

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Senate Bill 687

BY SENATORS SMITH, SYPOLT, BLAIR, BOLEY, CLINE,

FERNS, GAUNCH, MULLINS, FACEMIRE, JEFFRIES, OJEDA

AND WOELFEL

[Passed April 8, 2017; in effect from passage]

OFFICE WEST VIRGINIA
SECRETARY OF STATE

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[Passed April 8, 2017; in effect from passage]

1 AN ACT to amend and reenact §22-3-11, §22-3-13a and §22-3-23 of the Code of West Virginia,
2 1931, as amended; to amend and reenact §22-6-24 of said code; to amend and reenact
3 §22-11-7b of said code; to amend and reenact §22A-1-2 and §22A-1-5 of said code; to
4 amend and reenact §22A-2-59 of said code; to amend said code by adding thereto a new
5 section, designated §22A-2A-1001; to amend and reenact §22A-6-3, §22A-6-4 and §22A-
6 6-6 of said code; to amend and reenact §22A-7-2, §22A-7-3, §22A-7-5, §22A-7-5a and
7 §22A-7-7 of said code; to amend and reenact §22A-9-1 of said code; to amend and
8 reenact §22A-11-1, §22A-11-2, §22A-11-3 and §22A-11-4 of said code; and to amend
9 said code by adding thereto a new section, designated §22A-11-5, all relating generally to
10 natural resources; providing that moneys be paid from Special Reclamation Water Trust
11 Fund to assure a reliable source of capital and operating expenses for the treatment of
12 discharges from forfeited sites; modifying notification requirements for preblast surveys
13 for surface mining operations and certain other blasting activities; removing minimum bond
14 requirements related to certain reclamation work; providing for changes to the method of
15 plugging abandoned gas wells where a coal operator intends to mine through the well;
16 removing certain criteria from evaluation for the narrative water quality standard;
17 authorizing the elimination of the Board of Miner Training, Education and Certification, the
18 Mine Inspectors' Examining Board and the Mine Safety Technology Task Force, and the
19 transfer of duties from those boards and task force to the Board of Coal Mine Health and
20 Safety; providing guaranteed term limits for certain board and commission members;
21 providing that an automated external defibrillator unit be required first-aid equipment
22 located in certain areas of an underground coal mine; directing that the Office of Miners'
23 Health, Safety and Training revise state rules related to diesel equipment operating in
24 underground mines; and requiring rulemaking.

Be it enacted by the Legislature of West Virginia:

1 That §22-3-11, §22-3-13a and §22-3-23 of the Code of West Virginia, 1931, as amended,
2 be amended and reenacted; that §22-6-24 of said code be amended and reenacted; that §22-11-
3 7b of said code be amended and reenacted; that §22A-1-2 and §22A-1-5 of said code be
4 amended and reenacted; that §22A-2-59 of said code be amended and reenacted; that said code
5 be amended by adding thereto a new section, designated §22A-2A-1001; that §22A-6-3, §22A-
6 6-4 and §22A-6-6 of said code be amended and reenacted; that §22A-7-2, §22A-7-3, §22A-7-5,
7 §22A-7-5a and §22A-7-7 of said code be amended and reenacted; that §22A-9-1 of said code be
8 amended and reenacted; that §22A-11-1, §22A-11-2, §22A-11-3 and §22A-11-4 of said code be
9 amended and reenacted; and that said code be amended by adding thereto a new section,
10 designated §22A-11-5, all to read as follows:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.

1 (a) After a surface mining permit application has been approved pursuant to this article,
2 but before a permit has been issued, each operator shall furnish a penal bond, on a form to be
3 prescribed and furnished by the secretary, payable to the state of West Virginia and conditioned
4 upon the operator faithfully performing all of the requirements of this article and of the permit. The
5 penal amount of the bond shall be not less than \$1,000 nor more than \$5,000 for each acre or
6 fraction of an acre: *Provided*, That the minimum amount of bond furnished for any type of
7 reclamation bonding shall be \$10,000. The bond shall cover: (1) The entire permit area; or (2)
8 that increment of land within the permit area upon which the operator will initiate and conduct
9 surface mining and reclamation operations within the initial term of the permit. If the operator
10 chooses to use incremental bonding, as succeeding increments of surface mining and
11 reclamation operations are to be initiated and conducted within the permit area, the operator shall

12 file with the secretary an additional bond or bonds to cover the increments in accordance with this
13 section: *Provided, however*, That once the operator has chosen to proceed with bonding either
14 the entire permit area or with incremental bonding, the operator shall continue bonding in that
15 manner for the term of the permit.

