

**H. B. 2236**

(By Delegates R. Smith, Nelson, R. Phillips, Summers  
Butler, Gearheart, Walters, D. Evans, Cooper and Kessinger)

[Introduced January 22, 2015; referred to the  
Committee on Energy then Government Organization.]

A BILL to repeal §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and §22A-2A-307 of the Code of West Virginia, 1931, as amended; to amend and reenact §22A-2A-101, §22A-2A-301, §22A-2A-308, §22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405, §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603, §22A-2A-604, §22A-2A-701, §22A-2A-702, §22A-2A-703, §22A-2A-704, §22A-2A-801, §22A-2A-802, §22A-2A-803, §22A-2A-804, §22A-2A-805, §22A-2A-806, §22A-2A-807 and §22A-2A-901 of said code; and to further amend said code by adding thereto a new section, designated §22A-2A-204a, all relating to abolishing the West Virginia Diesel Equipment Commission; transferring the powers, duties and appropriations of the commission to the Director of the office of Miners' Health, Safety and Training; establishing legislative rule-making authority of the director; and providing that approvals of equipment and rules previously approved by the commission continue in full force and effect.

*Be it enacted by the Legislature of West Virginia:*

That §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and

1 §22A-2A-307 of the Code of West Virginia, 1931, as amended, be repealed; that §22A-2A-101,  
2 §22A-2A-301, §22A-2A-308, §22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403,  
3 §22A-2A-404, §22A-2A-405, §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603,  
4 §22A-2A-604, §22A-2A-701, §22A-2A-702, §22A-2A-703, §22A-2A-704, §22A-2A-801,  
5 §22A-2A-802, §22A-2A-803, §22A-2A-804, §22A-2A-805, §22A-2A-806, §22A-2A-807and  
6 §22A-2A-901 of said code be amended and reenacted; and that said code be amended by adding  
7 thereto a new section, designated §22A-2A-204a, all to read as follows:

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

10 **PART I. GENERAL PROVISIONS.**

11 **§22A-2A-101. Use of diesel-powered equipment authorized.**

12 Diesel-powered equipment for use in underground coal mines may only be approved,  
13 operated and maintained in accordance with rules, requirements and standards established pursuant  
14 to this article: ~~Diesel-powered equipment may not be used in underground coal mines until the West~~  
15 ~~Virginia diesel equipment commission promulgates its initial rules, requirements and standards~~  
16 ~~governing the operation of diesel equipment in underground coal mines~~ *Provided*, That the diesel  
17 ~~equipment commission~~ director may approve limited site-specific requests for experimental and  
18 testing use of diesel-powered equipment in underground coal mines and for the use of alternative  
19 diesel-related health and safety technologies and methods consistent with the provisions of section  
20 three hundred ten of this article.

21 **§22A-2A-204a. Director defined.**

22 “Director” means the Director of the Office of Miners’ Health and Safety established by

1 section one, article one of this chapter.

2 **§22A-2A-301. The West Virginia Diesel Equipment Commission abolished; transfer of duties**  
3 **and responsibilities; transfer of equipment and records; continuation of**  
4 **prior approvals of diesel equipment for use in underground coal mines;**  
5 **continuation of rules of the commission.**

6 ~~The West Virginia Diesel Equipment Commission, consisting of six members, is continued,~~  
7 ~~and commencing July 1, 2010, is a separate independent commission within the Department of~~  
8 ~~Commerce.~~

9 (a) The West Virginia Diesel Equipment Commission is hereby abolished. All powers, duties  
10 and appropriations heretofore granted to the commission are hereby transferred to the Director of the  
11 Office of Miners' Health, Safety and Training.

12 (b) On the effective date of the reenactment of this section, all equipment and records  
13 necessary to effectuate the purposes of this article shall be transferred to the director.

