and Redevelopment Act requires the use of a Licensed Remediation Specialist for supervision of all remediations completed through the program. This is to ensure that the safety, health, and welfare of the public are protected.

The changes to this section strengthen the program by requiring 1) evidence of accredited educational degrees earned to meet minimum education requirements; 2) a passing score set by the rule at 70% for the Licensed Remediation Specialist examination; and 3) appropriate continuing education, including mandatory training specific to the program.

The changes to the Risk Protocol were made to update the requirements related to performing risk assessments to better reflect the current standard of practice.

The changes also increase fees associated with the program which have not been increased since the original filing in 1997. The current fees do not adequately cover program costs.

Oil and Gas Conservation Commission, Rules of the Commission, 39 CSR 01

This rule amends a current legislative rule. Generally, it defines the operations of the Oil and Gas Conservation Commission (OGCC). The rules are promulgated primarily to prevent waste, protect correlative rights of owners, and to conserve oil and gas fields throughout the state.

The rule change was prompted by the needs of oil and gas operators who are developing deep wells into shale formations. A deep well is a well which penetrates below the top of the Onondaga Limestone formation.

Current deep well spacing requirements are 3,000 feet minimum between wells and 400 feet minimum between wells and lease or unit boundaries. It has been widely acknowledged by both industry and government officials that these deep well minimum spacing requirements are unworkable for deep wells drilled into tight formations, such as the Utica and Rogersville shales. Currently, operators are being granted exceptions for these types of wells, almost as a matter of routine.

For horizontal deep wells the minimum distances between new wells and older wells and new wells and unit and lease boundaries are defined. These are default minimums. If needed, the OGCC has the authority to create exceptions to these distances. The new spacing language provides that the productive interval of each new horizontal deep well shall be:

- Unless otherwise agreed to, no less than 1,000 feet from the productive interval measured perpendicularly from a previously permitted deep well operated by a different operator;
- No less than 800 feet from the productive interval measured perpendicularly from a previously permitted deep well operated by the same operator;
- Unless otherwise agreed to, no less than 500 feet from a lease or unit boundary measured perpendicularly for wells where the adjoining lease or unit is operated by different operators;
- No less than 400 feet from a lease or unit boundary measured perpendicularly for wells where the adjoining lease or unit is operated by the same operator;
- No less than 150 feet from the productive interval nearest the heel or toe of a previously permitted deep well and no less than 75 feet from a lease or unit boundary; and
- For a horizontal well, no spacing limitations for non-productive intervals before or after the productive interval.

The vertical deep well spacing is updated with respect to the minimum distances between a well and the lease or unit boundaries. The distance is changed from 400 feet to

500 feet, so that vertical deep well spacing will be consistent with the spacing requirements of horizontal deep wells.

CODE REFERENCE: West Virginia Code §64-3-1 et seq. – amended

DATE OF PASSAGE: March 3, 2020

EFFECTIVE DATE: June 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 163

Authorizing DEP promulgate legislative rules

This bill contains eight Department of Environmental Protection rules which constitute Bundle 3.

Department of Environmental Protection, Emission Standards for Hazardous Air Pollutants, 45 CSR 34

This rule modifies an existing DEP rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Clean Air Act (CAA).

The modifications incorporate by reference annual updates to the federal counterpart promulgated by the EPA as of June 1, 2018.

These modifications are necessary for the state to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in this State for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by the EPA.

Department of Environmental Protection, Ambient Air Quality Standards, 45CSR08

This rule modifies an existing DEP rule which establishes and adopts standards of ambient air quality in West Virginia, specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead, incorporating, by reference, the national primary and secondary ambient air quality standards as promulgated by the United States Environmental Protection Agency (EPA).

The modifications adopt and incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2018. These incorporate, by reference, EPA modifications on retention of standards for the various oxides of nitrogen.

These modifications to our rule are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State.

Department of Environmental Protection, Standards of Performance for New Stationary Sources, 45 CSR 16

This rule modifies an existing DEP rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2018. These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this state.

Department of Environmental Protection, Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities, 45 CSR 25

This rule modifies an existing DEP rule which establishes and adopts emission standards for controlling air pollution from Hazardous Waste Treatment, Storage, and Disposal Facilities, as promulgated by the United States Environmental Protection (EPA) in accordance with the federal Resource Conservation and Recovery Act (RCRA).

The modifications incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2018. These modifications are necessary to maintain consistency with applicable federal laws and allow West Virginia to continue as the primary enforcement authority of the federal hazardous waste management system (RCRA) in the state.

The modifications also incorporate, by reference, annual updates to provisions contained in the State Hazardous Waste Management System Rule, 33 CSR 20, promulgated as of June 1, 2018, and establishes the general procedures and criteria necessary to implement air emissions standards. Additionally, the tables appended are updated in conformity with new Federal guidelines.

Department of Environmental Protection, Quality Implementation Plans, 45 CSR 36

This rule repeals an existing DEP rule which establishes general provisions relating to transportation conformity plans, pursuant to the Clean Air Act (CAA), requiring that federally supported highway and transit projects are consistent with state air quality implementation plans in places where air quality does not currently meet federal standards. The circumstances requiring adoption of the Rule no longer exist.

Department of Environmental Protection, Provisions for Determining Compliance with Air Quality Management Rules, 45 CSR 38

This rule repeals an existing DEP rule which establishes general provisions relating to data which could be used to determine if a facility complied with emissions standards, pursuant to the Clean Air Act (CAA). The circumstances requiring adoption of the Rule no longer exist, as the requirements of Enhanced Special Monitoring Call of the EPA which gave rise to this Rule have been included in other Rules and this is now duplicative.

Department of Environmental Protection, Cross State Air Pollution Rule to Control Annual Nitrogen Oxides Emissions, Annual Sulfur Dioxide Emissions and Ozone Season Nitrogen Oxides Emissions, 45 CSR 43

This rule is new. It establishes a program of mitigating the emissions of certain hazardous materials through emissions trading programs among the states as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Clean Air Act (CAA).

The modifications incorporate by reference the federal Cross-State Air Pollution Rules promulgated by EPA as of June 1, 2018.

These modifications are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in this State for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA. The modifications also update the promulgation history of the rule.

Department of Environmental Protection, Requirements Governing Water Quality Standards, 47 CSR 2

The rule amends a current rule. It establishes requirements governing the discharge of sewage, industrial wastes, and other wastes into the waters of the state and establishes water quality standards for the waters standing or flowing over the surface of the state. The public policy of the State of West Virginia is to maintain reasonable standards of purity and quality of the water of the state consistent with (1) public health and public enjoyment; (2) the propagation and protection of animals, birds, fish, and other aquatic life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture, and the provision of a permanent foundation for healthy industrial development.

As submitted to the Legislative Rule-Making Review Committee, DEP amended the requirements governing Water Quality Standards to adhere to the federal requirement for Triennial Review of Water Quality Standards, as required by the Clean Water Act, Section 303(c)(1). Revisions relating to overlapping mixing zones and harmonic mean flow complied with changes made by the Legislature to W. Va. Code §22- 11-7b. Revisions to human health criteria brought the state's standards in line with nationally-recommended water quality criteria. Revisions to the site-specific criterion process allowed a streamlined process for developing site-specific revisions for copper and other metals. Additional administrative revisions were made to make the rule clearer and more concise.

The Legislative Rule-Making Review Committee modified the proposed rule to return the standards to current standards with technical amendments. The Committee on Energy, Industry and Mining approved an amendment to the proposed rule returning the standards to those submitted by the DEP. The Committee Substitute returns the proposed rule to the modified rule recommended by the LRMRC with the addition of a paragraph requiring the Secretary to propose updates to Appendix E on or before April 1, 2020, to put them out for comment, and submit the proposed updates to the 2021 Legislative Session. The Committee Substitute also states that the DEP Secretary shall allow for submission of proposed human health criteria until October 1, 2019.

CODE REFERENCE: West Virginia Code §64-3-1 – amended

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: March 5, 2019

ACTION BY GOVERNOR: March 26, 2019

Senate Bill 223

Authorizing Department of Commerce promulgate legislative rules

This bill contains eight rules relating to the Department of Commerce, including rules from the Division of Labor, the Office of Miners' Health Safety and Training, and the Division of Natural Resources.

Office of Miners' Health Safety and Training, Rule Governing the Safety of Those Employed In and Around Surface Mines in West Virginia, 56 CSR 3

During the 2018 Regular Session, Senate Bill 626 passed which required the Director of the Office of Miners Health, Safety and Training (OMHST) to revise this rule by promulgating an emergency rule to reflect that the Mine Safety and Health Administration (MSHA) approved surface ground control plan shall serve as the state- approved plan. Further, Senate Bill 626 required automated external defibrillators (AED) on all surface mining operations.

Specifically, Section 6, relating to the powers and duties of the Director of OMHST, is completely rewritten. In Section 8, the Director of OMHST is directed to execute a bond in the sum of \$10,000. The current bond is \$2,000. In Section 10, the salary of surface mine inspectors is changed from "not less than \$17,000 per year" to not less than "\$53,904 per year."

In Section 11, the Mine Inspectors' Examining Board is abolished, and the duties of that entity are imposed upon the Board of Coal Mine Health and Safety.

In Section 21, the minimum salary of a mine foreman examiner is increased from \$13,500 to \$31,032. In Section 30, subsection 30.8. is added to provide that the MSHA- approved surface ground control plan shall serve as the state-approved plan.

In Section 48, a new subsection 48.4. requires that at least one AED be stored on the permitted area of all surface operations in a controlled environment with manufacturers' recommendations. Further, all mine personnel must be trained on the operation of the AED, and a written record must be retained. In Section 52, the requirement for filing reports was revised from monthly to quarterly.

Office of Miners' Health Safety and Training, Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia, 56 CSR 8

During the 2018 Regular Session, Senate Bill 626 passed which required the Director of the Office of Miners Health, Safety and Training to promulgate an emergency rule detailing the requirements for mine safety programs to be established by coal operators as provided in W. Va. Code §22A-1-36(b).

This rule amends a current legislative rule. It provides that the comprehensive mine safety program is not subject to annual review by the Director, except when there has been a fatality, a serious accident involving bodily harm, or a pattern of mine safety violations. The Director now has 90 days, as opposed to 30 days, to approve an initial submission of a program or to approve any proposed modifications or revisions. A program's annual evaluation must now include accident investigations conducted during the previous one-year period. Finally, it allows an operator or independent contractor to petition the Director to be removed from annual review.

Office of Miners' Health Safety and Training, Operating Diesel Equipment in Underground Mines in West Virginia, 56 CSR 23

During the 2018 Regular Session, Senate Bill 626 passed which required the Director of the Office of Miners Health, Safety and Training to amend the state rules to permit the use of diesel generators in

underground mines as long as the generator is vented directly to the return and at least one person is present within sight and sound of the generator.

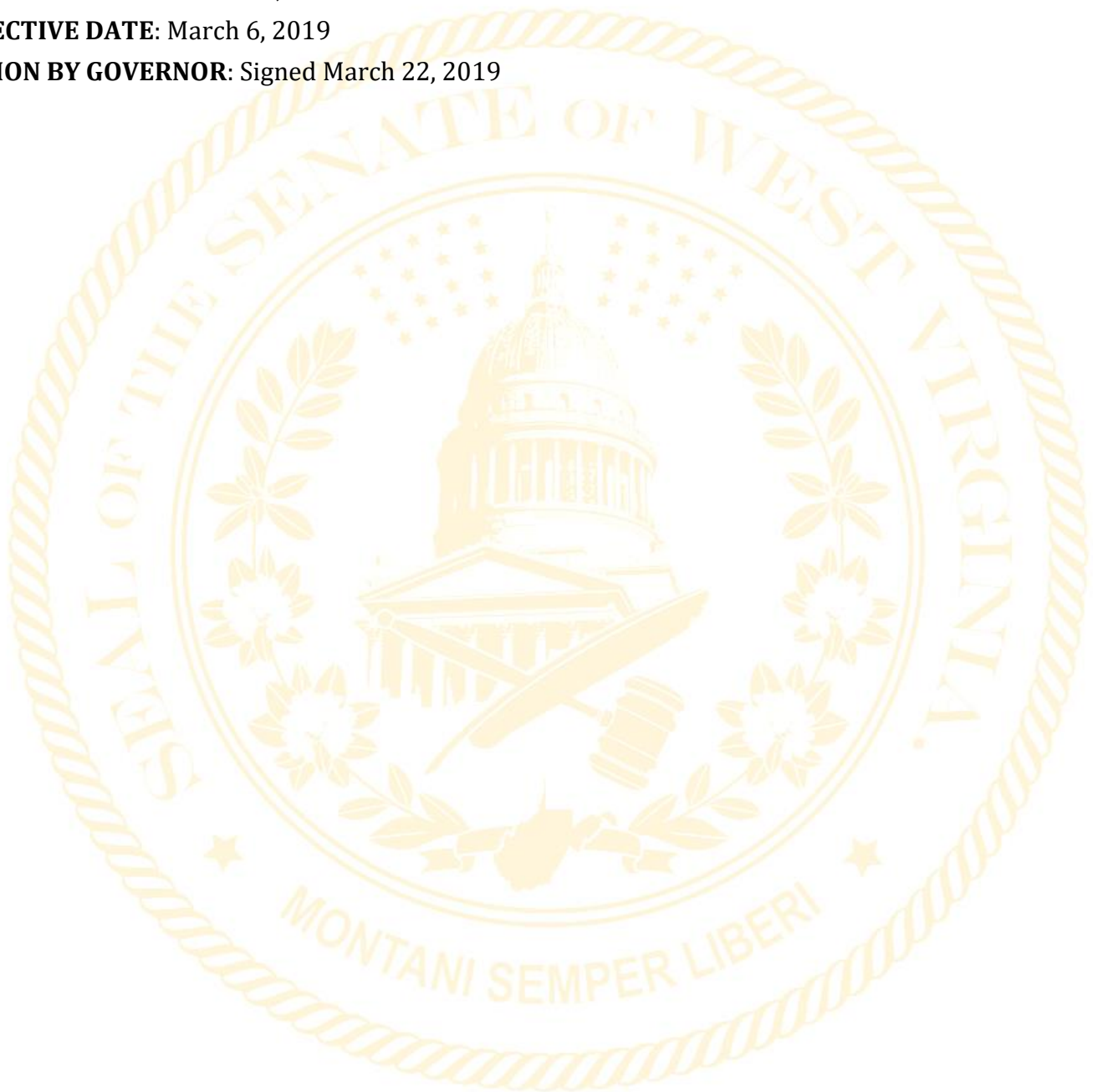
This rule also contains two new sections that relate to the operation of underground diesel-powered electric generators (§28) and electrical provisions for diesel- powered electrical generators (§29).

