

HB 4525

2010 APR -1 PM 4:24

OFFICE OF THE
CLERK OF THE HOUSE OF DELEGATES
STATE OF WEST VIRGINIA

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2010



ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 4525**

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



Passed March 13, 2010

In Effect Ninety Days From Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H.B. 4525

(BY DELEGATES CAPUTO, MILEY, HUNT, BUTCHER,
CRAIG, BOGGS, MAHAN, KOMINAR, VARNER,
HAMILTON AND WHITE)

[Passed March 13, 2010; in effect ninety days from passage.]

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

FILED

2010 APR -1 PM 4: 24

OFFICE OF THE CLERK
WEST VIRGINIA
SECRETARY OF STATE

Be it enacted by the Legislature of West Virginia:

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

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

§22A-1-21. Penalties.

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

17 (2) Revisions to the assessment of civil penalties shall be
18 proposed as legislative rules in accordance with the
19 provisions of article three, chapter twenty-nine-a of this code.

20 (3) Any miner who knowingly violates any health or
21 safety provision of this chapter or health or safety rule
22 promulgated pursuant to this chapter is subject to a civil
23 penalty assessed by the director under subdivision (4) of this
24 subsection which shall not be more than \$250 for each
25 occurrence of the violation.

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

38 (5) If the person against whom a civil penalty is assessed
39 fails to pay the penalty within the time prescribed in the
40 order, the director may file a petition for enforcement of the
41 order in any appropriate circuit court. The petition shall
42 designate the person against whom the order is sought to be
43 enforced as the respondent. A copy of the petition shall
44 immediately be sent by certified mail, return receipt
45 requested, to the respondent and to the representative of the
46 miners at the affected mine or the operator, as the case may
47 be. The director shall certify and file in the court the record
48 upon which the order sought to be enforced was issued. The
49 court has jurisdiction to enter a judgment enforcing,
50 modifying and enforcing as modified, or setting aside, in
51 whole or in part, the order and decision of the director or it
52 may remand the proceedings to the director for any further
53 action it may direct. The court shall consider and determine

54 de novo all relevant issues, except issues of fact which were
55 or could have been litigated in review proceedings before a
56 circuit court under section twenty of this article and, upon the
57 request of the respondent, those issues of fact which are in
58 dispute shall be submitted to a jury. On the basis of the
59 jury's findings the court shall determine the amount of the
60 penalty to be imposed. Subject to the direction and control
61 of the Attorney General, attorneys appointed for the director
62 may appear for and represent the director in any action to
63 enforce an order assessing civil penalties under this
64 subdivision.

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

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

87 (A) Violations involving fatalities and serious injuries;

88 (B) Failure or refusal to comply with any order issued
89 under section fifteen of this article;

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

91 (D) Violations involving an imminent danger;

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

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

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

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

114 (d) Whoever knowingly makes any false statement,
115 representation or certification in any application, record,
116 report, plan or other document filed or required to be

117 maintained pursuant to this law or any order or decision
118 issued under this law is guilty of a misdemeanor and, upon
119 conviction thereof, shall be fined not more than \$5,000 or
120 imprisoned in the jail not more than six months, or both fined
121 and imprisoned. The conviction of any person under this
122 subsection shall result in the revocation of any certifications
123 held by the person under this chapter which certified or
124 authorized the person to direct other persons in coal mining
125 by operation of law and bars that person from being issued
126 any license under this chapter, except a miner's certification,
127 for a period of not less than one year or for a longer period as
128 may be determined by the director.

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

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

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

PART 3. WEST VIRGINIA DIESEL EQUIPMENT
COMMISSION.

§22A-2A-301. The West Virginia Diesel Equipment Commission.

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

§22A-2A-304. Nomination and appointment of members.

1 (a) Prior to the appointment of a person to the
2 commission, the Governor shall request the nomination of a
3 candidate for the appointment. If the position is to be filled
4 by a person who can reasonably be expected to represent the
5 viewpoint or interests of underground coal operators in this
6 state, the Governor shall request the nomination from the
7 major trade association representing underground coal
8 operators in this state. If the position is to be filled by a
9 person who can reasonably be expected to represent the
10 viewpoint or interests of working miners in this state, the
11 Governor shall request the nomination from the highest
12 ranking officer of the major employee organization
13 representing coal miners in this state. The Director of the
14 Office of Miner's Health, Safety and Training or his or her
15 designee and the Health Safety Administrator shall serve as
16 a nonvoting ex officio member.