14 (c) The rules of the commission in effect immediately prior to the effective date of the  
15 reenactment of this section shall remain in force and effect until new or additional rules are  
16 promulgated by the director, pursuant to section three hundred-eight of this article. To the extent  
17 that the rules of the commission adequately fulfill the objectives of this article, the director may  
18 continue to enforce such rules. Such rules will be deemed to be actions taken by the director to  
19 fulfill the duties transferred to the director and will remain in effect without further action by the  
20 director or the Legislature.

21 (d) All approvals of diesel-powered equipment, diesel power packages or engines and  
22 exhaust emissions control and conditioning systems made by the commission and in effect prior to

1 the effective date of this article shall remain in full force and effect until and unless the director takes  
2 official action to revoke such approvals.

3 **§22A-2A-308. ~~Promulgation of initial rules by the commission~~ Director's authority to**  
4 **promulgate legislative rules; continuation of rules adopted by the**  
5 **commission.**

6 (a) ~~The West Virginia diesel equipment commission shall prepare and adopt the initial rules~~  
7 ~~for the operation of diesel equipment in underground coal mines in this state~~ director has the power  
8 and authority to propose legislative rules to carry out and implement the provisions of this article in  
9 accordance with the provisions of article three, chapter twenty-nine-a of this code. ~~In preparing and~~  
10 ~~adopting initial rules proposing rules for legislative approval, the commission~~ director shall consider  
11 the highest achievable measures of protection for miners' health and safety through available  
12 technology, engineering controls and performance requirements and shall further consider the cost,  
13 availability, adaptability and suitability of any available technology, engineering controls and  
14 performance requirements as they relate to the use of diesel equipment in underground coal mines.

15 (b) ~~In promulgating the initial rules pursuant to subsection (a) of this section, the commission~~  
16 ~~shall follow the procedures set forth in article three, chapter twenty-nine-a of this code that are~~  
17 ~~prescribed for an agency proposing a legislative rule, to the point where an agency would approve~~  
18 ~~a rule for submission to the Legislature. At that point, the commission shall proceed to final~~  
19 ~~adoption of the initial rules and file a notice of the final adoption in the state register and with the~~  
20 ~~legislative rule-making review committee. Final adoption of the initial rules may be approved only~~  
21 ~~upon a majority vote of all six members of the commission. All six members must be present when~~  
22 ~~a vote is taken. Upon final adoption by the commission, the initial rules are thereby promulgated and~~

1 ~~have the effect of law without further action by the commission or the Legislature. The initial rules~~  
 2 ~~shall be published in the code of state rules and continue in effect until modified or superseded in~~  
 3 ~~accordance with the provisions of this article. All rules promulgated and adopted by the commission~~  
 4 ~~in effect prior to the effective date of this section shall remain in effect until changed or superseded~~  
 5 ~~by legislative rule pursuant to subsection (a) of this section.~~

6 (c) To the extent that the rules of the commission adequately fulfill the objectives of this  
 7 article, the director may continue to enforce such rules. Such rules will be deemed to be actions  
 8 taken by the director to fulfill the duties transferred to the director and will remain in effect without  
 9 further action by the director or the Legislature.

10 **§22A-2A-309. ~~Commission's~~ Director's authority to approve site-specific experimental testing**  
 11 **prior to initial rules.**

12 The ~~commission is hereby authorized to~~ director may approve limited site-specific requests  
 13 for experimental and testing use of diesel-powered equipment in underground coal mines prior to  
 14 promulgation of initial rules in accordance with subsections (b), (c), (d), (e), (f) and (g), section three  
 15 hundred ten of this article. ~~Final approval of a site-specific request may be approved only upon a~~  
 16 ~~majority vote of all six members of the commission. All six members must be present when a vote~~  
 17 ~~is taken.~~

18 **§22A-2A-310. ~~Duties of commission following promulgation of initial rules~~ director.**