16 (b) The period of liability for bond coverage begins with issuance of a permit and continues
17 for the full term of the permit plus any additional period necessary to achieve compliance with the
18 requirements in the reclamation plan of the permit.

19 (c)(1) The form of the bond shall be approved by the secretary and may include, at the
20 option of the operator, surety bonding, collateral bonding (including cash and securities),
21 establishment of an escrow account, self bonding or a combination of these methods. If collateral
22 bonding is used, the operator may elect to deposit cash or collateral securities or certificates as
23 follows: Bonds of the United States or its possessions of the Federal Land Bank or of the
24 Homeowners' Loan Corporation; full faith and credit general obligation bonds of the State of West
25 Virginia or other states and of any county, district or municipality of the state of West Virginia or
26 other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of
27 the department. The cash deposit or market value of the securities or certificates shall be equal
28 to or greater than the penal sum of the bond. The secretary shall, upon receipt of any deposit of
29 cash, securities or certificates, promptly place the same with the Treasurer of the state of West
30 Virginia whose duty it is to receive and hold the deposit in the name of the state in trust for the
31 purpose for which the deposit is made when the permit is issued. The operator making the deposit
32 is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the
33 secretary, the whole or any portion of any cash, securities or certificates so deposited, upon
34 depositing with him or her in lieu thereof cash or other securities or certificates of the classes
35 specified in this subsection having value equal to or greater than the sum of the bond.

36 (2) The secretary may approve an alternative bonding system if it will: (A) Reasonably
37 assure that sufficient funds will be available to complete the reclamation, restoration and

38 abatement provisions for all permit areas which may be in default at any time; and (B) provide a
39 substantial economic incentive for the permittee to comply with all reclamation provisions.

40 (d) The secretary may accept the bond of the applicant itself without separate surety when
41 the applicant demonstrates to the satisfaction of the secretary the existence of a suitable agent
42 to receive service of process and a history of financial solvency and continuous operation
43 sufficient for authorization to self insure.

44 (e) It is unlawful for the owner of surface or mineral rights to interfere with the present
45 operator in the discharge of the operator's obligations to the state for the reclamation of lands
46 disturbed by the operator.

47 (f) All bond releases shall be accomplished in accordance with the provisions of section
48 twenty-three of this article.

49 (g)(1) The Special Reclamation Fund previously created is continued. The Special
50 Reclamation Water Trust Fund is created within the state treasury into and from which moneys
51 shall be paid for the purpose of assuring a reliable source of capital and operating expenses for
52 the treatment of water discharges from forfeited sites where the secretary has obtained or applied
53 for an NPDES permit as of the effective date of this article. The moneys accrued in both funds,
54 any interest earned thereon and yield from investments by the State Treasurer or West Virginia
55 Investment Management Board are reserved solely and exclusively for the purposes set forth in
56 this section and section seventeen, article one of this chapter.

57 (2) The funds shall be administered by the secretary who is authorized to expend the
58 moneys in both funds for the reclamation and rehabilitation of lands which were subjected to
59 permitted surface mining operations and abandoned after August 3, 1977, where the amount of
60 the bond posted and forfeited on the land is less than the actual cost of reclamation, and where
61 the land is not eligible for abandoned mine land reclamation funds under article two of this chapter.
62 The secretary may also expend an amount not to exceed ten percent of the total annual assets

63 in both funds to implement and administer the provisions of this article and, as they apply to the
64 Surface Mine Board, articles one and four, chapter twenty-two-b of this code.

65 (3)(A) A tax credit shall be granted against the tax imposed by subsection (i) of this section
66 to any mine operator who performs reclamation or remediation at a bond forfeiture site which
67 otherwise would have been reclaimed using funds from the Special Reclamation Fund or Special
68 Reclamation Water Trust Fund. The credit authorized pursuant to this subdivision is retroactive
69 and may be claimed for reclamation or remediation performed on or after January 1, 2012:
70 *Provided*, That for reclamation or remediation performed prior to July 13, 2013, no tax credit may
71 be granted unless a written application for the tax credit was submitted to the Tax Commissioner
72 prior to September 1, 2014. The amount of credit shall be determined as provided in this section.