17 (b) The Governor shall appoint a member to serve for the
18 term for which the person was nominated, and until his or her
19 successor has been nominated and appointed: *Provided*, That
20 if a successor is not appointed within one hundred twenty
21 days after the expiration of a member's term, a vacancy is
22 deemed to exist. The Governor may reject a nomination and
23 decline to appoint a nominee only if the person does not have

24 the qualifications, integrity and responsibility necessary to
25 enable the person to perform his or her duties as a member of
26 the commission.

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

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

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

23 (b) Upon application of a coal mine operator, the
24 commission shall consider site-specific requests for the use
25 of diesel equipment in underground coal mines and for the

26 use of alternative diesel-related health and safety
27 technologies and methods. The commission's action on
28 applications submitted under this subsection shall be on a
29 mine-by-mine basis. Upon receipt of a site-specific
30 application, the commission shall conduct an investigation,
31 which investigation shall include consultation with the mine
32 operator and the authorized representatives of the miners at
33 the mine. Authorized representatives of the miners shall
34 include a Mine Health and Safety Committee elected by
35 miners at the mine, a person or persons employed by an
36 employee organization representing miners at the mine or a
37 person or persons authorized as the representative or
38 representatives of miners of the mine in accordance with
39 MSHA regulations at 30 C.F.R. Pt. 40 (relating to
40 representative of miners). Where there is no authorized
41 representative of the miners, the commission shall consult
42 with a reasonable number of miners at the mine. Upon
43 completion of the investigation, the commission may approve
44 the application for the site-specific request: *Provided*, That
45 an application for a site-specific request under this subsection
46 may be approved only upon a majority vote of all six
47 members of the commission. All six members must be
48 present when a vote is taken.

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

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

55 (3) The commission members shall not approve an
56 application made under this section if, at the conclusion of
57 the investigation, the commission members have made a
58 determination that the use of the alternative technology or

59 method will reduce or compromise the level of health and
60 safety protection of miners.

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

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

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

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

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

90 contrary to law, shall vacate and, if appropriate, remand the
91 case.

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

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

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

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

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

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

7 (1) The Governor shall appoint, by and with the advice
8 and consent of the Senate, three members to represent the
9 viewpoint of those operators in this state. When such
10 members are to be appointed, the Governor shall request

11 from the major trade association representing operators in
12 this state a list of three nominees for each such position on
13 the board. All such nominees shall be persons with special
14 experience and competence in health and safety. There shall
15 be submitted with such list a summary of the qualifications
16 of each nominee. If the full lists of nominees are submitted
17 in accordance with the provisions of this subdivision, the
18 Governor shall make the appointments from the persons so
19 nominated. For purposes of this subdivision, the major trade
20 association representing operators in this state is that
21 association which represents operators accounting for over
22 one half of the coal produced in mines in this state in the year
23 prior to the year in which the appointment is to be made.

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

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

40 (4) The Director of the Office of Miner's Health, Safety
41 and Training or his or her designee shall serve as an ex
42 officio, nonvoting member.

43 (b) Members serving on the board on July 1, 2010, may
44 continue to serve until the expiration of their terms. The term
45 is three years. Members are eligible for reappointment.

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

71 (d) The board shall meet at least once during each
72 calendar month, or more often as may be necessary, and at
73 other times upon the call of the chair, or upon the request of
74 any three members of the board. Under the direction of the
75 board, the Health and Safety Administrator shall prepare an
76 agenda for each board meeting giving priority to the

77 promulgation of rules as may be required from time to time
78 by this code, and as may be required to improve coal mine
79 health and safety. The Health and Safety Administrator shall
80 provide each member of the board with notice of the meeting
81 and the agenda as far in advance of the meeting as practical,
82 but in any event, at least five days prior thereto. No meeting
83 of the board shall be conducted unless said notice and agenda
84 are given to the board members at least five days in advance,
85 as provided herein, except in cases of emergency, as declared
86 by the director, in which event members shall be notified of
87 the board meeting and the agenda: *Provided*, That upon
88 agreement of a majority of the quorum present, any
89 scheduled meeting may be ordered recessed to another day
90 certain without further notice of additional agenda.

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

106 (e) Whenever a vacancy on the board occurs,
107 nominations and appointments shall be made in the manner
108 prescribed in this section: *Provided*, That in the case of an
109 appointment to fill a vacancy, nominations of three persons
110 for each such vacancy shall be requested by and submitted to

111 the Governor within thirty days after the vacancy occurs by
112 the major trade association or major employee organization,
113 if any, which nominated the person whose seat on the board
114 is vacant. The vacancy shall be filled by the Governor within
115 thirty days of his or her receipt of the list of nominations.

