

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **H. B. 2955**

5 (By Delegates Caputo and Barker)

6  
7  
8 [Passed March 12, 2011; in effect ninety days from passage.]  
9

10 AN ACT to amend the Code of West Virginia, 1931, as amended, by  
11 adding thereto a new article, designated §11-13BB-1, §11-13BB-  
12 2, §11-13BB-3, §11-13BB-4, §11-13BB-5, §11-13BB-6, §11-13BB-7,  
13 §11-13BB-8, §11-13BB-9, §11-13BB-10, §11-13BB-11, §11-13BB-12  
14 and §11-13BB-13; to amend and reenact §22-3-7, §22-3-8 and  
15 §22-3-19 of said code; to amend and reenact §22A-1-4 of said  
16 code; and to amend and reenact §22A-11-3 of said code, all  
17 relating to environmental resources; to providing a tax credit  
18 for purchase of innovative mine safety technology; legislative  
19 findings and purpose; definitions; requirements for list of  
20 approved innovative mine safety technology; amount of tax  
21 credit allowed; criteria for qualified investment; forfeiture  
22 of unused tax credits; treatment for transfer of certified  
23 eligible safety property to successors; setting forth  
24 requirements for identification of investment credit property;



1 Mine Safety Technology Tax Credit Act".

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

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

7 **§11-13BB-3. Definitions.**

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

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

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

15 (2) "Coal mining company" means:

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

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

22 (3) "Director" means the Director of the Office of Miners'  
23 Health, Safety and Training or West Virginia Office of Miners'  
24 Health, Safety and Training established under article one, chapter

1 twenty two-a of this code.

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

5 (5) "Eligible taxpayer" means a coal mining company which  
6 purchases eligible safety property.

7 (6) "List of approved innovative mine safety technology" means  
8 the list required to be compiled and maintained by the Mine Safety  
9 Technology Task Force and approved and published by the director  
10 under this article.

11 (7) "Office of Miners' Health, Safety and Training" or "West  
12 Virginia Office of Miners' Health, Safety and Training" means the  
13 Office of Miners' Health, Safety and Training established under  
14 article one, chapter twenty two-a of this code.

15 (8) "Person" includes any corporation, limited liability  
16 company, or partnership.

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

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

22 (A) A lease of eligible safety property may constitute a  
23 qualified purchase if the lease was entered into and became  
24 effective at a time when the equipment is on the list of approved

1 innovative mine safety technology, and if the primary term of the  
2 lease for the eligible safety property is five years or more.  
3 Leases having a primary term of less than five years do not  
4 qualify.

5 (B) "Qualified purchase" does not include:

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

9 (ii) Purchases or leases of any property not exclusively used  
10 in West Virginia;

11 (iii) Repair costs including materials used in the repair,  
12 unless for federal income tax purposes, the cost of the repair must  
13 be capitalized and not expensed;

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

16 (v) Clothing;

17 (vi) Airplanes;

18 (vii) Off-premises transportation equipment;

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

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

22 (x) Property that is acquired incident to the purchase of the  
23 stock or assets of an industrial taxpayer, which property was or  
24 had been used by the seller in his or her industrial business in

1 this state, or in which investment was previously the basis of a  
2 credit against tax taken under any other article of this chapter.

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

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

10 (ii) The property is not acquired from a related person or by  
11 one component member of a controlled group from another component  
12 member of the same controlled group. The Tax Commissioner may  
13 waive this requirement if the property was acquired from a related  
14 party for its then fair market value; and

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

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

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

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

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

1 issuance of and updating of the list of approved innovative mine  
2 safety technologies.

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

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



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

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

21 **§11-13BB-5. Amount of credit allowed.**

22           (a) *Credit allowed* -- For tax years beginning after  
23 December 31, 2011, there is allowed to eligible taxpayers a credit  
24 against the taxes imposed by articles twenty-three and twenty-four

1 of this chapter. The amount of credit shall be determined as  
2 provided in this section.