19 (a) ~~After the promulgation of the initial rules, the commission shall have as its primary duties~~  
 20 ~~the implementation~~ It is the duty of the director to carry out and implement the provisions of this  
 21 article and the evaluation and adoption of to evaluate and adopt state of the art technology and  
 22 methods, reflected in engines and engine components, emission control equipment and procedures,

1 that, when applied to diesel-powered underground mining machinery, shall reasonably reduce or  
2 eliminate diesel exhaust emissions and enhance protections of the health and safety of miners. The  
3 technology and methods adopted by the ~~commission~~ director shall have been demonstrated to be  
4 reliable. In making a decision to adopt new technology and methods, the ~~commission~~ director shall  
5 consider the highest achievable measures of protection for miners' health and safety through  
6 available technology, engineering controls and performance requirements and shall further consider  
7 the cost, availability, adaptability and suitability of any available technology, engineering controls  
8 and performance requirements as they relate to the use of diesel equipment in underground coal  
9 mines. Any state of the art technology or methods adopted by the ~~commission~~ director shall not  
10 reduce or compromise the level of health and safety protection of miners.

11 (b) Upon application of a coal mine operator, the ~~commission~~ director shall consider  
12 site-specific requests for the use of diesel equipment in underground coal mines and for the use of  
13 alternative diesel-related health and safety technologies and methods. The ~~commission's~~ director's  
14 action on applications submitted under this subsection shall be on a mine-by-mine basis. Upon  
15 receipt of a site-specific application, the ~~commission~~ director shall conduct an investigation, which  
16 investigation shall include consultation with the mine operator and the authorized representatives  
17 of the miners at the mine. Authorized representatives of the miners shall include a Mine Health and  
18 Safety Committee elected by miners at the mine, a person or persons employed by an employee  
19 organization representing miners at the mine or a person or persons authorized as the representative  
20 or representatives of miners of the mine in accordance with MSHA regulations at 30 C.F.R. Pt. 40  
21 (relating to representative of miners). Where there is no authorized representative of the miners, the  
22 ~~commission~~ director shall consult with a reasonable number of miners at the mine. Upon completion

1 of the investigation, the ~~commission~~ director may approve the application for the site-specific  
2 request. ~~Provided, That an application for a site specific request under this subsection may be~~  
3 ~~approved only upon a majority vote of all six members of the commission. All six members must~~  
4 ~~be present when a vote is taken~~

5 (1) Within one hundred eighty days of receipt of an application for use of alternative  
6 technologies or methods, the ~~commission~~ director shall complete its investigation: ~~Provided, That~~  
7 the director shall have an additional one hundred eighty days to complete investigations upon  
8 applications filed prior to the effective date of the reenactment of this section. The time period may  
9 be extended with the consent of the applicant.

10 (2) The ~~commission~~ director shall have thirty days upon completion of the investigation in  
11 which to render a final decision approving or rejecting the application.

12 (3) The ~~commission members shall~~ director may not approve an application made under this  
13 section if, at the conclusion of the investigation, the ~~commission members have made a~~  
14 ~~determination~~ director determines that the use of the alternative technology or method will reduce  
15 or compromise the level of health and safety protection of miners.

16 (4) The written approval of an application for the use of alternative technologies or methods  
17 shall include the results of the ~~commission's~~ director's investigation and describe the specific  
18 conditions of use for the alternative technology or method.

19 (5) The written decision to reject an application for the use of alternative technologies or  
20 methods shall include the results of the ~~commission's~~ director's investigation and shall outline in  
21 detail the basis for the rejection.

22 (c) The ~~commission~~ director shall establish conditions for the use of diesel-powered

1 equipment in shaft and slope construction operations at coal mines.

2           (d) ~~In performing its functions, the commission~~ The director shall have access to the services  
3 of the Board of Coal Mine Health and Safety necessary for the director to implement and carry out  
4 the provisions of this article. The board, at the request of the director, shall provide administrative  
5 support and assistance pursuant to section six, article six of this chapter, to enable the ~~commission~~  
6 director to carry out its the duties imposed upon the director in this article.