CODE REFERENCE: West Virginia Code §64-10-1, §64-10-2, and §64-10-3 – amended

DATE OF PASSAGE: March 6, 2019

EFFECTIVE DATE: March 6, 2019

ACTION BY GOVERNOR: Signed March 22, 2019



Senate Bill 240

Repealing certain legislative rules no longer authorized or are obsolete

This bill repeals the following legislative rules which are obsolete or for which there is no longer authority, including two rules from the Department of Environmental Protection.

Department of Environmental Protection

- Department of Environmental Protection legislative rule relating to abandoned mine lands reclamation rule, 59 CSR 1.
- Department of Environmental Protection legislative rule relating to certification of gas wells, 35 CSR 7.

CODE REFERENCE: West Virginia Code §64-12-1 et seq. – new

DATE OF PASSAGE: February 11, 2019

EFFECTIVE DATE: February 11, 2019

ACTION BY GOVERNOR: February 19, 2019

Senate Bill 163

Authorizing the Department of Environmental Protection promulgate legislative rules

This bill contains 10 rules proposed by the Department of Environmental Protection and two rules which the Department requested be repealed, which constitute Bundle 3.

Hazardous Waste Management System, 33 CSR 20

This proposed rule modifies an existing Department of Environmental Protection (DEP) legislative rule that regulates the generation, treatment, storage, and disposal of hazardous waste in this State.

The modification proposed by this rule adopts and incorporates by reference current provisions in the federal counterpart, the Resource Conservation and Recovery Act (RCRA) and the regulations promulgated thereunder. The rule is amended to include federal changes through July 1, 2017.

Underground Storage Tanks, 33 CSR 30

This proposed rule modifies an existing Department of Environmental Protection (DEP) legislative rule that regulates underground storage tanks in this State.

The modification proposed by this rule adopts and incorporates by reference current provisions in the federal counterpart, 40 CFR 280. The rule is amended to include federal changes through July 15, 2015.

The modifications to Section 3 are extensive, including additions to the qualifications of Class A, C, and D certificates and an entirely new Class F certificate. The modifications also delete the Secretary's power to do a background check, add a requirement that the applicant submit documentation of active job participations, and add new requirements for National Association of Corrosion Engineer certification levels for Class D and Class E classifications. Application fees are increased from \$75 to \$185 and the renewal rate is increased to \$125 from \$50, with the fee covering a three-year period instead of a two-year period. A new section provides that fees shall be adjusted annually to account for inflation or deflation.

Section 4 is amended to add a requirement that the Secretary be notified of structural deficiencies of tanks and any work done on interior linings or corrosion protection.

West Virginia Surface Mining Reclamation Rule, 38 CSR 2

This proposed rule modifies an existing Department of Environmental Protection legislative rule that governs requirements of a program that deals with the remediation of mine lands and returning them to approximate environmental integrity. The proposed amendment consolidates various provisions relating to blasting under the rubrics of this rule, deletes certain sections of the current rule that have no apparent Federal counterpart, and modifies certain sections to be more closely analogous to the Federal counterpart.

Section 6 has been extensively amended. The amendments cover, in extensive detail, the general requirements for blasting operations, filing and composition of blasting plans, public notice of all blasting operations—including appropriate signage, surface blasting on underground mines, the creation, composition and maintenance of the blast record, blasting procedures, including the safety protocols to be followed, blasting controls for structures, and pre-blast surveys. They include tables and charts setting forth explosive eights, vibrations, and other criteria.

In Section 11, the provisions relating to incremental bonding have been amended to mirror the language found in the Federal Code of Federal Regulations and provisions relating to Environmental Security Accounts for Water Quality are eliminated as it has no Federal counterpart.

A new Section 25 has been added on the certification of blasters which sets forth requirements for certification, training, the responsibilities of blasters, examination procedures, approval and recertification, certificates, penalties for violations—including suspension and revocation, reinstatement, potential civil and criminal penalties and all hearings and appeals, blasting crews and reciprocity with other states.

A new Section 26 has been added setting forth requirements for blasting damage claims, claim filing procedures, investigation and rules governing all aspects of the arbitration of the claims.

A new Section 27 has been added setting forth requirements for the assessment, sufficiency, distribution of proceeds from and payment of explosive material fees, and adding language referencing the Code penalties for failure to comply with paying the fees.

Standards of Performance for New Stationary Sources, 45 CSR 16

This proposed rule modifies an existing DEP rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2016.

Control of Air Pollution from Combustion of Solid Waste, 45 CSR 18

This proposed rule modifies an existing DEP rule which establishes and adopts national standards of performance and other requirements for air pollution caused by the combustion of solid waste, as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2017.

Section 9 has been amended to substantially change the manner in which hydrogen chloride and mercury emissions are to be calculated. Additionally, combined emissions for units using a coal mill or alkali bypass are given a new method of calculation. An entirely new set of procedures now being specified for electronic media.

Control of Air Pollution from Municipal Solid Waste Landfills, 45 CSR 23

This proposed rule modifies an existing DEP rule which establishes and adopts emission standards for controlling air pollution from Municipal Solid Waste Landfills, as promulgated by the United States Environmental Protection (EPA) in accordance with the federal Resource Conservation and Recovery Act (RCRA).

The modifications incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2017.

Section 7, which is new, sets forth the applicability, compliance times, emissions requirements, collection and control system requirements testing requirements, emission monitoring requirements, compliance requirements, reporting requirements, and recordkeeping requirements enjoined upon operators of existing municipal solid waste landfills by the EPA.

Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities, 45 CSR 25

This proposed rule modifies an existing DEP rule which establishes and adopts emission standards for controlling air pollution from Hazardous Waste Treatment, Storage, and Disposal Facilities, as promulgated by the United States Environmental Protection (EPA) in accordance with the federal Resource Conservation and Recovery Act (RCRA).

The modifications incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2017.

The modifications also incorporate by reference annual updates to provisions contained in the State Hazardous Waste Management System Rule, 33 CSR 20, promulgated as of June 1, 2017.

Emission Standards for Hazardous Air Pollutants, 45 CSR 34

This proposed rule modifies an existing DEP rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Clean Air Act (CAA).

The modifications incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2017.

Ambient Air Quality Standards, 45 CSR 08

This proposed rule modifies an existing DEP rule which establishes and adopts standards of ambient air quality in West Virginia, specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, incorporating by reference the national primary and secondary ambient air quality standards, as promulgated by the United States Environmental Protection Agency (EPA).

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2017. It incorporates by reference EPA modifications on the Ambient Air Quality Standards for Lead and Particulate matter which retain the current lead standard and make a technical correction on the particulate matter standard. Also, new methods of measuring sulfur dioxide and nitrogen dioxide concentrations were approved.

West Virginia Surface Mining Reclamation Rule, 38 CSR 2

This proposed rule modifies an existing Department of Environmental Protection legislative rule that governs requirements of a program that deals with the remediation of mine lands and returning them to approximate environmental integrity. The proposed amendment consolidates various provisions relating to blasting under the rubrics of this rule, deletes certain sections of the current rule that have no apparent Federal counterpart, and modifies certain sections to be more closely analogous to the Federal counterpart.

The proposed rule makes extensive changes to the section on blasting. It covers, in extensive detail, the general requirements for blasting operations, the filing and composition of blasting plans, public notice of all blasting operations—including appropriate signage, surface blasting on underground mines, the creation, composition and maintenance of the blast record, blasting procedures, including the safety protocols to be followed, blasting controls for structures, and pre-blast surveys. It includes tables and charts setting forth explosive weights, vibrations, and other criteria.

A new Section 25 on the certification of blasters setting forth requirements for certification, training, the responsibilities of blasters, examination procedures, approval and recertification, certificates,

penalties for violations—including suspension and revocation, reinstatement, potential civil and criminal penalties and all hearings and appeals as per Code, blasting crews and reciprocity with other states.

A new Section 26 adds an entirely new section setting forth requirements for blasting damage claims, claim filing procedures, investigation and rules governing all aspects of the arbitration of such claims.

Finally, the proposed rule adds a new Section 27 setting forth requirements for the assessment, sufficiency, distribution of proceeds from and payment of explosive material fees, and adding language referencing the Code penalties for failure to comply with paying the same.

The Senate Committee on Energy, Industry and Mining adopted amendments to the proposed rule which rewrote paragraph 12.2.a.4 of the proposed rule, relating to a bond release or reduction. It removed reference to compliance with water quality standards and allows the Secretary to approve a request for release without restriction as to Phase. The Committee also rewrote paragraph 12.2.4.B. The paragraph currently requires an operator to irrevocable commit other financial resources to assure long term treatment of drainage. It requires a mechanism whereby the Secretary can assume management of the resources in the case of an operator's default. EIM's amendment removes this requirement and simply requires an operator to provide assurances in a form satisfactory to the Secretary through a contract or other mechanism to provide for long term treatment of the damage.

Voluntary Remediation and Redevelopment Rule, 60 CSR 3

This proposed rule modifies an existing Department of Environmental Protection legislative rule that implements a program that provides guidelines for brownfield revitalization and provides procedures and standards for that program. The rule is designed to encourage persons to voluntarily implement and remedial plans at sites which may be contaminated without DEP having to take enforcement action by providing financial incentives and establishing limitations of liability for persons who perform remediation on these sites to DEP's standards.

The modifications proposed by this rule revise procedures for the Brownfields Revolving Fund (BRF) program. Primarily, all information about the BRF is now placed in the same section of the Rule, greater flexibility is provided for on establishing loan interest rates and procedures for accommodation of a variety of entities, so that conditions for EPA loans can be met, and to gain access to a broader array of funding sources, such as legislative grants of monies or grants from other entities or groups.

Section 6 has been amended to remove language providing that voluntary arbitration agreements may contain a provision for alternative dispute resolution.

State Construction Grants Program Rule, 47 CSR 33

This rule is being repealed because Congress never reappropriated the money for this grant program.

Rules on Freedom of Information Act Requests, 60 CSR 2

The Department requested that this rule be repealed.

CODE REFERENCE: West Virginia Code §64-3-1 – amended

DATE OF PASSAGE: February 16, 2018

EFFECTIVE DATE: February 16, 2018

ACTION BY GOVERNOR: Signed February 27, 2018

Senate Bill 230

Authorizing the Department of Commerce promulgate legislative rules

This bill contains seven Division of Labor Rules; five Division of Natural Resources rules, one rule from the Office of Miners' Health, Safety and Training and one Division of Energy rule which is being repealed, all relating to the Department of Commerce and constituting Bundle 10.

Miners Health Safety and Training, Operating Diesel Equipment in Underground Mines in WV, 56 CSR 23

During the 2015 legislative session, the Legislature passed Senate Bill 357. Senate Bill 357 (codified as W. Va. Code 22A-2A-301(a), abolished the West Virginia Diesel Commission and transferred its duties and responsibilities to the Director of the Office of Miners Health, Safety and Training. Senate Bill 357 gave the power and authority to propose legislative rules.