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

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

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

24 (3) *Corporation net income tax.* -- After application of

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

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

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

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

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

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

12           (d) No tax credit is allowed or may be applied under this  
13 article until the taxpayer seeking to claim the tax credit has:

14           (1) Filed, with the Office of Miners' Health, Safety and  
15 Training, a written application for certification of the proposed  
16 tax credit; and

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

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

1 (f) The total amount of tax credit that may be used in any  
2 taxable year by any eligible taxpayer in combination with the  
3 owners of the eligible taxpayer under this article may not exceed  
4 \$100,000.

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

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

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

19 **§11-13BB-6. Qualified investment.**

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

24 (b) *Placed in service or use.*-- For purposes of the credit

1 allowed by this article, property is considered placed in service  
2 or use in the earlier of the following taxable years:

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

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

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

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

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

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



1 property is retained in a business in this state for use in a coal  
2 mine in West Virginia, and the taxpayer retains a controlling  
3 interest in the successor business. In this event, the successor  
4 business is allowed to claim the amount of credit still available  
5 with respect to the certified eligible safety property transferred,  
6 and the taxpayer (transferor) may not be required to forfeit the  
7 credit for the years remaining at the time of transfer in the  
8 original five year credit period.

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



1 required to redetermine the amount of credit allowed in earlier  
2 years.

3 **§11-13BB-9. Identification of investment credit property.**

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

7 (1) Its identity;

8 (2) Its actual or reasonably determined cost;

9 (3) Its straight-line depreciation life;

10 (4) The month and taxable year in which it was placed in  
11 service;

12 (5) The amount of credit taken; and

13 (6) The date it was disposed of or otherwise ceased to be  
14 actively and directly used in a coal mine in this state.

15 **§11-13BB-10. Failure to keep records of certified eligible safety  
16 property.**

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

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

24 (2) If a taxpayer cannot establish when certified eligible

1 safety property reported for purposes of claiming this credit  
2 returned during the taxable year was placed in service, the  
3 taxpayer is treated as having placed it in service in the most  
4 recent prior year in which similar property was placed in service,  
5 unless the taxpayer can establish that the property placed in  
6 service in the most recent year is still on hand and used in a coal  
7 mine in this state at the end of that year. In that event, the  
8 taxpayer will be treated as having placed the returned property in  
9 service in the next most recent year.

10 **§11-13BB-11. Tax credit review and accountability.**

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

- 18 (1) The numbers of taxpayers claiming the credit; and  
19 (2) The cost of the credit.

20 (b) Taxpayers claiming the credit shall provide whatever  
21 information the Tax Commissioner requires to prepare the report:  
22 *Provided*, That the information is subject to the confidentiality  
23 and disclosure provisions of sections five-d and five-s, article  
24 ten of this chapter. If, in any reporting period under this

1 section, fewer than ten eligible taxpayers have taken or applied  
2 for the credit authorized under this article, then no report shall  
3 be filed for that reporting period under this section.

4 **§11-13BB-12. Disclosure of tax credits.**

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

10 **§11-13BB-13. Rules.**

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

17 **§11-13BB-14. Termination.**

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

20 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

21 **ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.**

22 **§22-3-7. Notice of intention to prospect, requirements therefor;**  
23 **bonding; secretary's authority to deny or limit;**

1                   **postponement of reclamation; prohibited acts;**  
2                   **exceptions.**

3           (a) Any person intending to prospect for coal in an area not  
4 covered by a surface-mining permit, in order to determine the  
5 location, quantity or quality of a natural coal deposit, making  
6 feasibility studies or for any other purpose, shall file with the  
7 secretary, at least fifteen days prior to commencement of any  
8 disturbance associated with prospecting, a notice of intention to  
9 prospect, which notice shall include a description of the  
10 prospecting area, the period of supposed prospecting and any other  
11 information as required by rules promulgated pursuant to this  
12 section: *Provided*, That prior to the commencement of prospecting,  
13 the secretary may issue an order denying or limiting permission to  
14 prospect where the secretary finds that prospecting operations will  
15 damage or destroy a unique natural area, or will cause serious harm  
16 to water quality, or that the operator has failed to satisfactorily  
17 reclaim other prospecting sites, or that there has been an abuse of  
18 prospecting by previous prospecting operations in the area.