7           (e) Any action taken by the commission prior to the effective date of the reenactment of this  
8 section or by the director to either approve or reject the use of an alternative technology or method,  
9 or establish conditions under subsection (c) of this section, shall be final and binding and not subject  
10 to further review except where a decision by the commission prior to the effective date of the  
11 enactment of this section or by the director may be deemed to be an abuse of discretion or contrary  
12 to law. If any party affected by a decision of the commission prior to the effective date of the  
13 reenactment of this section or of the director believes that the decision is an abuse of discretion or  
14 contrary to law, that party may file a petition for review with the circuit court of Kanawha County  
15 in accordance with the provisions of the administrative procedures act relating to judicial review of  
16 governmental determinations. The court, in finding that any decision made by the commission prior  
17 to the effective date of the reenactment of this section or by the director is an abuse of discretion or  
18 contrary to law, shall vacate and, if appropriate, remand the case.

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

21           (g)~~(f)~~ Appropriations for the funding ~~of the commission~~ and to effectuate the purposes of this  
22 article shall be made to a budget account hereby established for that purpose in the General Revenue



1 Fund. Expenditures from this fund are provided for in section six, article six of this chapter.

2 ~~(h) The commission may issue a clarifying resolution about the initial rules and other matters~~  
 3 ~~consistent with the powers and duties of the commission under this article. A unanimous vote is~~  
 4 ~~required for any clarifying resolution by the commission.~~

5 **§22A-2A-402. Approval of diesel power package or diesel engine.**

6 Every diesel power package or diesel engine used in underground coal mining shall be  
 7 approved by the ~~West Virginia diesel equipment commission~~ director when it complies with  
 8 applicable requirements, standards, and procedures established by ~~rules of the commission~~ this  
 9 article, and be certified or approved, as applicable, by MSHA and maintained in accordance with  
 10 MSHA certification or approval.

11 **§22A-2A-403. Exhaust emissions control and conditioning systems.**

12 (a) All exhaust emissions control and conditioning systems and their component devices for  
 13 diesel-powered equipment for use in underground coal mines shall be approved by the ~~West Virginia~~  
 14 ~~diesel equipment commission~~ director. Such approval requires compliance with applicable standards  
 15 and procedures established by ~~rules of the commission~~ pursuant to this article for the use of the  
 16 system or device in reducing or eliminating diesel particulate matter, carbon monoxide and oxides  
 17 of nitrogen.

18 ~~The rules of the commission shall require~~ All exhaust emissions control and conditioning  
 19 systems ~~to~~ must undergo an initial series of laboratory tests, using test equipment requirements and  
 20 standard procedures approved by the ~~commission~~ director for testing for gaseous and particulate  
 21 emissions. The ~~commission~~ director shall compile a list of acceptable third-party laboratories where  
 22 testing is performed competently and reliable results are produced.

1 (b) Requirements and standards for exhaust emissions control and conditioning systems  
2 include, but are not limited to, the following:

3 (1) A minimum standard, stated as an average percentage, for the reduction of diesel  
4 particulate matter emissions by a diesel particulate matter filter or other comparably effective  
5 emissions control device;

6 (2) A minimum standard, stated in parts per million, for the reduction of emissions of  
7 undiluted carbon monoxide, using an oxidation catalyst or other gaseous emissions control device;

8 (3) A minimum standard, stated in parts per million, for the reduction of emissions of oxides  
9 of nitrogen, using advanced control technology such as catalytic control technology or other  
10 comparably effective control methods;

11 (4) Any additional requirements established by the rules of the commission prior to the  
12 enactment of this section, as may be supplemented or amended by legislative rules promulgated by  
13 the director or MSHA regulations relating to requirements for permissible mobile diesel-powered  
14 transportation equipment set forth in part 36, title thirty of the code of federal regulations, 30 C.F.R.  
15 §36.1, et seq.