During the 2017 legislative session, the Legislature passed Senate Bill 687 (Codified at S.B. 22A-2A-1001), which mandated the Director to revise these rules and to make nine (9) specific changes as a Miners Health, Safety and Training rule. The Director incorporated those (9) specified changes into the WV Diesel Commission.

The proposed rule: adds a new subsection that permits a mine operator to replace a filter or catalyst of the same make and model without contacting the office of miners' health, safety and training; provides that only qualified mechanics authorized by the engine manufacturer or ASE certified diesel mechanics may repair or adjust fuel injection systems, engine timing or exhaust emissions control and conditioning systems; requires all used intake air filters, exhaust diesel particulate matter filters and engine oil filters to be placed in their original containers or other suitable enclosed containers and be removed from the underground mine to the surface no less than once in a 24 hour period; requires records of emissions tests, 200 hour maintenance tests and repairs be countersigned once each week by the certified mine electrician or mine foreman; with respect to replacing engine oil and filters, requires an independent analysis be conducted of the engine oil; removes requirement that a portable carbon monoxide (CO) sampling device be installed into the untreated exhaust gas coupling provided in the operator's cab; modifies the time and duration for which the CO sampler must be started to measure and record CO levels from every minute for five minutes to every thirty seconds for ninety seconds; modifies the time and duration for which the CO sampler must be started to measure and record CO levels from every minute for five minutes to every thirty seconds for ninety seconds; modifies the alternative condition by which equipment fails under 196 CSR 1-21, to omit the reference to the average CO reading for untreated exhaust gas is greater than twice the baseline; and removes the requirement for eight (8) hours of annual diesel equipment operator refresher training separate from that required by MSHA regulations.

Division of Energy, Community Development Assessment and Real Property Valuation Procedures for Office of Coalfield Community Development, 207 CSR 1

This rule is being repealed because the Division of Energy no longer exists.

CODE REFERENCE: West Virginia Code §64-10-1 et seq. – amended

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: March 10, 2018

ACTION BY GOVERNOR: Signed March 21, 2018

Senate Bill 113

Authorizing DEP promulgate legislative rules

This rules bundle contains nine bills which constitute Bundle 3, Department of Environmental Protection. Each rule is discussed below.

Department of Environmental Protection, Alternative emission limitations during startup, shutdown and maintenance operations, 45-01

This rule is a new rule that sets forth the criteria for establishing an alternative emission limitation (AEL) during periods of startup, shutdown, or maintenance for stationary sources (periods outside of normal operations). The rule adopts the alternative emission limitation provisions already contained in a series of state implementation plans. The rule applies to a set of sources that have excess emissions during these specified periods and thus, cannot meet the allowable emissions limits at all times. The rule provides criteria for establishing these alternative emissions limitations and includes the reporting requirements in accordance with corresponding federal regulation. The rule does not apply to sources of emissions that are subject to a NSPS or MACT regulation with specific start-up and shutdown provisions.

The rule implements modifications to WV Rules which are necessary to maintain compliance with federal Clean Air Act (CAA) guidelines as interpreted by the Environmental Protection Agency (EPA), and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State.

Department of Environmental Protection, Permits for construction, modification, relocation and operation of stationary sources of air pollutants, notification requirements, administrative updates, temporary permits, general permits, permission to commence construction and procedures for evaluation, 45-13

This rule modifies an existing DEP rule which establishes a series of procedures for reporting by stationary sources of air pollution, and defines the criteria necessary for obtaining permits to construct, modify, or relocate a non-major stationary source, consistent with the CAA.

These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State. Finally, the promulgation history of the rule is updated.

Department of Environmental Protection, Permits for construction and modification of major stationary sources for prevention of significant deterioration of air quality, 45-14

This rule modifies an existing DEP rule which establishes a preconstruction state permit program consistent with the federal CAA and implementing regulations for the prevention of significant deterioration of air quality. The program sets forth criteria for issuing permits for the construction or major modification of major stationary sources of air pollution.

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2016. These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State. The promulgation history of the rule is also updated.

Department of Environmental Protection, Standards of performance for new stationary sources, 45-16

This rule modifies an existing DEP rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the EPA pursuant to the federal CAA.

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2016. These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State. The promulgation history of the rule is also updated.

Department of Environmental Protection, Control of air pollution from hazardous waste treatment, storage and disposal facilities, 45-25

This rule modifies an existing DEP rule which establishes and adopts emission standards for controlling air pollution from Hazardous Waste Treatment, Storage, and Disposal Facilities, as promulgated by the EPA in accordance with the federal Resource Conservation and Recovery Act (RCRA).

The modifications incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2016. These modifications are necessary to maintain consistency with applicable federal laws and allow West Virginia to continue as the primary enforcement authority of the federal hazardous waste management system (RCRA) in the State.

The modifications also incorporate by reference annual updates to provisions contained in the State Hazardous Waste Management System Rule, 33CSR20, promulgated as of June 1, 2016. The promulgation history of the rule is also updated.

Department of Environmental Protection, Emission standards for hazardous air pollutants, 45-34

This rule modifies an existing DEP rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the EPA pursuant to the CAA.

The modifications incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2016.

These modifications are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in this State for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA. The modifications also update the promulgation history of the rule.

Department of Environmental Protection, Ambient air quality standards, 45-08

This rule modifies an existing DEP rule which establishes and adopts standards of ambient air quality in West Virginia, specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, incorporating by reference the national primary and secondary ambient air quality standards, as promulgated by the EPA.

The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2016. These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of

federal new source performance standards in this State. Finally, the promulgation history of the rule is updated.

Department of Environmental Protection, Rule: Voluntary remediation and redevelopment, 60-03

This Rule is being promulgated in order to bring State Rules into conformity with the federal EPA rule which recently made changes to exposure factors, toxicity criteria, and physiochemical parameters, as well as risk-based groundwater de minimis values now including exposure via dermal contact.

This rule amends Table 60-3B (the “Deminimis Table”) and incorporates some minor changes. The table is used extensively during risk-based cleanups to determine whether or not environmental contamination at a site being evaluated under the rule exceeds levels that would be protective of human health.

Department of Environmental Protection, Awarding of matching grants for local litter control programs, 33-41

This Rule is being promulgated in order to replace 58-06. This entire Rule is new.

The Litter Control Grant Program was originally established by the legislature under the jurisdiction of the Division of Natural Resources. During the 2005 regular session of the legislature, the creation of the A. James Manchin Rehabilitation Environmental Action Plan (“REAP”) moved the Litter Control Program from the DNR to the DEP. This rule simply clarifies that the program is under the jurisdiction of the DEP.

CODE REFERENCE: West Virginia Code §64-3-1 et seq. – amended

DATE OF PASSAGE: March 30, 2017

EFFECTIVE DATE: March 30, 2017

ACTION BY GOVERNOR: Signed April 8, 2017

Senate Bill 134

Authorizing Bureau of Commerce to promulgate legislative rules

This bill authorizes six rules, and directs the Board of Coal Mine Health and Safety to amend a current rule and repeals one current legislative rule promulgated by the Division of Natural Resources.

Office of Miners' Health, Safety and Training Certification, Recertification and Training of EMT-Miners and the Certification of EMT-M Instructors, 56-22

The Coal Jobs and Safety Act of 2016 transferred the training of miners EMTs from the Office of Emergency Services to the Director of the Office of Miners' Health Safety and Training. The rule conforms to the Act. It adds a definition of "National DOT Curriculum for First Responders."; extends the period of time accepted for recognition as an EMT-M under the Grandfather Clause; and lists 2 new requirements for certification.

An initial applicant has up to one year to retake the parts of the test that he or she failed in order to obtain the EMT-M certification. After one year, if the applicant fails to obtain his or her certification, he or she must repeat the entire EMT-M course. The EMT- M curriculum in conjunction with the National DOT Curriculum for First Responders must be followed when teaching the sixty (60) hour EMT-M certification course. Updates in the DOT curriculum will also apply to the EMT-M curriculum.

The 2017 Legislature during the Regular Session directed the Board of Coal Mine Health and Safety to amend the below rule:

Board of Coal Mine Health and Safety Rules governing proximity detection systems and haulage safety generally, 36-57

The Legislature directed the Board to amend its current rules to remove the July 1, 2017, deadline and insert instead the timeframe set forth in the federal rule relating to proximity detection systems.

CODE REFERENCE: West Virginia Code §64-10-1, §64-10-2, and §64-10-3 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: April 8, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

Senate Bill 202

Authorizing Department of Commerce promulgate legislative rules

This bill authorizes the Department of Commerce to promulgate the following rules, including rules for the Division of Labor, WorkForce West Virginia, and the Office of Miners' Health, Safety and Training.

West Virginia Division of Labor, Wage Payment and Collection, 42 CSR 5

Senate Bills 12 and 318, both passed during the 2015 Legislative Session, amended the Wage Payment and Collection Act. Senate Bill 12 standardized the law concerning the time by which employers must pay employees their final wages, regardless of the reason for the separation. Senate Bill 318 modified the Code to permit employers to pay employees twice monthly without having to seek a variance from DOL, so long as the bi-monthly settlements are no more than nineteen days apart. DOL now proposes several modifications to the current rules implementing that Act.

The House of Delegates amended the rule on page seven, subsection 10.4 and subdivisions 10.4.1 and 10.4.2, by inserting language to clarify that an employer or a claimant may submit evidence for consideration by the Division of Labor.

Division of Labor, Minimum Wage and Maximum Hours, 42 CSR 8

The Division of Labor has promulgated this rule pursuant to passage of House Bill 4283 during the 2014 Regular Session and House Bill 201 during the Second Extraordinary Session. The rule sets forth criteria for employer and employee exemptions, determination of compensable time, employer credits and other matters relating to minimum wages, maximum hours and overtime compensation.

The Senate amended the rule on page one, section two, by adding a new subsection to clarify the enforceability of the provisions of the rule.

WorkForce West Virginia, West Virginia Prevailing Wage Act, 96 CSR 4

The rule series 96CSR4 is a new series offered by WorkForce WV pursuant to W.Va. Code §21-5A-12.

The rule defines the regions of the state that will be used to calculate the prevailing hourly rate of wages. Also, the rule provides the process for addressing written objections to the methodology to calculate the wages.

Any public authority or political subdivision contemplating the construction of a public improvement project exceeding \$500,000 in public money must obtain the prevailing hourly rate of wages from WorkForce. Such rates shall be incorporated into the contract specifications. The subdivision also provides that any affected person may object to the methodology for determining the prevailing hourly rate of wages or the rate of wages by filing a written objection with the Executive Director in accordance with the process provided for in the rule.

Office of Miners' Health, Safety and Training, Substance Abuse Screening Standards and Procedures, 56 CSR 19

The Office of Miners' Health, Safety and Training, in response to S.B. 357 (The Coal Jobs and Safety Act of 2015), has amended its current rules to bring them into conformity with the provision in SB 357 which states that if a miner refuses or fails a drug test, the agency may immediately suspend the miner's certification instead of waiting, in the case of union miner, for the outcome of the arbitration. The rule is