73 (B) The amount of a reclamation tax credit granted under this subsection shall be equal to
74 the amount that the Tax Commissioner determines, based on the project costs, as shown in the
75 records of the secretary, that would have been spent from the Special Reclamation Fund or
76 Special Reclamation Water Trust Fund to accomplish the reclamation or remediation performed
77 by the mine operator, including expenditures for water treatment.

78 (C) To claim the credit, the mine operator shall, from time to time, file with the Tax
79 Commissioner a written application seeking the amount of the credit earned. Within thirty days of
80 receipt of the application, the Tax Commissioner shall issue a certification of the amount of tax
81 credit, if any, to be allocated to the eligible taxpayer. Should the amount of the credit certified be
82 less than the amount applied for, the Tax Commissioner shall set forth in writing the reason for
83 the difference. Should no certification be issued within the thirty-day period, the application will be
84 deemed certified. Any decision by the Tax Commissioner is appealable pursuant to the provisions
85 of the West Virginia Tax Procedure and Administration Act set forth in article ten, chapter eleven
86 of the code. Applications for certification of the proposed tax credit shall contain the information
87 and be in the detail and form as required by the Tax Commissioner.

88 (h) The Tax Commissioner may promulgate rules for legislative approval pursuant to the
89 provisions of article three, chapter twenty-nine-a of this code to carry out the purposes of this
90 subdivision two, subsection (g) of this section.

91 (i)(1) Rate, deposits and review.

92 (A) For tax periods commencing on and after July 1, 2009, every person conducting coal
93 surface mining shall remit a special reclamation tax of fourteen and four-tenths cents per ton of
94 clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the
95 Special Reclamation Fund and the Special Reclamation Water Trust Fund.

96 (B) For tax periods commencing on and after July 1, 2012, the rate of tax specified in
97 paragraph (A) of this subdivision is discontinued and is replaced by the rate of tax specified in this
98 paragraph. For tax periods commencing on and after July 1, 2012, every person conducting coal
99 surface mining shall remit a special reclamation tax of twenty-seven and nine-tenths cents per
100 ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in
101 the Special Reclamation Fund and the Special Reclamation Water Trust Fund. Of that amount,
102 fifteen cents per ton of clean coal mined shall be deposited into the Special Reclamation Water
103 Trust Fund.

104 (C) The tax shall be levied upon each ton of clean coal severed or clean coal obtained
105 from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a
106 combination of coal and waste material as part of a fuel supply.

107 (D) Beginning with the tax period commencing on July 1, 2009, and every two years
108 thereafter, the special reclamation tax shall be reviewed by the Legislature to determine whether
109 the tax should be continued: *Provided*, That the tax may not be reduced until the Special
110 Reclamation Fund and Special Reclamation Water Trust Fund have sufficient moneys to meet
111 the reclamation responsibilities of the state established in this section.

112 (2) In managing the special reclamation program, the secretary shall: (A) Pursue cost-
113 effective alternative water treatment strategies; and (B) conduct formal actuarial studies every two

114 years and conduct informal reviews annually on the Special Reclamation Fund and Special
115 Reclamation Water Trust Fund.

116 (3) Prior to December 31, 2008, the secretary shall:

117 (A) Determine the feasibility of creating an alternate program, on a voluntary basis, for
118 financially sound operators by which those operators pay an increased tax into the Special
119 Reclamation Fund in exchange for a maximum per-acre bond that is less than the maximum
120 established in subsection (a) of this section;

121 (B) Determine the feasibility of creating an incremental bonding program by which
122 operators can post a reclamation bond for those areas actually disturbed within a permit area, but
123 for less than all of the proposed disturbance and obtain incremental release of portions of that
124 bond as reclamation advances so that the released bond can be applied to approved future
125 disturbance; and

126 (C) Determine the feasibility for sites requiring water reclamation by creating a separate
127 water reclamation security account or bond for the costs so that the existing reclamation bond in
128 place may be released to the extent it exceeds the costs of water reclamation.

129 (4) If the secretary determines that the alternative program, the incremental bonding
130 program or the water reclamation account or bonding programs reasonably assure that sufficient
131 funds will be available to complete the reclamation of a forfeited site and that the Special
132 Reclamation Fund will remain fiscally stable, the secretary is authorized to propose legislative
133 rules in accordance with article three, chapter twenty-nine-a of this code to implement an alternate
134 program, a water reclamation account or bonding program or other funding mechanisms or a
135 combination thereof.