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

§22A-6-4. Board powers and duties.

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

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

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

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

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

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

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

48 (5) The board shall afford interested persons a period of
49 not less than thirty days after releasing proposed rules to

50 submit written data or comments. The board may, upon the
51 expiration of such period and after consideration of all
52 relevant matters presented, promulgate such rules with such
53 modifications as it may deem appropriate.

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

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

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

76 (d) To carry out its duties and responsibilities, the board
77 is authorized to employ such personnel, including legal
78 counsel, experts and consultants, as it deems necessary. In
79 addition, the board, within the appropriations provided for by
80 the Legislature, may conduct or contract for research and
81 studies and is entitled to the use of the services, facilities and

82 personnel of any agency, institution, school, college or
83 university of this state.

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

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

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

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

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

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

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

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

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

133 (6) Any other information the board deems appropriate;

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

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

1 (a) The Governor shall appoint the Health and Safety
2 Administrator of the board for a term of employment of one
3 year. The Health and Safety Administrator shall be entitled
4 to have his or her contract of employment renewed on an
5 annual basis except where such renewal is denied for cause:
6 *Provided*, That the Governor has the power at any time to
7 remove the Health and Safety Administrator for misfeasance,
8 malfeasance or nonfeasance: *Provided, however*, That the
9 board has the power to remove the Health and Safety
10 Administrator without cause upon the concurrence of five
11 members of the board.

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

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

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

32 (e) (1) Appropriations for the salaries of the Health and
33 Safety Administrator and any other employees of the board

34 and for necessary office and operating expenses shall be
35 made to a budget account established for those purposes in
36 the General Revenue Fund. Such account shall be separate
37 from any accounts or appropriations for the Office of Miners'
38 Health, Safety and Training.

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

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

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

60 (h) The administrator shall provide administrative
61 assistance to the West Virginia Diesel Commission, The
62 State Coal Mine Safety and Technical Review Committee,
63 Board of Coal Mine Health and Safety, Board of Miner
64 Training, Education and Certification, and the Mine Safety
65 Technology Task Force, and serve as the legislative liaison

66 for budgetary issues. The Administrator shall serve as an ex
67 officio, nonvoting member on the West Virginia Diesel
68 Commission, The State Coal Mine Safety and Technical
69 Review Committee, Board of Miner Training, Education and
70 Certification, and the Mine Safety Technology Task Force.

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

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

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

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

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

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

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

17 (b) The committee shall consist of two members who
18 shall be residents of this state, and who shall be appointed as
19 hereinafter specified in this section:

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

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

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

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

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

45 (d) A quorum of the committee shall require both
46 members, and the committee may only act officially by a
47 quorum.

48 (e) The committee may review any matter relative to
49 mine safety and mining technology, and may pursue
50 development and resolution of issues related thereto. The
51 committee may make recommendations to the board for the
52 promulgation of rules with general mining industry
53 application. Upon receipt of a unanimous recommendation
54 for rule making from the committee and only thereon, the
55 board may adopt or reject such rule, without modification
56 except as approved by the committee: *Provided*, That any
57 adopted rule shall not reduce or compromise the level of
58 safety or protection below the level of safety or protection
59 afforded by applicable statutes and rules. When so
60 promulgated, such rules shall be effective, notwithstanding
61 the provisions of applicable statutes.

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

80 (2) If the committee determines to recommend a request
81 made pursuant to subdivision (1) of this subsection, the

82 committee shall provide the results of its investigation to the
83 Board of Coal Mine Health and Safety along with
84 recommendations for the development of the site-specific
85 rules applicable to the individual mine, which
86 recommendations may include a written proposal containing
87 draft rules.

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

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

108 (h) In performing its functions, the committee has access
109 to the services of the coal mine Health and Safety
110 Administrator appointed under section six of this article. The
111 director shall make clerical support and assistance available
112 in order that the committee can carry out its duties. Upon the
113 request of both members of the committee, the Health and
114 Safety Administrator shall draft proposed rules and reports or
115 make investigations.

116 (i) The powers and duties provided for in this section for
117 the committee are not intended to replace or precondition the
118 authority of the Board of Coal Mine Health and Safety to act
119 in accordance with sections one through six and eight
120 through ten of this article.

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

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

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

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

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

16 surface mine operators accounting for over one half of the
17 coal produced in surface mines in this state in the year prior
18 to that year in which the appointment is made.