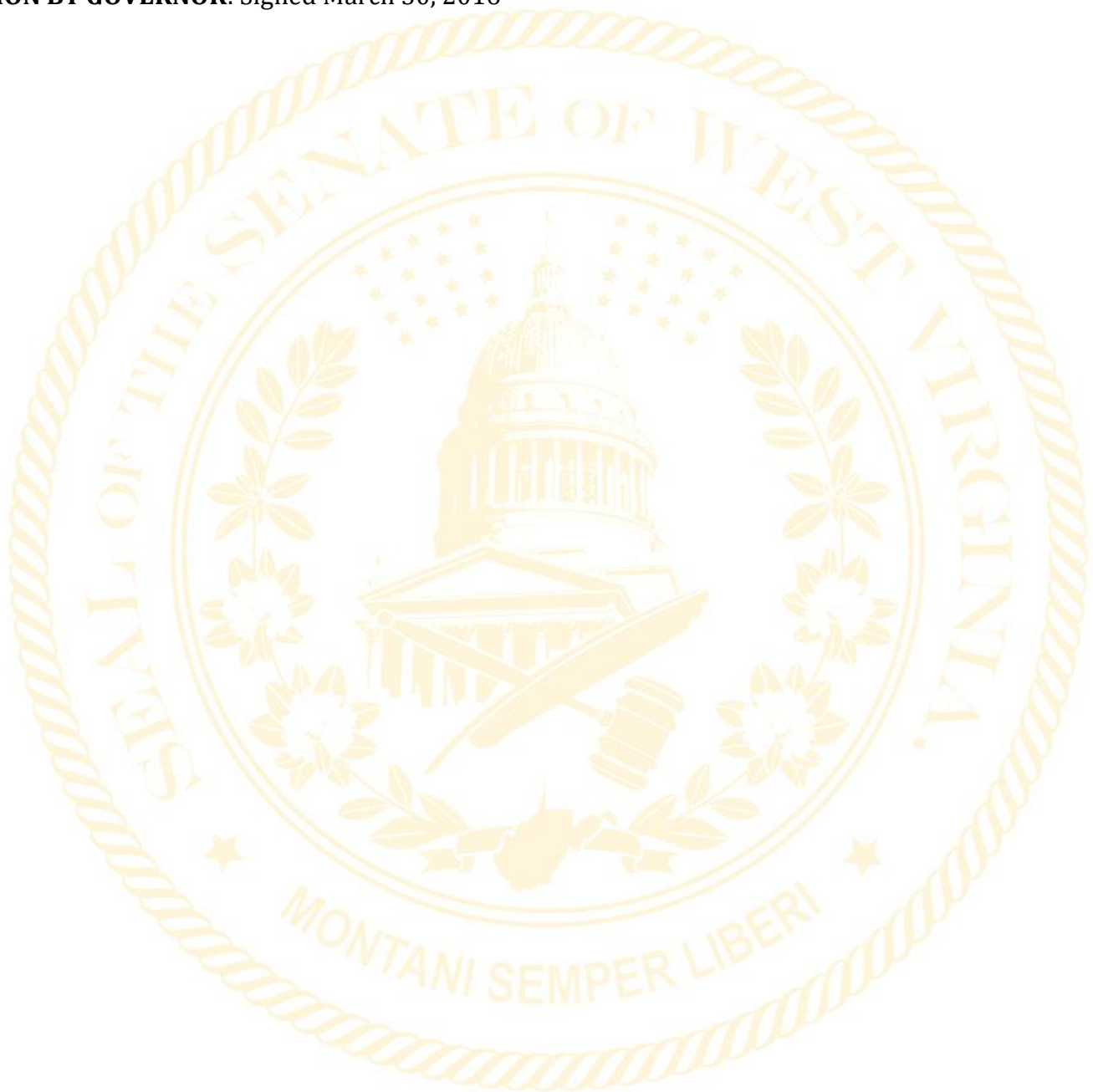
also amended to include sections from SB 357 which states that a certified employee may not rely on a prescription that is dated one year prior to the date of the drug test result.

CODE REFERENCE: West Virginia Code §64-10-1 et seq. – amended

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: March 11, 2016

ACTION BY GOVERNOR: Signed March 30, 2016



Senate Bill 140

Amending State Administrative Procedures Act

This bill was recommended for passage by the Legislative Rule-Making Review Committee. The bill makes a number of changes to Chapter 29A, the State Administrative Procedures Act, in order to better align the Code with current practice and to add additional code sections to facilitate the rule-making process.

Two new sections are added to state code. The first, §29A-1-3a, clarifies that technical amendments to a current rule (including typos, punctuation, internal code citations, addresses and phone numbers) do not require the rule to go through the legislative rule-making review committee. Instead, agencies can file the corrected rule with the Secretary of State's office. The second new section, §29A-1-3b, concerns void rules and clarifies that when an agency ceases to exist, the agency rules are automatically void.

One section of code, §29A-2-8, is repealed. This code section placed limitations on an agency's ability to duplicate its own rules, or to obtain copies of those rules other than from the Secretary of State, except under certain circumstances. Additional amendments to the Code made by this bill include:

A new definition added in §29A-1-2 defining "legislative exempt rule," as a rule that is "promulgated by an agency or relating to a subject matter that is exempt from the rule-making provisions" of chapter 29A. Additional changes are made throughout the chapter to identify the manner in which legislative exempt rules are to be handled. Amendments to §29A-3-1a clarifying that an agency seeking to amend an existing rule must re-file the entirety of the rule rather than simply those parts of the bill that are being changed, and further clarifying that new language be underlined and removed language must be stricken through in the rule submitted to rule-making.

§29A-3-4 sets forth the procedures for filing legislative exempt rules and notices thereof with the Secretary of State's Office, but clarifies that legislative exempt rules and other procedural and interpretive rules are not void for failure to comply with these procedures. §29A-3-8 adds language on the effective date of legislative rules to allow the effective date to be set by other sections of applicable code. Similar changes in §29A-3-13 modify the effective date of non-exempt legislative rules that are filed with the State Register to the filing date, or to another date fixed by the agency.

Finally, §29A-3-15 modifies the procedures for handling emergency legislative rules. The bill adds a requirement that an agency filing a proposed emergency rule include therewith "a listing of state agencies, professions, businesses and other identifiable interest groups affected by the proposed emergency rule." An agency's good faith failure to provide a comprehensive list is not a basis for disapproval of the emergency rule. The bill also clarifies that an emergency rule expires upon an agency's failure to file a proposed rule addressing the same subject matter following the close of the public comment period.

CODE REFERENCE: West Virginia Code §29A-1-2, §29A-3-1a, §29A-3-4, §29A-3-8, §29A-3-13 and §29A-3-15 – amended; §29A-1-3a and §29A-1-3b – new; §29A-2-8 – repealed

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: March 14, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

House Bill 2233

Requiring that legislative rules be reviewed five years after initial approval by the Legislative Rule-Making Review Committee and the Legislative Auditor's Office

This bill requires the Legislative Rule-Making Review Committee, with the assistance of the Legislative Auditor, to review any rule promulgated after January 1, 2015, within five years of its effective date. The LRMRC is to make recommendations to the Legislature for amendment or repeal of any rule. The LRMRC is to determine whether or not a rule is achieving its purpose and whether it should be eliminated, continued or amended. The LRMRC and the Legislative Auditor's Office are to submit their findings and recommendations to the Joint Committee on Government and Finance.

CODE REFERENCE: West Virginia Code §29A-3-16 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

House Bill 2283

Authorizing the Department of Environmental Protection to promulgate legislative rules

The purpose of this bill was to authorize the DEP to promulgate ten legislative rules – five from the Division of Air Quality; one from the Secretary's Office; and four from the Division of Water and Waste Management. Most of these rules involved standard updates to DEP rules to ensure such rules matched EPA updates in order to ensure the DEP remains the primary enforcer of EPA law in WV. Several of the rules were more complex and/or controversial, most significantly:

- 47 CSR 2, relating to water quality standards in WV; among other things, designating part of the Kanawha River known as “zone 1” to a “water category A”, meaning suitable for drinking water;
- 47 CSR 30, relating to NPDES permitting for coal operators; providing clarification that coal operators are subject to the same standards as other industries regarding NPDES permitting, as was previously clarified in S.B. 615 enacted in 2012, and to hopefully provide clarity of WV law to a WV federal court which had relied on the prior version of the rule to make adverse rulings against WV coal operators; and
- 33 CSR 1, relating to solid waste management, updating the rule to permit solid waste facilities to accept waste from natural gas well sites under a regulatory framework and standards set forth in the updated rule, pursuant to a previously enacted bill during the first special session in 2014, HB 107.

CODE REFERENCE: West Virginia Code §64-3-1 et seq. – amended

EFFECTIVE DATE: March 12, 2015

DATE OF PASSAGE: March 12, 2015

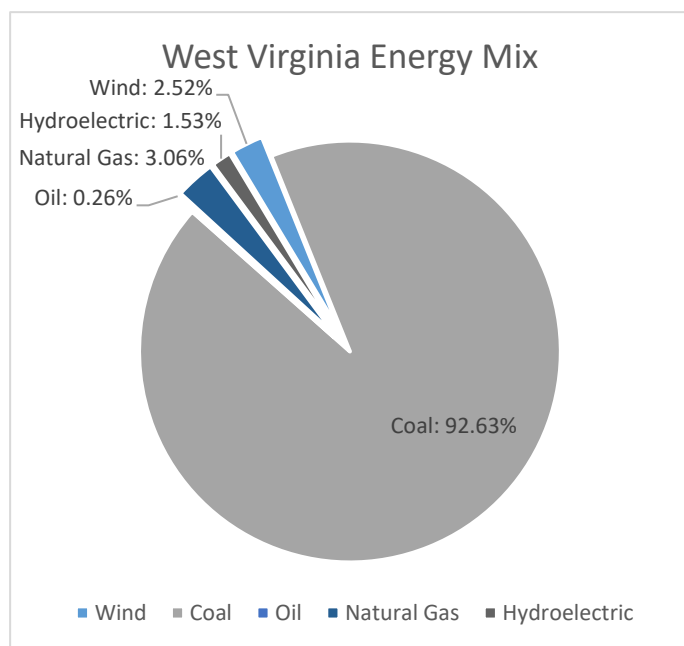
ACTION BY GOVERNOR: Signed March 31, 2015

Appendix – West Virginia Energy Statistics



Wind Power in West Virginia

West Virginia generates a large majority of its energy from coal-fired power facilities. The state, however, is generating an ever-increasing share of its power from wind turbines. West Virginia has eight operational wind generation facilities with a total capacity of 856 megawatts.



Data Source: EIA Electricity Data Browser

Electric Grid Mix

West Virginia depends on coal mined in the state for most of its power. The state has used hydroelectric power generation since around 1900, but hydroelectric power constitutes a decreasing share of energy production and is unlikely to grow. A very small amount of the power generated in the state is from solar panels. The fastest-growing source of renewable power generation is wind power, which has been steadily growing each year. 2021 saw a slight year-over-year decrease in wind generation due to a variety of factors, including planned facility outages for equipment upgrades.

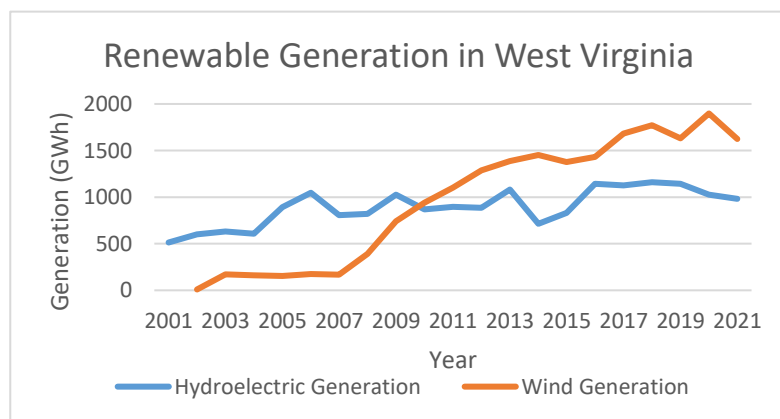
Permitting Process

The West Virginia Public Service Commission (PSC) oversees the permitting process for all new power generation in the state. The PSC holds public hearings

to authorize any new power generation projects, taking into account the interests of private power companies, the government, public interest groups and individual citizens. The PSC's three Commissioners then decide whether siting the project is within the public interest, and may approve, approve with conditions, or deny the application. Environmental, business, and landowner advocacy groups often participate in these proceedings, ensuring that the Commission has access to all the information that may be relevant to a facility's permitting.

Growth of Wind Power in State

Wind power has become more attractive to power generation developers in recent years. The cost of producing and installing wind turbines has dropped, and the turbines have become more efficient, making wind power competitive with other power generation sources. Facilities also benefit from federal and state tax incentives. Those that began construction in 2020-2021 receive \$15/MW generated from the federal Renewable Electricity Production Tax Credit, and all wind facilities pay reduced state B&O taxes as compared to other generation units.



Data Source: EIA Electricity Data Browser

Wind Power Facilities

The following eight facilities are currently in operation in West Virginia. They are listed by maximum capacity. Maximum capacity is an indication of the most energy a facility is capable of producing. Deployed capacity, the amount of energy the facility adds to the power grid, may differ from maximum capacity by a large margin for a variety of reasons. In the case of wind, environmental factors can reduce capacity, making turbines more weather-dependent than fossil-fuel generators. All generation facilities are also deployed based on demand and cost – generation is only used if it is needed, and generators are often run at below 100% capacity for this reason.

Two existing facilities have requested and received permission to make modifications to their operations or equipment. Details on these changes are available at the end of the list.

NedPower Mount Storm

- County: Grant
- Capacity: 264 MW
- Turbines: 132

Black Rock Wind Force, LLC

- County: Preston
- Capacity: 115 MW
- Turbines: 23

New Creek Wind, LLC

- County: Grant
- Capacity: 102.5 MW
- Turbines: 49

Beech Ridge Energy, LLC

- County: Greenbrier
- Capacity: 100.5 MW
- Turbines: 67

AES Laurel Mountain, LLC

- County: Randolph
- Capacity: 97.6 MW
- Turbines: 61

Mountaineer Wind Energy Center

- County: Tucker, Preston
- Capacity: 66 MW
- Turbines: 44

Beech Ridge Energy II, LLC

- County: Greenbrier
- Capacity: 56.2 MW
- Turbines: 20

Pinnacle Wind Force ¹

- County: Mineral
- Capacity: 55.2 MW
- Turbines: 23

Catamount Wind LLC ² (site permitted; not yet constructed)

- County: Grant, Tucker
- Capacity: 250 MW
- Turbines: 166

1: Pinnacle Wind Force obtained permission to repower its turbines with higher-generation models in December 2019. Case# 19-1154-E-CS-PW.