16 **§22A-2A-404. Emissions monitoring and control.**

17 ~~Rules of the commission~~ The director shall establish procedures for monitoring and  
18 controlling emissions from diesel-powered equipment. ~~Such~~ The procedures shall include, but not  
19 be limited to, monitoring and controlling activities to be performed by a qualified person.

20 **§22A-2A-405. Exhaust gas monitoring and control.**

21 (a) For monitoring and controlling exhaust gases, the ~~rules of the commission~~ director shall  
22 establish the maximum allowable ambient concentration of exhaust gases in the mine atmosphere.

1 Standards for exhaust gases, stated in parts per million, shall be established for carbon monoxide and  
 2 oxides of nitrogen. The rules shall establish the location in the mine at which the concentration of  
 3 these exhaust gases is to be measured, the frequency at which measurements are to be made, and  
 4 requirements prescribing the sampling instruments to be used in the measurement of exhaust gases.

5 ~~Rules of the commission~~ The director shall establish the concentration of exhaust gas,  
 6 stated as a percentage of an exposure limit, that when present will require changes to be made in  
 7 the use of diesel-powered equipment or the methods of mine ventilation, or will require other  
 8 modifications in the mining process.

9 ~~Rules of the commission~~ The director shall provide for ~~the~~ remedial action to be taken  
 10 if the concentration of any of the gases listed in subsection (a) of this section exceeds the exposure  
 11 limit.

12 (d) In addition to the other maintenance requirements required by this article, ~~rules of the~~  
 13 ~~commission~~ the director shall ~~provide~~ establish requirements for service, maintenance and tests  
 14 which are specific to an engine's fuel delivery system, timing or exhaust emissions control and  
 15 conditioning system.

16 PART 5. VENTILATION.

17 **§22A-2A-501. Ventilation.**

18 (a) ~~Rules of the commission~~ The director shall establish values to be maintained for the  
 19 minimum quantities of ventilating air where diesel-powered equipment is operated ~~The purpose of~~  
 20 ~~these rules is~~ to ensure that necessary minimum ventilating air quantity is provided where  
 21 diesel-powered equipment is operated.

22 (b) ~~Rules of the commission~~ The director shall require that each specific model of

1 diesel-powered equipment shall be approved before it is taken underground. ~~The rules shall provide~~  
2 ~~that in addition to requiring that~~ Each diesel engine shall have an assigned MSHA approval number  
3 securely attached to the engine with the information required by 30 C.F.R. §§7.90 and 7.105. The  
4 approval plate shall also specify the minimum ventilating air quantity required by the ~~commission~~  
5 director for the specific piece of diesel-powered equipment. ~~The rules shall provide that~~ The  
6 minimum ventilating air quantity shall be determined by the director based on the amount of air  
7 necessary at all times to maintain the exhaust emissions at levels not exceeding the exposure limits  
8 established ~~by the commission~~ pursuant to section four hundred six of this article.

9 (c) ~~Rules of the commission shall require that~~ The minimum quantities of air in any split  
10 where any individual unit of diesel-powered equipment is being operated shall be at least that  
11 specified on the approval plate for that equipment. Air quantity measurements to determine  
12 compliance with this requirement shall be made at the individual unit of diesel-powered equipment.

13 (d) ~~Rules of the commission~~ The director shall establish the minimum quantities of air  
14 required in any split when multiple units are operated. Air quantity measurements to determine  
15 compliance with this requirement shall be made at the most downwind unit of diesel-powered  
16 equipment that is being operated in that air split.

17 (e) ~~Rules of the commission shall provide that~~ Minimum quantities of air in any split where  
18 any diesel-powered equipment is operated shall not be less than the minimum air quantities  
19 established pursuant to subsections (a) and (b) of this section and shall be specified in the mine  
20 diesel ventilation plan.