136 (j) This special reclamation tax shall be collected by the Tax Commissioner in the same
137 manner, at the same time and upon the same tonnage as the minimum severance tax imposed
138 by article twelve-b, chapter eleven of this code is collected: *Provided*, That under no circumstance

139 shall the special reclamation tax be construed to be an increase in either the minimum severance
140 tax imposed by said article or the severance tax imposed by article thirteen of said chapter.

141 (k) Every person liable for payment of the special reclamation tax shall pay the amount
142 due without notice or demand for payment.

143 (l) The Tax Commissioner shall provide to the secretary a quarterly listing of all persons
144 known to be delinquent in payment of the special reclamation tax. The secretary may take the
145 delinquencies into account in making determinations on the issuance, renewal or revision of any
146 permit.

147 (m) The Tax Commissioner shall deposit the moneys collected with the Treasurer of the
148 State of West Virginia to the credit of the Special Reclamation Fund and Special Reclamation
149 Water Trust Fund.

150 (n) At the beginning of each quarter, the secretary shall advise the Tax Commissioner and
151 the Governor of the assets, excluding payments, expenditures and liabilities, in both funds.

152 (o) To the extent that this section modifies any powers, duties, functions and
153 responsibilities of the department that may require approval of one or more federal agencies or
154 officials in order to avoid disruption of the federal-state relationship involved in the implementation
155 of the federal Surface Mining Control and Reclamation Act, 30 U. S. C. §1270 by the state, the
156 modifications will become effective upon the approval of the modifications by the appropriate
157 federal agency or official.

§22-3-13a. Preblast survey requirements.

1 (a) At least thirty days prior to commencing blasting, as defined in section twenty-two-a of
2 this article, an operator or an operator's designee shall make the following notifications in writing
3 to all owners and occupants of man-made dwellings or structures that the operator or operator's
4 designee will perform preblast surveys in accordance with subsection (e) of this section:

5 (1) For surface mining operations the required notifications shall be to all owners and
6 occupants of man-made dwellings or structures within one-half mile of the permitted area or
7 areas; and

8 (2) For blasting associated with permitted surface disturbance of underground mines and
9 blasting associated with specified construction, including but not limited to, haul roads, shafts,
10 and/or drainage structures, the operator may send a written request to the secretary asking that
11 the required notifications be limited to all owners and occupants of man-made dwellings or
12 structures within one-half mile of the proposed blasting area.

13 (b) An owner of a man-made dwelling or structure within the areas described in subdivision
14 (1) or (2), subsection (a) of this section may waive the right to a preblast survey in writing. If an
15 occupant or owner of a man-made dwelling or structure refuses to allow the operator or the
16 operator's designee access to the dwelling or structure and refuses to waive in writing the right to
17 a preblast survey or to the extent that access to any portion of the structure, underground water
18 supply or well is impossible or impractical under the circumstances, the preblast survey shall
19 indicate that access was refused, impossible or impractical. The operator or the operator's
20 designee shall execute a sworn affidavit explaining the reasons and circumstances surrounding
21 the refusals. The secretary may not determine the preblast survey to be incomplete because it
22 indicates that access to a particular structure, underground water supply or well was refused,
23 impossible or impractical. The operator shall send copies of all written waivers and affidavits
24 executed pursuant to this subsection to the secretary.

25 (c) If a preblast survey was waived by the owner and was within the requisite area and the
26 property was sold, the new owner may request a preblast survey from the operator.

27 (d) An owner within the requisite area may request, from the operator, a preblast survey
28 on structures constructed after the original preblast survey.

29 (e) The preblast survey shall include:

30 (1) The names, addresses or description of structure location and telephone numbers of
31 the owner and the residents of the structure being surveyed and the structure number from the
32 permit blasting map;

33 (2) The current home insurer of the owner and the residents of the structure;

34 (3) The names, addresses and telephone numbers of the surface mining operator and the
35 permit number;

36 (4) The current general liability insurer of the surface mining operator;

37 (5) The name, address and telephone number of the person or firm performing the preblast
38 survey;

39 (6) The current general liability insurer of the person or firm performing the preblast survey;

40 (7) The date of the preblast survey and the date it was mailed or delivered to the secretary;