19           (b) Notice of intention to prospect shall be made in writing  
20 on forms prescribed by the secretary and shall be signed and  
21 verified by the applicant. The notice shall be accompanied by: (1)  
22 A United States Geological Survey topographic map showing by proper  
23 marking the crop line and the name, where known, of the seam or  
24 seams to be prospected; (2) a filing fee of \$2000; and (3) a bond,

1 or cash, or collateral securities or certificates of the same type  
2 and form and in the same manner as provided in section eleven of  
3 this article, in the amount of five hundred dollars per acre or  
4 fraction thereof for the total estimated disturbed area. If a bond  
5 is used, it shall be payable to the State of West Virginia and  
6 conditioned that the operator faithfully perform the requirements  
7 of this article as they relate to backfilling and revegetation of  
8 the disturbed area.

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

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

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

24 (f) An operator may not remove more than two hundred fifty

1 tons of coal without the specific written approval of the  
2 secretary. Such approval shall be requested by the operator on  
3 forms prescribed by the secretary. The secretary shall promulgate  
4 rules governing such operations and setting forth information  
5 required in the application for approval. Each such application  
6 shall be accompanied by a \$2000 filing fee.

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

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

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

20 **§22-3-8. Prohibition of surface mining without a permit; permit**  
21 **requirements; successor in interest; duration of**  
22 **permits; proof of insurance; termination of permits;**  
23 **permit fees.**

24 (a) No person may engage in surface mining operations unless

1 he or she has first obtained a permit from the secretary in  
2 accordance with the following:

3 (1) All permits issued pursuant to the requirements of this  
4 article shall be issued for a term not to exceed five years:

5 *Provided*, That if the applicant demonstrates that a specified  
6 longer term is reasonably needed to allow the applicant to obtain  
7 necessary financing for equipment and the opening of the operation,  
8 and if the application is full and complete for the specified  
9 longer term, the secretary may extend a permit for a longer term:

10 *Provided, however*, That subject to the prior approval of the  
11 secretary, with the approval being subject to the provisions of  
12 subsection (c), section eighteen of this article, a successor in  
13 interest to a permittee who applies for a new permit, or transfer  
14 of a permit, within thirty days of succeeding to the interest and  
15 who is able to obtain the bond coverage of the original permittee,  
16 may continue surface mining and reclamation operations according to  
17 the approved mining and reclamation plan of the original permittee  
18 until the successor's permit application or application for  
19 transfer is granted or denied.

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

21 (3) A permit terminates if the permittee has not commenced the  
22 surface mining operations covered by the permit within three years  
23 of the date the permit was issued: *Provided*, That the secretary  
24 may grant reasonable extensions of time upon a timely showing that

1 the extensions are necessary by reason of litigation precluding  
2 commencement, or threatening substantial economic loss to the  
3 permittee, or by reason of conditions beyond the control and  
4 without the fault or negligence of the permittee: *Provided,*  
5 *however,* That with respect to coal to be mined for use in a  
6 synthetic fuel facility or specific major electric-generating  
7 facility, the permittee shall be considered to have commenced  
8 surface mining operations at the time the construction of the  
9 synthetic fuel or generating facility is initiated.