2: The company that owns and operates Mount Storm changed ownership in September 2020. The facility's name was changed to Catamount Wind following this acquisition. Case# 22-0079-E-CS-PC.

Wind Power Facilities Map

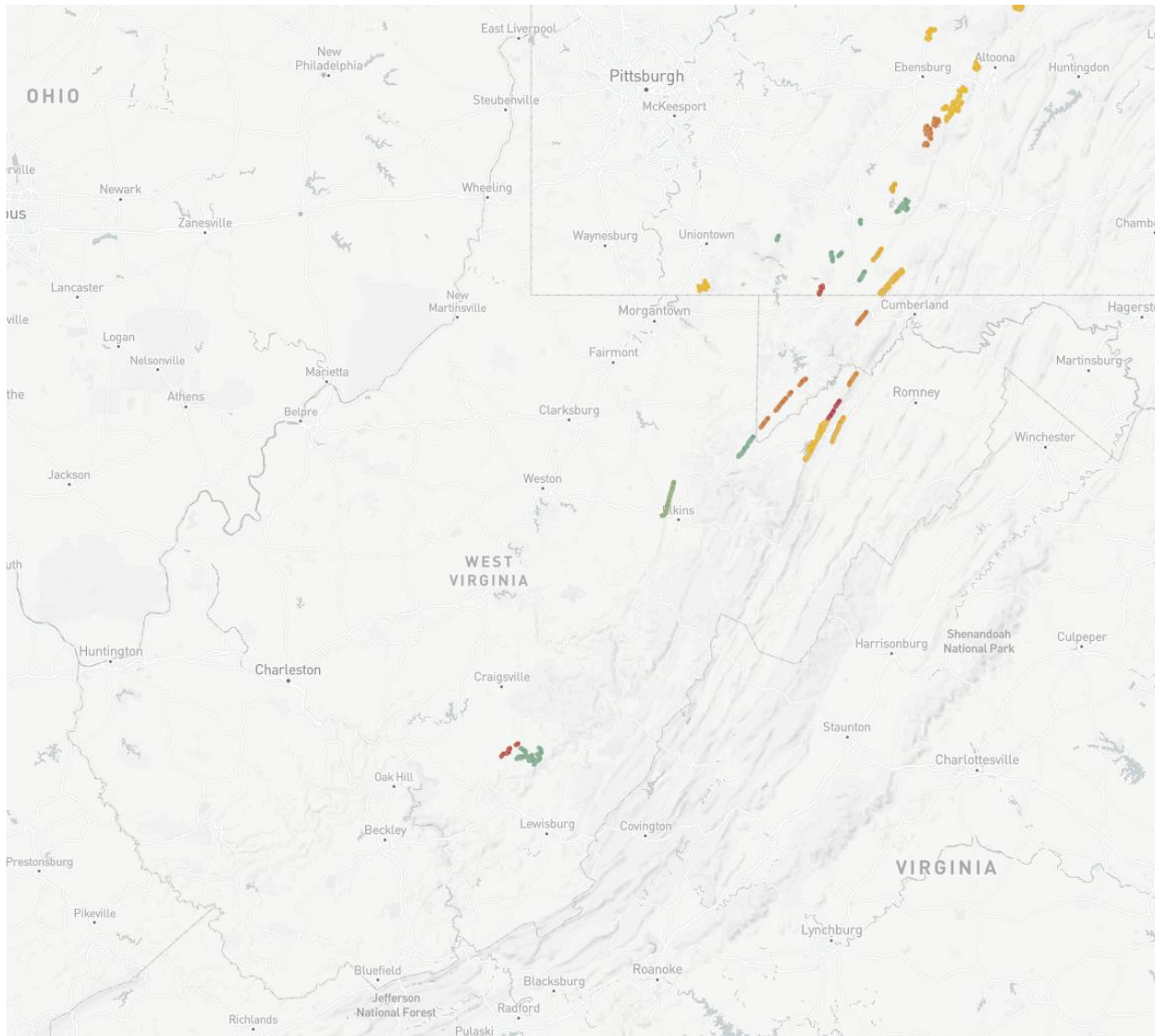


Figure 1 – Map of Wind Generation in West Virginia (Data Source: US Wind Turbine Database)

Solar Power in West Virginia

The newest addition to West Virginia's alternative/renewable energy mix, solar, has seen growth since two bills passed during the 2020 Regular Session – **Senate Bill 578**, which modified the tax structure on units that generate, produce and/or sell electricity from solar photovoltaic methods in an effort to incentivize solar generation facility investment, and **Senate Bill 583**, the Renewable Energy Facilities Program, to encourage retail solar projects and expedite required permitting to encourage new merchant solar plant construction for the wholesale market.



The West Virginia Public Service Commission has approved six solar generation facilities so far; however, none of these projects have yet been completed or gone into operation yet.

Raleigh Solar I, LLC

- County: Raleigh
- Authorized Capacity: 90 MW

Wild Hill Solar, LLC

- County: Jefferson
- Authorized Capacity: 92.5 MW

Capon Bridge Solar, LLC

- County: Hampshire
- Authorized Capacity: 20 MW

Horus West Virginia I, LLC

- County: Jefferson
- Authorized Capacity: 80 MW

Monongalia Power and Potomac Edison

- County: Monongalia, Tucker, Berkeley, Brooke, Pleasants
- Authorized Capacity: 50 MW

Appalachian Power and Wheeling Power

- County: Berkeley
- Authorized Capacity: 50 MW

Energy Facts: At a Glance



West Virginia

End-use energy consumption 2020, estimates



End-use consumption by source, excluding losses

580.4 trillion British thermal units
(percent of total for all sources)



Coal
26.8
(4.6%)



Natural gas
242.7
(41.8%)



Petroleum
185.7
(32.0%)



Renewable energy
15.8
(2.7%)



Electricity
109.4
(18.9%)

Electric power sector consumption by source

562.5 trillion British thermal units
(percent of total for all sources)



Coal
512.9
(91.2%)



Natural gas
22.4
(4.0%)



Petroleum
1.5
(0.3%)



Renewable energy
25.7
(4.6%)



Nuclear power
0.0
(0.0%)



Electricity flows

trillion British thermal units

Net interstate outflows of electricity
229.5

Net international imports of electricity
0.0

End-use consumption by sector, excluding losses

580.4 trillion British thermal units
(percent of total for all sectors)



Commercial
53.6
(9.2%)



Industrial
281.4
(48.5%)



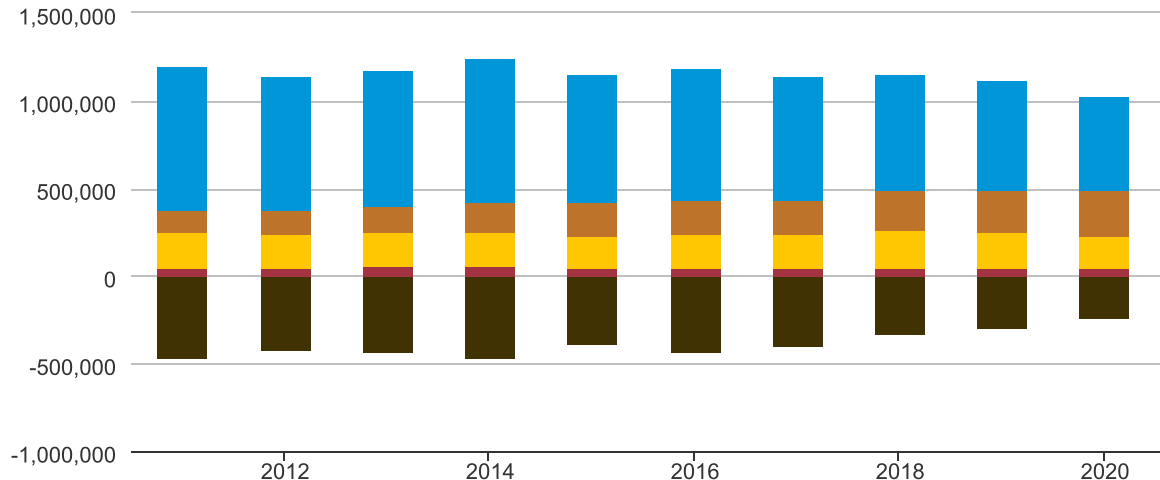
Residential
75.4
(13.0%)



Transportation
170.0
(29.3%)

Total energy consumption estimates by source, annual

billion btu



West Virginia / coal West Virginia / natural gas West Virginia / nuclear
West Virginia / petroleum West Virginia / renewables
West Virginia / net interstate flow of electricity West Virginia / net imports of electricity

Total energy production estimates by energy source, annual

billion btu

6,000,000

4,000,000

2,000,000

0

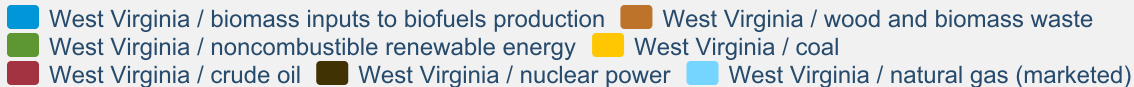
2012

2014

2016

2018

2020



Total energy consumption estimates by end-use sector, annual

billion btu

1,000,000

750,000

500,000

250,000

0

2012

2014

2016

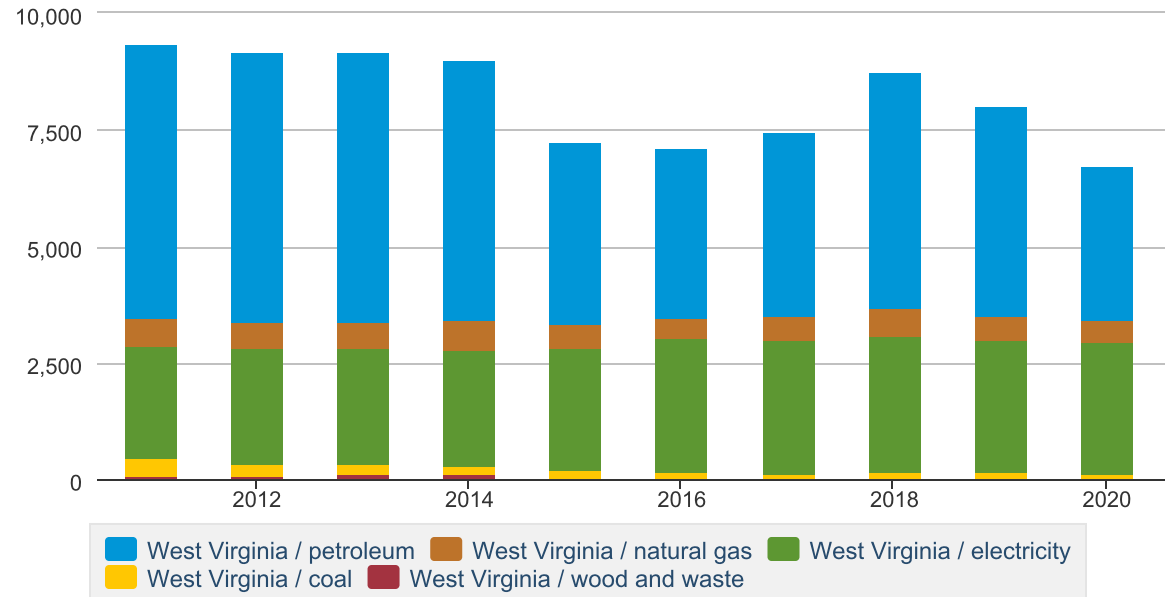
2018

2020



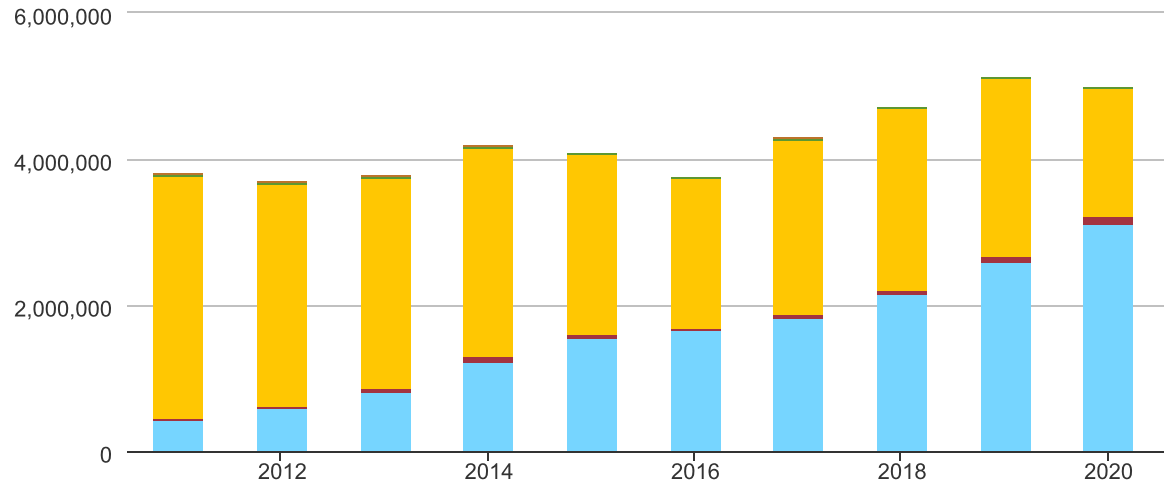
Total end-use energy expenditure estimates by source, annual