21 PART 6. FUEL.

22 **§22A-2A-601. Specifications for fuel.**

1 (a) The ~~commission~~ director shall establish standards for fuel to be used in diesel-powered  
2 equipment in underground coal mines. A purpose of these standards is to require the use of low  
3 volatile fuels that will lower diesel engine gaseous and particulate emissions and will reduce  
4 equipment maintenance by limiting the amount of sulfur in the fuel. Another purpose of the  
5 standards for fuel is to reduce the risk of fire in underground mines by establishing a minimum flash  
6 point for the diesel fuel used.

7 (b) ~~Rules of the commission shall require~~ Each coal mine using diesel equipment  
8 underground to shall establish a quality control plan for assuring that the diesel fuel used complies  
9 with the standards established pursuant to this section. The ~~rules~~ director shall also establish a  
10 procedure under which each mine operator will provide evidence that the diesel fuel used in  
11 diesel-powered equipment underground meets the standards for fuel established by the ~~commission~~  
12 director.

13 **§22A-2A-602. Fuel storage facilities.**

14 (a) The ~~commission~~ director shall establish requirements for the safe storage of diesel fuel  
15 underground so as to minimize the risks associated with fire hazards in areas where diesel fuel is  
16 stored.

17 (b) (1) ~~Rules of the commission~~ The director shall either provide:

18 (A) That all stationary underground diesel fuel tanks are prohibited; or

19 (B) That a stationary underground diesel fuel tank may only be authorized through a  
20 petitioning process that permits a stationary underground diesel fuel tank to be located in a  
21 permanent underground diesel fuel storage facility, on a site-specific basis. Stationary underground  
22 diesel fuel tanks may not be located in temporary underground diesel fuel storage areas.

1           (c) ~~Rules of the commission~~ The director shall ~~govern the~~ establish requirements for the  
2 transportation and storage of diesel fuel in diesel fuel tanks and safety cans.

3           (d) ~~Rules of the commission~~ The director shall establish limits on the total amount of diesel  
4 fuel that may be stored in each permanent underground diesel fuel storage facility and in each  
5 temporary underground diesel fuel storage area.

6 **§22A-2A-603. Dispensing of diesel fuel.**

7           ~~Rules of the commission~~ The director shall establish requirements governing the refueling  
8 of diesel-powered equipment which shall, at a minimum, comply with the provisions of part 75 of  
9 the code of federal regulations dealing with the dispensing of diesel fuel, set forth in 30 C.F.R.  
10 §75.1905, effective the twenty-fifth day of April, one thousand nine hundred ninety-seven.

11 **§22A-2A-604. Location of fueling.**

12           (a) ~~Rules of the commission~~ The director shall require that fueling of diesel-powered  
13 equipment is not to be conducted in the intake escapeways unless the mine design and entry  
14 configuration make it necessary. For those cases where fueling in the intake escapeways is  
15 necessary, the ~~rules~~ director shall establish a procedure whereby the mine operator shall submit a  
16 plan for approval, outlining the special safety precautions that will be taken to insure the protection  
17 of miners. The plan shall specify a fixed location where fueling will be conducted in the intake  
18 escapeway and all other safety precautions that will be taken, which shall include an examination  
19 of the area for spillage or fire by a qualified person.

20           (b) ~~Rules of the commission shall require that~~ At least one person, specially trained in the  
21 cleanup and disposal of diesel fuel spills, shall be on duty at the mine when diesel-powered  
22 equipment or mobile fuel transportation equipment is being used or when any fueling of

1 diesel-powered equipment is being conducted.

2 PART 7. FIRE SUPPRESSION.

3 **§22A-2A-701. Fire suppression systems for diesel-powered equipment and fuel transportation**  
4 **units.**

5 ~~Rules of the commission~~ The director shall establish requirements governing fire suppression  
6 systems for diesel-powered equipment and fuel transportation units shall, at a minimum, comply  
7 with the provisions of part seventy-five of the code of federal regulations dealing with fire  
8 suppression systems for diesel-powered equipment and fuel transportation units, set forth in 30  
9 C.F.R. §75.1911, effective April 25, 1997.