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

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

24 (6) (A) Prior to the issuance of any permit the secretary



1 shall ascertain from the Executive Director of Workforce West  
2 Virginia and the Insurance Commissioner whether the applicant is in  
3 compliance with the provisions of section six-c, article two,  
4 chapter twenty-one-a of this code and section five, article two,  
5 chapter twenty-three of this code with regard to any required  
6 subscription to the Unemployment Compensation Fund or to the  
7 Workers' Compensation Fund, the payment of premiums and other  
8 charges to the fund, the timely filing of payroll reports and the  
9 maintenance of adequate deposits. If the applicant is delinquent  
10 or defaulted, or has been terminated by the executive director or  
11 the Insurance Commissioner, the permit may not be issued until the  
12 applicant returns to compliance or is restored by the executive  
13 director or the Insurance Commissioner under a reinstatement  
14 agreement: *Provided*, That in all inquiries the Executive Director  
15 of Workforce West Virginia and the Insurance Commissioner shall  
16 make response to the Department of Environmental Protection within  
17 fifteen calendar days; otherwise, failure to respond timely is  
18 considered to indicate the applicant is in compliance and the  
19 failure will not be used to preclude issuance of the permit.

20 (B) It is a requirement of this article that each operator  
21 maintain continued compliance with the provisions of section five,  
22 article two, chapter twenty-three of this code and section six-c,  
23 article two, chapter twenty-one-a of this code and provide proof of  
24 compliance to the secretary on a quarterly basis.

1    **§22-3-19. Permit revision and renewal requirements; incidental**  
2            **boundary revisions; requirements for transfer;**  
3            **assignment and sale of permit rights; operator**  
4            **reassignment; and procedures to obtain inactive**  
5            **status.**

6            (a) (1) Any valid permit issued pursuant to this article  
7 carries with it the right of successive renewal upon expiration  
8 with respect to areas within the boundaries of the existing permit.  
9 The holders of the permit may apply for renewal and the renewal  
10 shall be issued: *Provided*, That on application for renewal, the  
11 burden is on the opponents of renewal, unless it is established  
12 that and written findings by the secretary are made that: (A) The  
13 terms and conditions of the existing permit are not being  
14 satisfactorily met: *Provided, however*, That if the permittee is  
15 required to modify operations pursuant to mining or reclamation  
16 requirements which become applicable after the original date of  
17 permit issuance, the permittee shall be provided an opportunity to  
18 submit a schedule allowing a reasonable period to comply with such  
19 revised requirements; (B) the present surface-mining operation is  
20 not in compliance with the applicable environmental protection  
21 standards of this article; (C) the renewal requested substantially  
22 jeopardizes the operator's continuing responsibility on existing  
23 permit areas; (D) the operator has not provided evidence that the

1 bond in effect for said operation will continue in effect for any  
2 renewal requested as required pursuant to sections eleven or twelve  
3 of this article; or (E) any additional revised or updated  
4 information as required pursuant to rules promulgated by the  
5 secretary has not been provided.

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

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

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

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

24 (2) An application for a significant revision of a permit is

1 subject to all requirements of this article and rules promulgated  
2 pursuant thereto and shall be accompanied by a filing fee of \$2000.

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

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

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

23 (e) Each request for inactive status shall be submitted on  
24 forms prescribed by the secretary, shall be accompanied by a filing

1 fee of \$2000, and shall be granted in accordance with the procedure  
2 established in the *Surface Mining and Reclamation Rule*.

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

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

6 **§22A-1-4. Powers and duties of the Director of the Office of**  
7 **Miners' Health, Safety and Training.**

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

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

18 (1) Supervise and direct the execution and enforcement of the  
19 provisions of this article.

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

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

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

11           (5) Prepare report forms to be used by mine inspectors in  
12 making their findings, orders and notices, upon inspections made in  
13 accordance with this article.

14           (6) Hear and determine applications made by mine operators for  
15 the annulment or revision of orders made by mine inspectors, and to  
16 make inspections of mines, in accordance with the provisions of  
17 this article.