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

32 (3) Three members shall be appointed by the Governor
33 who can reasonably be expected to represent the interests of
34 the working miners in this state. If the major employee
35 organization representing coal miners in this state is divided
36 into administrative districts, the employee organization of
37 each district shall, upon request by the Governor, submit a
38 list of three nominees for membership on the board. If such
39 major employee organization is not so divided into
40 administrative districts, such employee organization shall,
41 upon request by the Governor, submit a list of twelve
42 nominees for membership on the board. The Governor shall
43 make such appointments from the persons so nominated:
44 *Provided*, That in the event nominations are made by
45 administrative districts, not more than one member shall be
46 appointed from the nominees of any one district unless there
47 are less than three such districts in this state.

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

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

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

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

76 (d) Each appointed member of the board shall be paid the
77 same compensation, and each member of the board shall be
78 paid the expense reimbursement, as is paid to members of the
79 Legislature for their interim duties as recommended by the

80 citizens legislative compensation commission and authorized
81 by law for each day or portion thereof engaged in the
82 discharge of official duties. Any such amounts shall be paid
83 out of the State Treasury upon a requisition upon the State
84 Auditor, properly certified by such members of the board.

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

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

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

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

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

10 The director is authorized and directed to utilize state
11 mine inspectors, mine safety instructors, the state mine

12 foreman examiner, private and public institutions of
13 education and such other persons as may be available in
14 implementing the program of instruction and examinations.

15 The director may, at any time, make such
16 recommendations to the board as he or she may deem
17 appropriate.

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

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

ARTICLE 11. MINE SAFETY TECHNOLOGY.

§22A-11-2. Mine Safety Technology Task Force continued; membership; method of nomination and appointment.

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

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

7 (1) The Governor shall appoint, by and with the advice
8 and consent of the Senate, three members to represent the
9 viewpoint of operators in this state. When these members are
10 to be appointed, the Governor shall request from the major
11 trade association representing operators in this state a list of

12 three nominees for each position on the task force. All
13 nominees shall be persons with special experience and
14 competence in coal mine health and safety. There shall be
15 submitted with the list, a summary of the qualifications of
16 each nominee. For purposes of this subdivision, the major
17 trade association representing operators in this state is that
18 association which represents operators accounting for over
19 one half of the coal produced in mines in this state in the year
20 prior to the year in which the appointment is to be made.

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

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

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

40 (5) The Director of the Office of Miner's Health, Safety
41 and Training or his or her designee, shall serve as a ex
42 officio, nonvoting member.

43 (c) Each appointed member of the task force shall serve
44 at the will and pleasure of the Governor.

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

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

§22A-11-3. Task force powers and duties.

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

6 year 2006, and requirements for other mine safety
7 technologies.

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

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

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

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

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

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

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

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

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

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

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

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

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

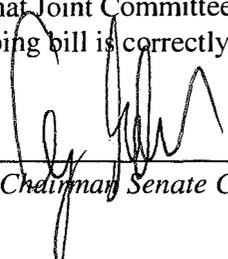
48 (3) Recommendations, if any, for the enactment, repeal
49 or amendment of any statute which would enhance
50 technological advancement in coal mine health and safety;
51 and

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

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

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

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.



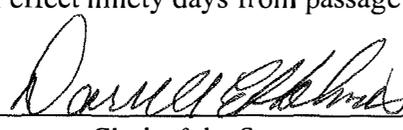
Chairman Senate Committee



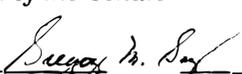
Chairman House Committee

Originating in the House.

In effect ninety days from passage.



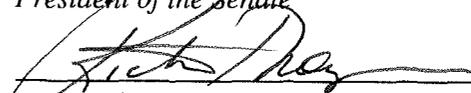
Clerk of the Senate



Clerk of the House of Delegates



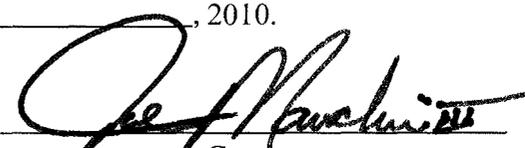
President of the Senate



Speaker of the House of Delegates

2010 APR -1 PM 4: 24
FILED
CLERK OF SENATE
SECRETARY OF STATE

The within is approved this the 1st
day of April, 2010.



Governor

PRESENTED TO THE
GOVERNOR

MAR 8 1 2010

Time 3:50 p