41 (8) A general description of the structure and its appurtenances, including, but not limited
42 to: (A) The number of stories; (B) the construction materials for the frame and the exterior and
43 interior finish; (C) the type of construction including any unusual or substandard construction; and
44 (D) the approximate age of the structure;

45 (9) A general description of the survey methods and the direction of progression of the
46 survey, including a key to abbreviations used;

47 (10) Written documentation and drawings, videos or photographs of the preblast defects
48 and other physical conditions of all structures, appurtenances and water sources which could be
49 affected by blasting;

50 (11) Written documentation and drawings, videos or photographs of the exterior and
51 interior of the structure to indicate preblast defects and condition;

52 (12) Written documentation and drawings, videos or photographs of the exterior and
53 interior of any appurtenance of the structure to indicate preblast defects and condition;

54 (13) Sufficient exterior and interior photographs or videos, using a variety of angles, of the
55 structure and its appurtenances to indicate preblast defects and the condition of the structure and
56 appurtenances;

57 (14) Written documentation and drawings, videos or photographs of any unusual or
58 substandard construction technique and materials used on the structure or its appurtenances or
59 both structure and appurtenances;

60 (15) Written documentation relating to the type of water supply, including a description of
61 the type of system and treatment being used, an analysis of untreated water supplies, a water
62 analysis of water supplies other than public utilities and information relating to the quantity and
63 quality of water;

64 (16) When the water supply is a well, written documentation, where available, relating to
65 the type of well; the well log; the depth, age and type of casing or lining; the static water level;
66 flow data; the pump capacity; the drilling contractor; and the source or sources of the
67 documentation;

68 (17) A description of any portion of the structure and appurtenances not documented or
69 photographed and the reasons;

70 (18) The signature of the person performing the survey; and

71 (19) Any other information required by the secretary which additional information shall be
72 established by rule in accordance with article three, chapter twenty-nine-a of this code.

73 (f) The preblast survey shall be submitted to the secretary at least fifteen days prior to the
74 commencement of any production blasting. The secretary shall review each preblast survey as to
75 form and completeness only and notify the operator of any deficiencies: *Provided*, That once all
76 required surveys have been reviewed and accepted by the secretary, blasting may commence
77 sooner than fifteen days after submittal. The secretary shall provide a copy of the preblast survey
78 to the owner or occupant.

79 (g) The secretary shall propose rules for legislative approval in accordance with article
80 three, chapter twenty-nine-a of this code dealing with preblast survey requirements and setting
81 the qualifications for individuals and firms performing preblast surveys.

82 (h) The provisions of this section do not apply to the extraction of minerals by underground
83 mining methods.

**§22-3-23. Release of bond or deposits; application; notice; duties of secretary; public
hearings; final maps on grade release.**

1 (a) The permittee may file a request with the secretary for the release of a bond or deposit.
2 The permittee shall publish an advertisement regarding the request for release in the same
3 manner as is required of advertisements for permit applications. A copy of the advertisement shall
4 be submitted to the secretary as part of any bond release application and shall contain a
5 notification of the precise location of the land affected, the number of acres, the permit and the
6 date approved, the amount of the bond filed and the portion sought to be released, the type and
7 appropriate dates of reclamation work performed and a description of the results achieved as they
8 relate to the permittee's approved reclamation plan. In addition, as part of any bond release
9 application, the permittee shall submit copies of letters which the permittee has sent to adjoining
10 property owners, local government bodies, planning agencies, sewage and water treatment
11 authorities or water companies in the locality in which the surface mining operation is located,
12 notifying them of the permittee's intention to seek release from the bond. Any request for grade
13 release shall also be accompanied by final maps.

14 (b) Upon receipt of the application for bond release, the secretary, within thirty days, taking
15 into consideration existing weather conditions, shall conduct an inspection and evaluation of the
16 reclamation work involved. The evaluation shall consider, among other things, the degree of
17 difficulty to complete any remaining reclamation, whether pollution of surface and subsurface
18 water is occurring, the probability of continuance or future occurrence of the pollution and the
19 estimated cost of abating the pollution. The secretary shall notify the permittee in writing of his or
20 her decision to release or not to release all or part of the bond or deposit within sixty days from
21 the date of the initial publication of the advertisement if no public hearing is requested. If a public
22 hearing is held, the secretary's decision shall be issued within thirty days thereafter.