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

20           (8) Make annually a full and complete written report of the  
21 administration of the office to the Governor and the Legislature of  
22 the state for the year ending June 30. The report shall include  
23 the number of visits and inspections of mines in the state by mine  
24 inspectors, the quantity of coal, coke and other minerals

1 (excluding oil and gas) produced in the state, the number of  
2 individuals employed, number of mines in operation, statistics with  
3 regard to health and safety of persons working in the mines  
4 including the causes of injuries and deaths, improvements made,  
5 prosecutions, the total funds of the office from all sources  
6 identifying each source of such funds, the expenditures of the  
7 office, the surplus or deficit of the office at the beginning and  
8 end of the year, the amount of fines collected, the amount of fines  
9 imposed, the value of fines pending, the number and type of  
10 violations found, the amount of fines imposed, levied and turned  
11 over for collection, the total amount of fines levied but not paid  
12 during the prior year, the titles and salaries of all inspectors  
13 and other officials of the office, the number of inspections made  
14 by each inspector, the number and type of violations found by each  
15 inspector. However, no inspector may be identified by name in this  
16 report. Such reports shall be filed with the Governor and the  
17 Legislature on or before December 31 of the same year for which it  
18 was made, and shall upon proper authority be printed and  
19 distributed to interested persons.

20 (9) Call or subpoena witnesses, for the purpose of conducting  
21 hearings into mine fires, mine explosions or any mine accident; to  
22 administer oaths and to require production of any books, papers,  
23 records or other documents relevant or material to any hearing,  
24 investigation or examination of any mine permitted by this chapter.

1 Any witness so called or subpoenaed shall receive \$40 per diem and  
2 shall receive mileage at the rate of \$0.15 for each mile actually  
3 traveled, which shall be paid out of the State Treasury upon a  
4 requisition upon the State Auditor, properly certified by such  
5 witness.

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

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

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

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

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

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

23 (c) The Director of the Office of Miners' Health, Safety and  
24 Training, or his or her designee, upon receipt of the list of



1 approved innovative mine safety technologies from the Mine Safety  
2 Technology Task force, has thirty days to approve or amend the list  
3 as provided in section four, article thirteen-bb, chapter eleven of  
4 this code. At the expiration of the time period, the director  
5 shall publish the list of approved innovative mine safety  
6 technologies as provided in section four, article thirteen-bb,  
7 chapter eleven of this code.

8 **ARTICLE 11. MINE SAFETY TECHNOLOGY.**

9 **§22A-11-3. Task force powers and duties.**

10 (a) The task force shall provide technical and other  
11 assistance to the office related to the implementation of the new  
12 technological requirements set forth in the provisions of section  
13 fifty-five, article two of this chapter, as amended and reenacted  
14 during the regular session of the Legislature in 2006 and  
15 requirements for other mine safety technologies.

16 (b) The task force, working in conjunction with the director,  
17 shall continue to study issues regarding the commercial  
18 availability, the functional and operational capability and the  
19 implementation, compliance and enforcement of the following  
20 protective equipment:

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

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

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

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

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

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

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

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

16 (4) Market forces impacting the development of new  
17 technologies, including issues regarding the costs of research and  
18 development, regulatory certification and incentives designed to  
19 stimulate the marketplace.

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

23 (1) A comprehensive overview of issues regarding the  
24 implementation of the new technological requirements set forth in

1 the provisions of section fifty-five, article two of this chapter,  
2 or rules promulgated in accordance with the law;

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

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

8 (4) Any other information the task force considers  
9 appropriate.

10 (e) In performing its duties, the task force shall, where  
11 possible, consult with, among others, mine engineering and mine  
12 safety experts, radiocommunication and telemetry experts and  
13 relevant state and federal regulatory personnel.

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

17 (g) The task force shall annually compile a proposed list of  
18 approved innovative mine safety technologies and transmit the list  
19 to the Director of the Office of Miners' Health, Safety and  
20 Training as provided in section four, article thirteen-BB, chapter  
21 eleven of this code. The list shall be approved by unanimous vote  
22 of the task force.