million dollars



Total energy production estimates by energy source, annual

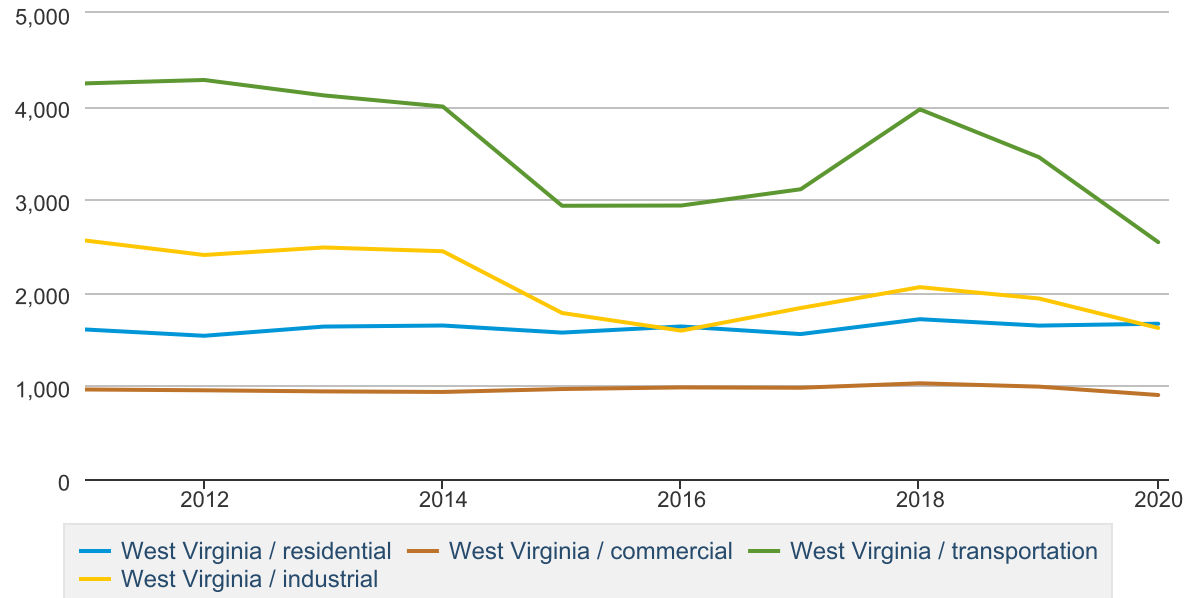
billion btu



West Virginia / biomass inputs to biofuels production West Virginia / wood and biomass waste
West Virginia / noncombustible renewable energy West Virginia / coal
West Virginia / crude oil West Virginia / nuclear power West Virginia / natural gas (marketed)

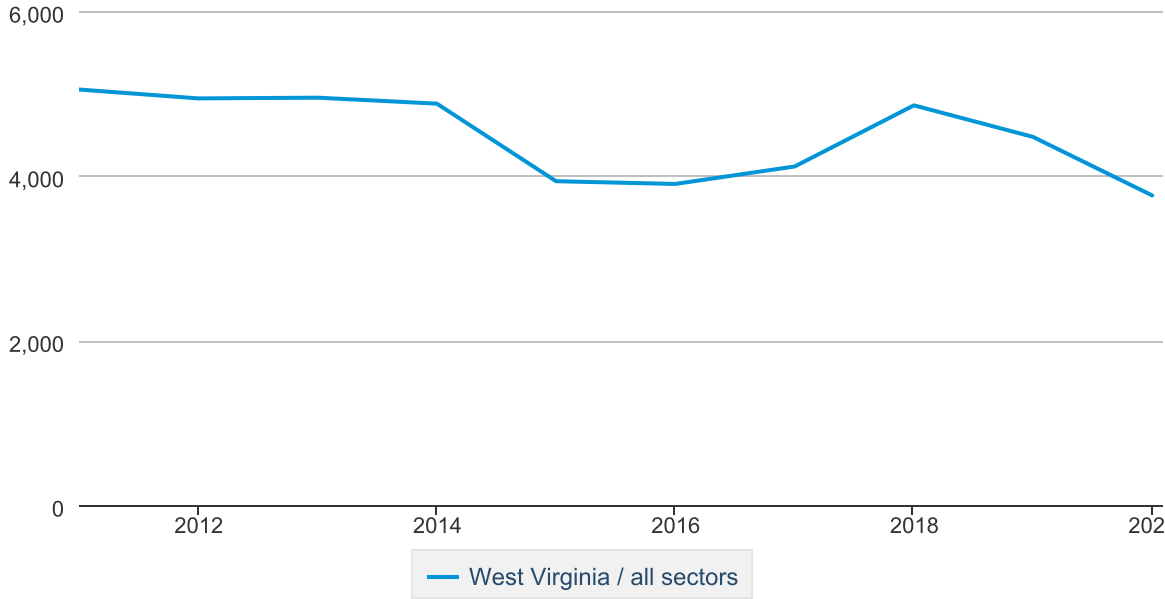
Total energy expenditure estimates by end-use sector, annual

million dollars



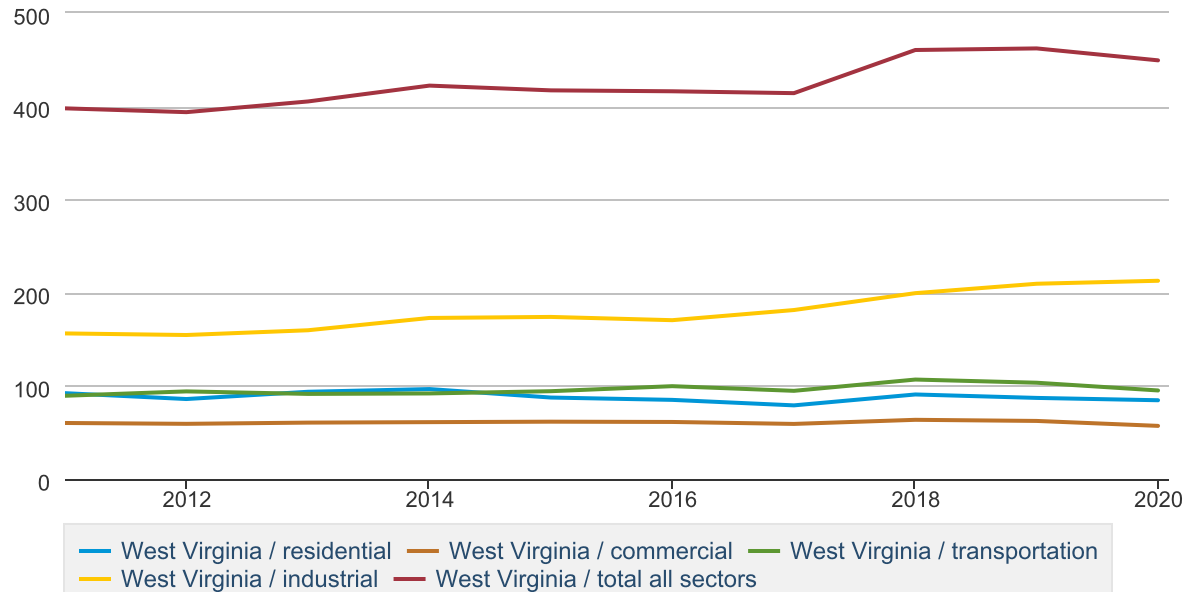
Total energy expenditure per capita estimates, annual

dollars



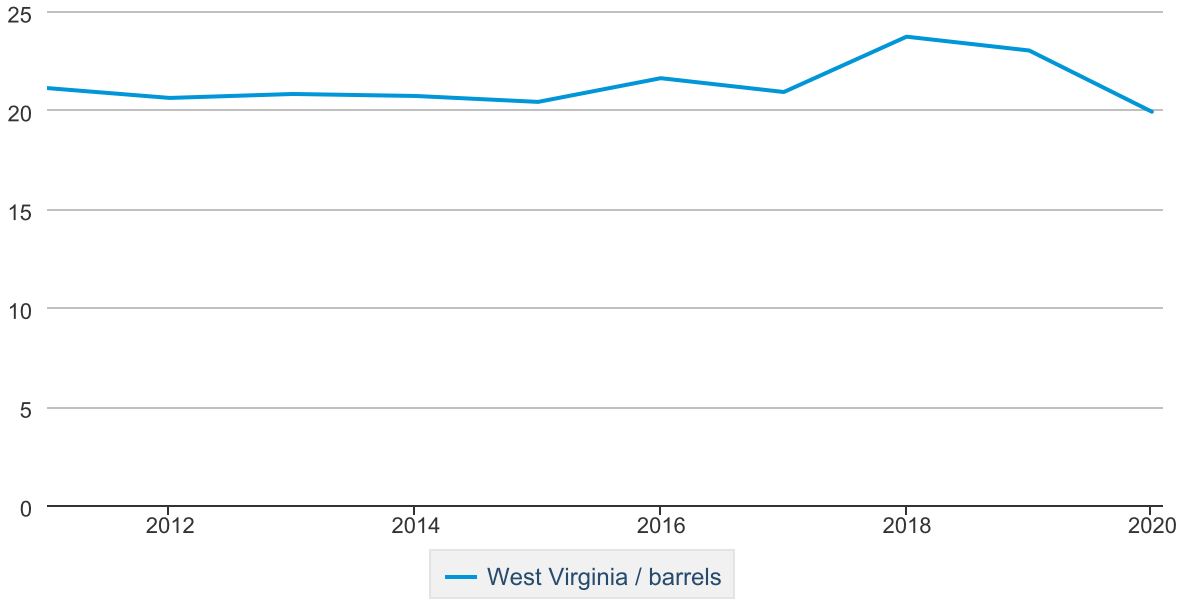
Total energy consumption estimates per capita by end-use sector, annual

million btu



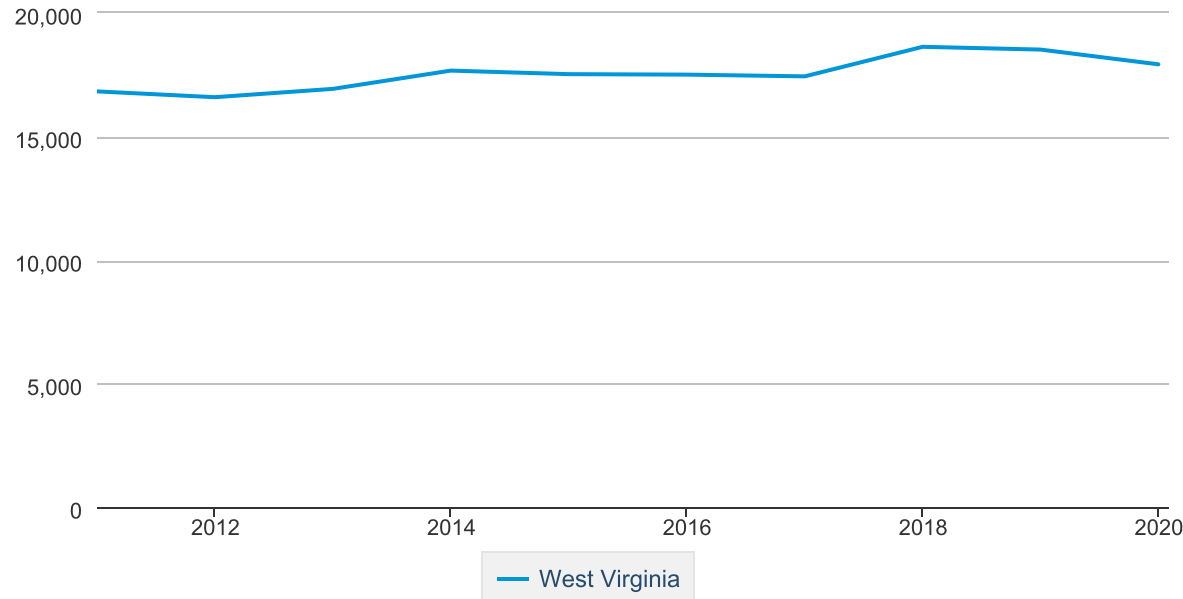
Total petroleum products consumption estimates per capita, annual