10 **§22A-2A-702. Fire suppression for storage areas.**

11 ~~Rules of the commission~~ governing fire suppression systems for permanent underground  
12 diesel fuel storage facilities shall, at a minimum, comply with the provisions of part 75 of the code  
13 of federal regulations dealing with fire suppression systems for permanent underground diesel fuel  
14 storage facilities, set forth in 30 C.F.R. §75.1912, effective April 25, 1997.

15 **§22A-2A-703. Use of certain starting aids regulated or prohibited.**

16 ~~Rules of the commission~~ The director shall regulate or prohibit the use of volatile or chemical  
17 starting aids.

18 **§22A-2A-704. Fire and safety training.**

19 (a) ~~Rules of the commission~~ The director shall establish rules to provide for all underground  
20 employees at the mine to receive special instruction related to fighting fires involving diesel fuel.  
21 This training may be included in annual refresher training under MSHA regulations set forth in 30  
22 C.F.R. Pt. 48 (relating to training and retraining of miners), or included in the fire drills required

1 under MSHA regulations set forth in 30 C.F.R. ~~§75.1101.23~~§75.1501 et seq. (relating to program of  
 2 instruction; location and use of fire fighting equipment; location of escapeways, exits, and routes of  
 3 travel; evacuation procedures; fire drills).

4 (b) ~~Rules of the commission~~ The director shall establish rules to provide for all miners to be  
 5 trained in precautions for safe and healthful handling and disposal of diesel-powered equipment  
 6 filters.

7 PART 8. MAINTENANCE.

8 **§22A-2A-801. Maintenance of diesel-powered equipment.**

9 (a) ~~Rules of the commission~~ The director shall require diesel-powered equipment to be  
 10 maintained in an approved and safe condition or removed from service. Failure of the mine operator  
 11 to comply with the maintenance requirements established by the board may result in revocation of  
 12 the ~~commission's~~ director's approval of the diesel-powered equipment. The ~~commission~~ director shall  
 13 establish procedures for appropriate notification to be given to the mine operator, requiring the  
 14 submission, evaluation and implementation of a plan to achieve and maintain compliance.

15 (b) ~~Rules of the commission~~ The director shall provide that service and maintenance of  
 16 diesel-powered equipment shall be performed according to a specified routine maintenance schedule,  
 17 on-board performance and maintenance diagnostics readings, emissions test results, and component  
 18 manufacturer's recommendations.

19 **§22A-2A-802. Training and qualification of persons working on diesel-powered equipment.**

20 (a) ~~Rules of the commission~~ The director shall require that all maintenance, repairs,  
 21 examinations and tests on diesel-powered equipment shall be performed by a person who, at a  
 22 minimum, is trained and qualified in accordance with the provisions of part 75 of the code of federal



1 regulations dealing with the training and qualification of persons working on diesel powered  
2 equipment, as set forth in 30 C.F.R. §75.1915, effective April 25, 1997.

3 (b) ~~Rules of the commission~~ The director shall require that the training and qualification  
4 program and record made available for inspection pursuant to the provisions of 30 C.F.R.  
5 §75.1915(c) be made available to the ~~commission~~ the director or its ~~an~~ authorized representative.

6 **§22A-2A-803. Examination of equipment by operator.**

7 ~~Rules of the commission~~ The director shall require that mobile diesel-powered equipment  
8 that is to be used during a shift be visually examined by the equipment operator before being placed  
9 in operation, and that equipment defects affecting safety be reported promptly to the mine operator.  
10 ~~Rules of the commission~~ The director shall specify the inspection procedures to be followed and the  
11 operating conditions under which the examination is to be made. ~~Rules of the commission~~ The  
12 director shall establish record-keeping requirements for such visual examinations.