barrels



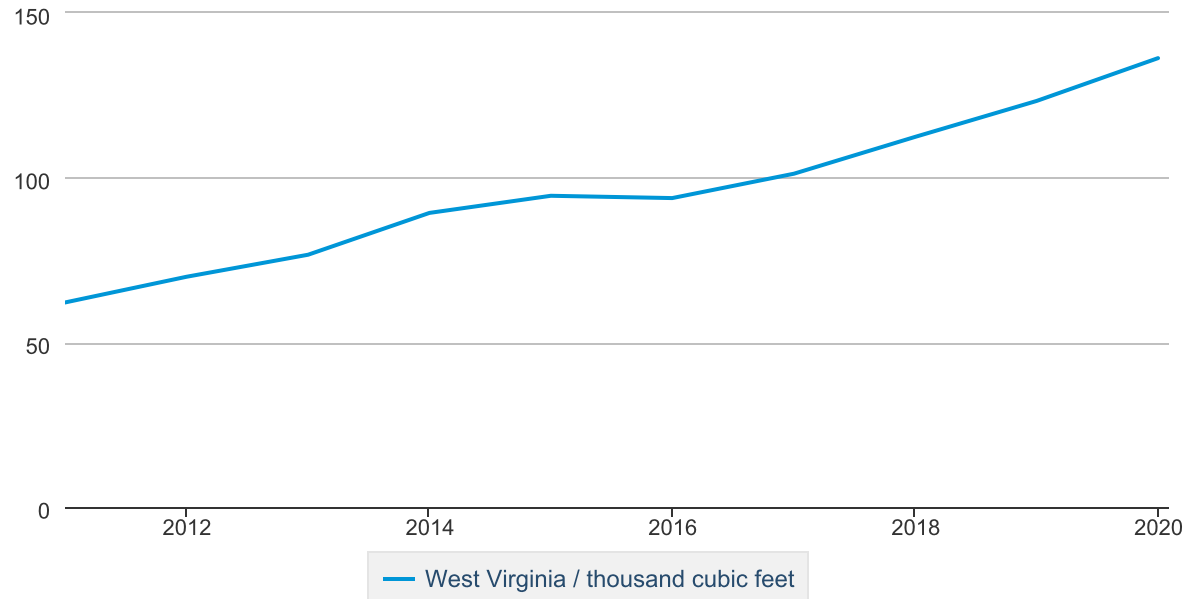
Total electricity consumption per capita, annual

kilowatthours



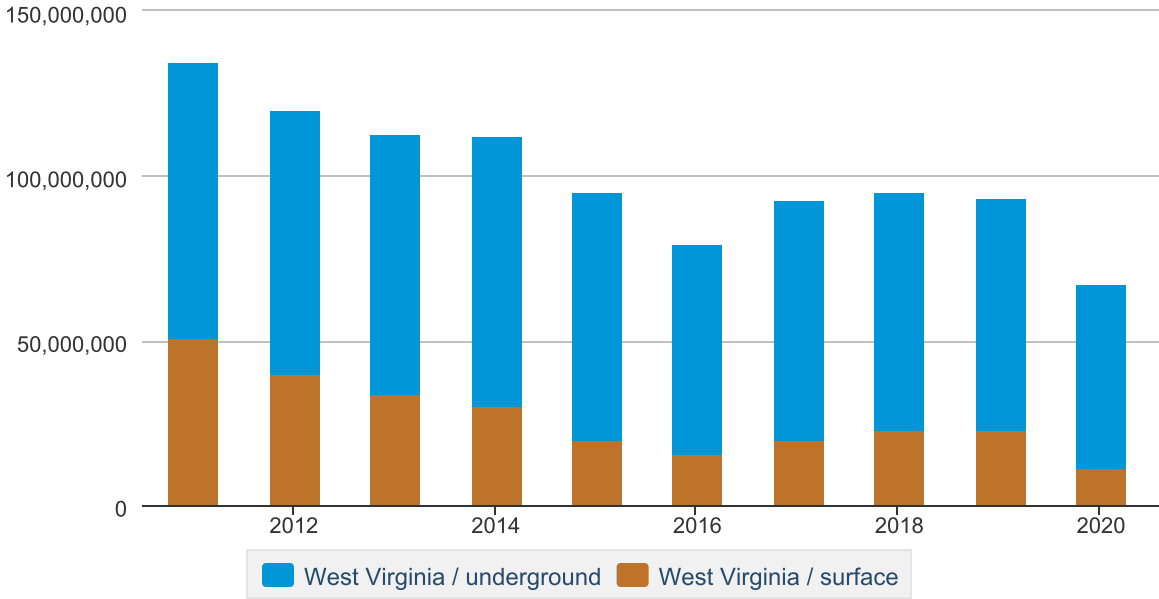
Total natural gas consumption estimates per capita, annual

thousand cubic feet



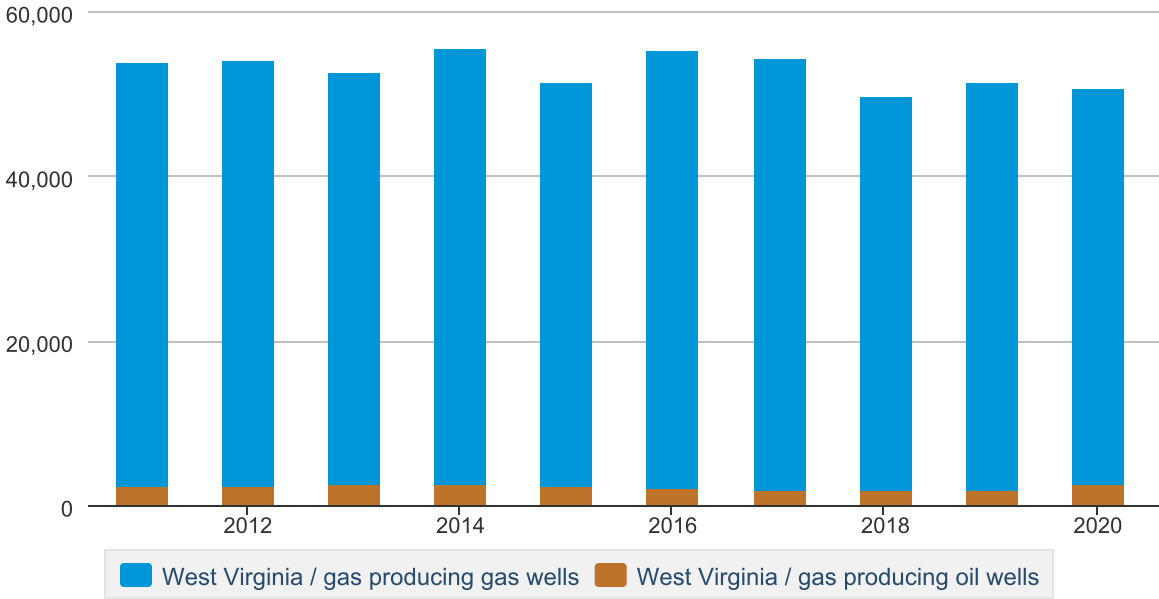
Coal production, annual

short tons



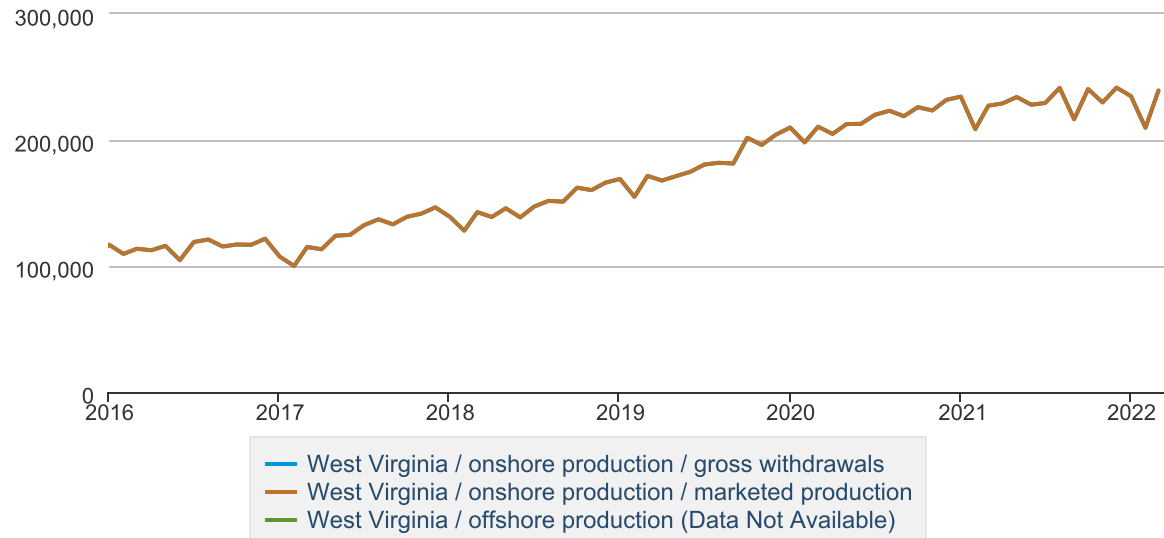
Number of natural gas producing wells, annual

number of elements



Natural gas production, monthly

million cubic feet



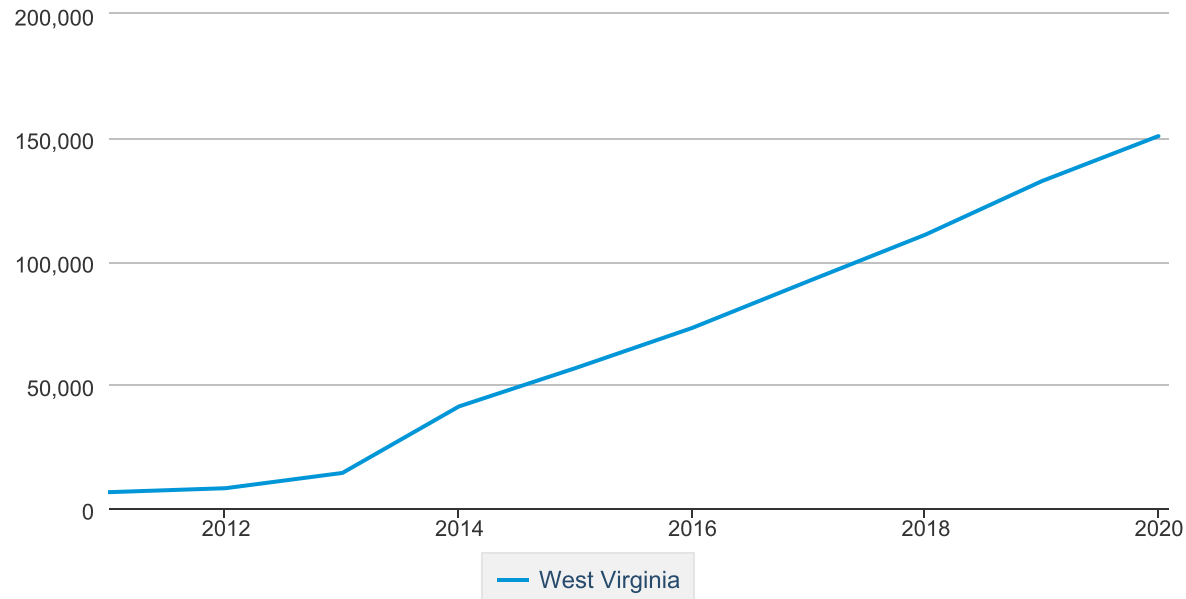
Form EIA-914, Monthly Natural Gas Production Report

Natural Gas Monthly

Natural Gas Annual

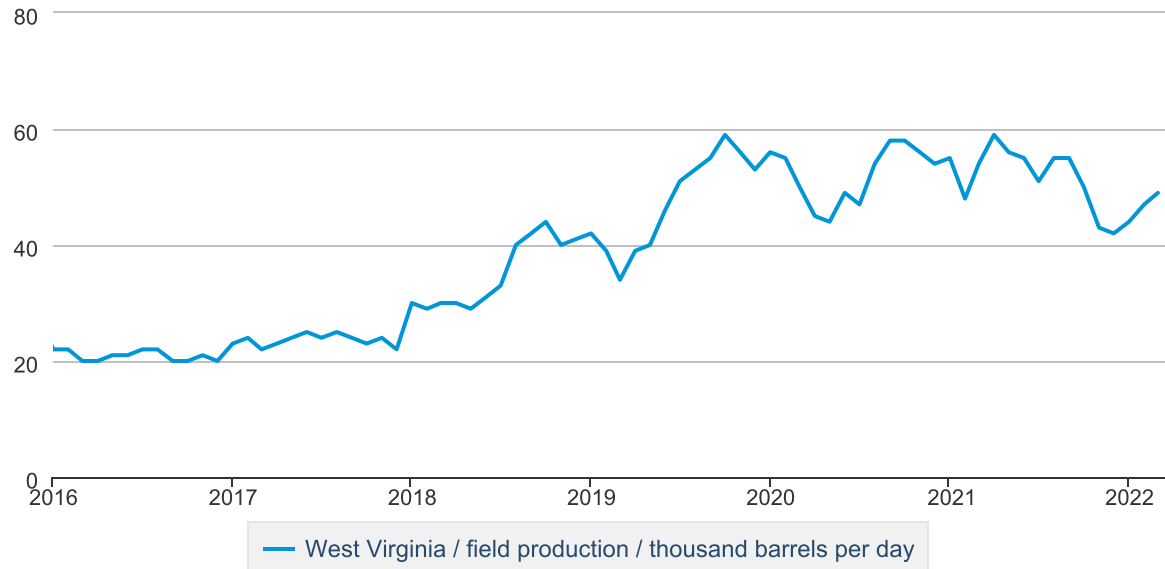
Natural gas liquids extracted from gas processing plants, annual

thousand barrels



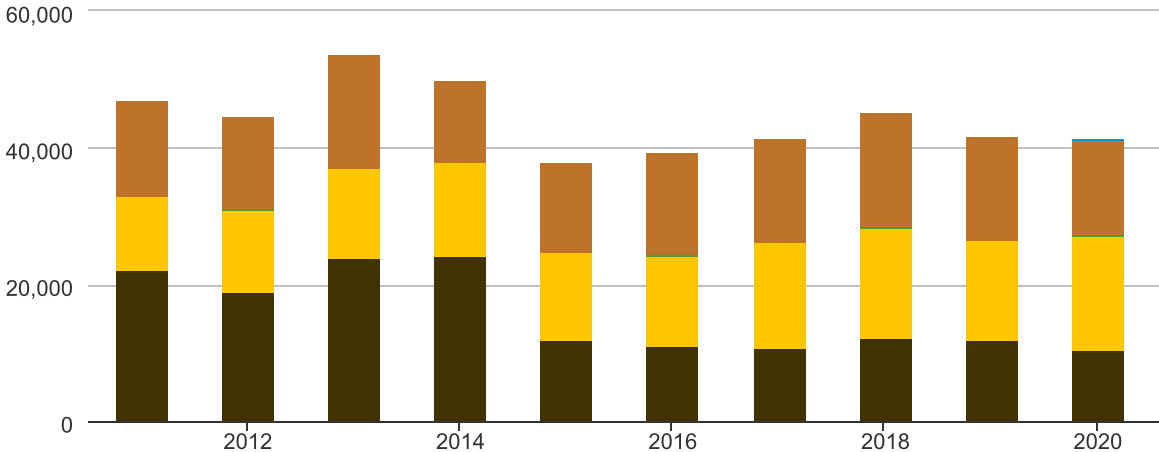
Crude oil production, monthly

thousand barrels per day



Renewable energy production estimates, annual

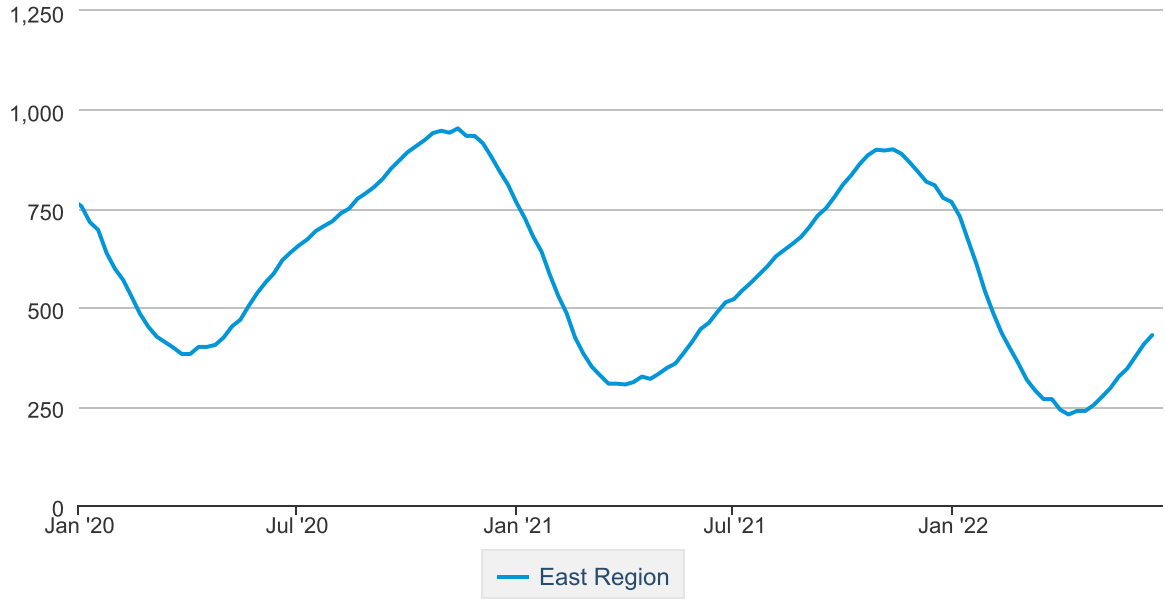
billion btu



- West Virginia / geothermal energy
- West Virginia / hydropower
- West Virginia / solar energy
- West Virginia / wind energy
- West Virginia / biomass inputs (feedstock) to the production of biodiesel
- West Virginia / wood and waste energy

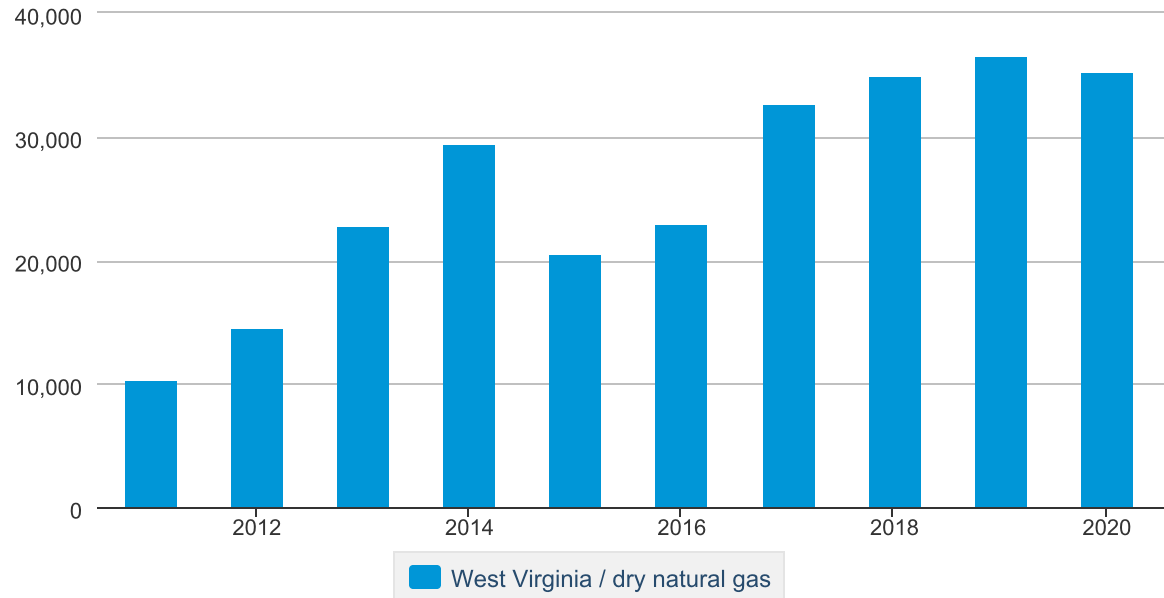
Working natural gas in underground storage, weekly

billion cubic feet



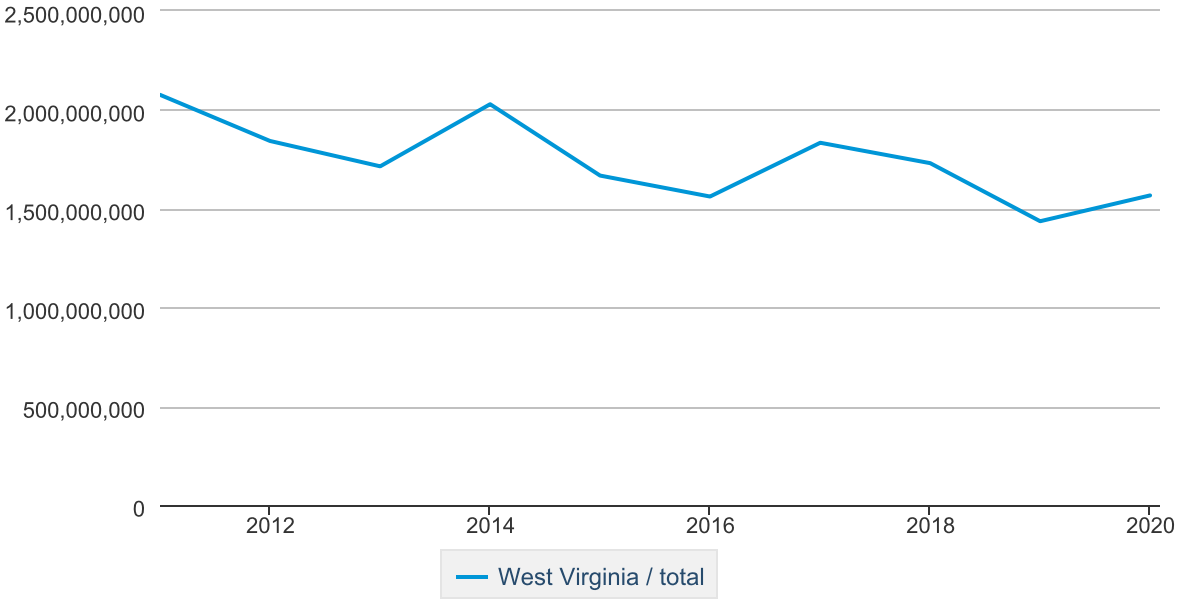
Dry natural gas proved reserves, annual

billion cubic feet



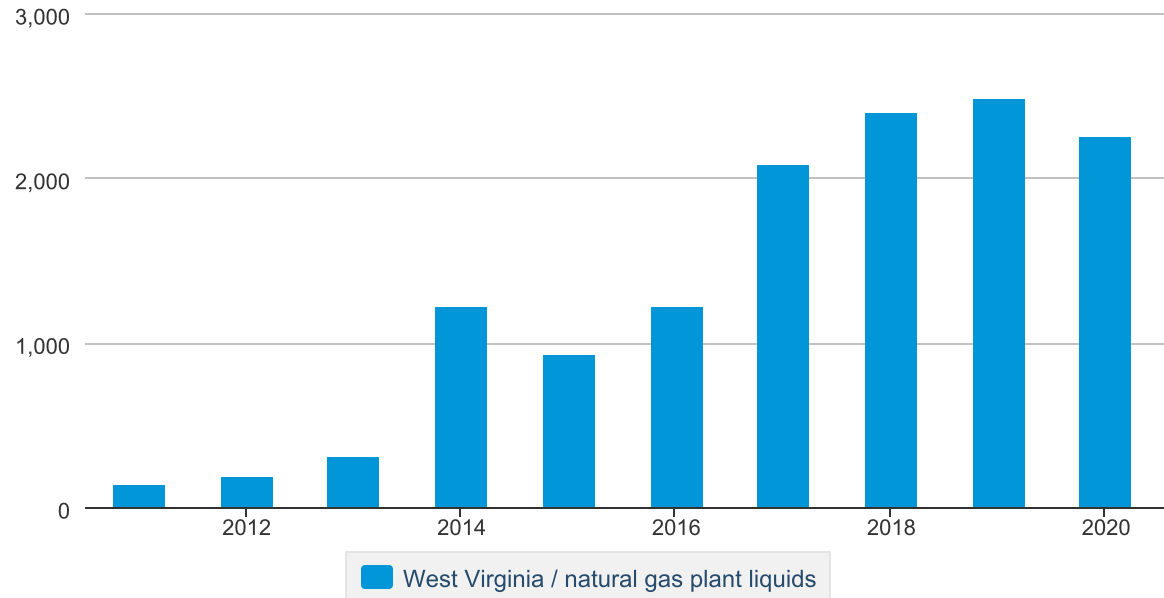
Recoverable coal reserves at producing mines, annual

short tons



Natural gas plant liquids proved reserves, annual

million barrels



Net electricity generation (utility-scale) by energy source, monthly

thousand megawatthours