13 **§22A-2A-804. Scheduled maintenance.**

14 ~~Rules of the commission~~ The director shall establish the intervals at which a qualified person  
15 will evaluate and interpret the results of tests and examinations, perform maintenance and make all  
16 necessary adjustments or repairs or remove the diesel-powered equipment from service. ~~Rules of~~  
17 ~~the commission~~ The director shall establish record-keeping requirements for persons performing  
18 maintenance.

19 **§22A-2A-805. On-board performance and maintenance diagnostics systems.**

20 ~~Rules of the commission~~ The director shall require that on-board engine performance and  
21 maintenance diagnostics systems shall be capable of continuously monitoring and giving read-outs.  
22 The diagnostics system shall identify levels that exceed the engine or component manufacturer's

1 recommendation, standards established by the ~~commission~~ director or the applicable MSHA  
2 requirements.

3 **§22A-2A-806. Diagnostic testing.**

4 (a) ~~Rules of the commission~~ The director shall require periodic examination and testing of  
5 all diesel-powered equipment by a person trained and qualified as required by rules of the  
6 ~~commission~~ director.

7 (b) ~~Rules of the commission~~ The director shall prescribe the scope of the examination and  
8 testing and the procedures to be followed, and the rules requiring testing of undiluted exhaust  
9 emissions may exceed the written standard operating procedures for such testing and evaluation  
10 required by part 75 of the code of federal regulations, set forth in 30 C.F.R. §75.19154(g).

11 **§22A-2A-807. Records.**

12 (a) ~~Rules of the commission~~ The director shall promulgate rules to provide:

13 (1) That a record be made of all tests, examinations and maintenance and repairs of  
14 diesel-powered equipment;

15 (2) That the person performing the test, examination, maintenance or repair certify by date,  
16 time, engine hour reading, and signature that the test, examination, maintenance or repair was made;

17 (3) That records of tests and examinations include the specific results of such tests and  
18 examinations;

19 (4) That records of maintenance and repairs include a description of the work or service that  
20 was performed, and the results of any subsequently required emissions testing.

21 (b) Rules of the ~~commission~~ director shall specify the persons who are required to  
22 countersign records of tests, examinations, maintenance and repairs.

1 (c) Rules of the ~~commission~~ director shall establish procedures and time periods for the  
2 retention of records and their availability for inspection by the ~~commission~~ the director and by  
3 miners and their representatives.

4 PART 9. TRAINING.

5 **§22A-2A-901. Training and general requirements.**

6 (a) ~~Rules of the commission~~ The director shall establish programs for training equipment  
7 operators and members of the mine health and safety committee. Training shall include, but not be  
8 limited to, the following:

9 (1) Fundamentals of the operation of a diesel engine;

10 (2) Federal and state regulations governing the use of diesel-powered equipment;

11 (3) The mine operator's rules for safe operation;

12 (4) Specific features of each piece of equipment; and

13 (5) Problem recognition.

14 (b) Required training shall include equipment specific, hands-on orientation given in an area  
15 of the mine where the equipment will be operated. This orientation shall be specific to the type and  
16 make of the diesel machine and shall be presented in small groups.

17 (c) ~~Rules of the commission~~ The director shall establish a certification process for qualifying  
18 equipment operators to operate a specific type of diesel-powered equipment. An operator may be  
19 qualified to operate more than one type of equipment by completing additional equipment-specific  
20 training covering differences specific to each additional type of equipment.

21 (d) ~~Rules of the commission~~ The director shall require refresher training, separate from that  
22 required by MSHA regulations at 30 C.F.R. Pt. 48 (relating to the training and retraining of miners),

1 and annual recertification.

NOTE: The purpose of this bill is to abolish the West Virginia Diesel Equipment Commission; transfer all power duties and appropriations of the commission to the Director of the office of Miners' Health, Safety and Training; establish legislative rule-making authority of the director; and provide that approvals of equipment and rules previously approved by the commission continue in full force and effect.

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