23 (c) If the secretary is satisfied that reclamation covered by the bond or deposit or portion
24 thereof has been accomplished as required by this article, he or she may release the bond or
25 deposit, in whole or in part, according to the following schedule:

26 (1) When the operator completes the backfilling, regrading and drainage control of a
27 bonded area in accordance with the operator's approved reclamation plan, the release of sixty
28 percent of the bond or collateral for the applicable bonded area.

29 (2) After revegetation has been established on the regraded mined lands in accordance
30 with the approved reclamation plan. When determining the amount of bond to be released after
31 successful revegetation has been established, the secretary shall retain that amount of bond for
32 the revegetated area which would be sufficient for a third party to cover the cost of reestablishing
33 revegetation and for the period specified for operator responsibility in section thirteen of this
34 article. No part of the bond or deposit shall be released under this subsection so long as the lands
35 to which the release would be applicable are contributing suspended solids to streamflow or runoff
36 outside the permit area in excess of the requirements set by subdivision (10), subsection (b),
37 section thirteen of this article or until soil productivity for prime farm lands has returned to
38 equivalent levels of yield as nonmined land of the same soil type in the surrounding area under
39 equivalent management practices as determined from the soil survey performed pursuant to
40 subdivision (15), subsection (a), section nine of this article. Where a silt dam is to be retained as
41 a permanent impoundment pursuant to subdivision (8), subsection (b), section thirteen of this
42 article, the portion of bond may be released under this subdivision so long as provisions for sound
43 future maintenance by the operator or the landowner have been made with the secretary.

44 (3) When the operator has completed successfully all surface coal mining and reclamation
45 activities, the release of the remaining portion of the bond, but not before the expiration of the
46 period specified for operator responsibility in section thirteen of this article: *Provided*, That no
47 bond shall be fully released until all reclamation requirements of this article are fully met: *Provided*,
48 *however*, That the release may be made where the quality of the untreated post-mining water
49 discharged is better than or equal to the premining water quality discharged from the mining site
50 where expressly authorized by legislative rule promulgated pursuant to section three, article one
51 of this chapter.

52 (d) If the secretary disapproves the application for release of the bond or portion thereof,
53 the secretary shall notify the permittee, in writing, stating the reasons for disapproval and
54 recommending corrective actions necessary to secure the release and notifying the operator of
55 the right to a hearing.

56 (e) When any application for total or partial bond release is filed with the secretary, he or
57 she shall notify the municipality in which a surface-mining operation is located by registered or
58 certified mail at least thirty days prior to the release of all or a portion of the bond.

59 (f) Any person with a valid legal interest which is or may be adversely affected by release
60 of the bond or the responsible officer or head of any federal, state or local governmental agency
61 which has jurisdiction by law or special expertise with respect to any environmental, social or
62 economic impact involved in the operation, or is authorized to develop and enforce environmental
63 standards with respect to the operations, has the right to file written objections to the proposed
64 bond release and request a hearing with the secretary within thirty days after the last publication
65 of the permittee's advertisement. If written objections are filed and a hearing requested, the
66 secretary shall inform all of the interested parties of the time and place of the hearing and shall
67 hold a public hearing in the locality of the surface-mining operation proposed for bond release
68 within three weeks after the close of the public comment period. The date, time and location of
69 the public hearing shall also be advertised by the secretary in a newspaper of general circulation
70 in the same locality.

71 (g) Without prejudice to the rights of the objectors, the applicant, or the responsibilities of
72 the secretary pursuant to this section, the secretary may hold an informal conference to resolve
73 any written objections and satisfy the hearing requirements of this section thereby.

74 (h) For the purpose of the hearing, the secretary has the authority and is hereby
75 empowered to administer oaths, subpoena witnesses and written or printed materials, compel the
76 attendance of witnesses, or production of materials, and take evidence, including, but not limited
77 to, inspections of the land affected and other surface-mining operations carried on by the applicant

78 in the general vicinity. A verbatim record of each public hearing required by this section shall be
79 made and a transcript made available on the motion of any party or by order of the secretary at
80 the cost of the person requesting the transcript.

81 (i) The secretary shall propose rules for legislative approval during the 2018 regular
82 session of the Legislature in accordance with the provisions of article three, chapter twenty-nine-
83 a of the code and revisions to the Legislative Rule entitled West Virginia Surface Mining
84 Reclamation Rule, Title 38, Series 2 of the West Virginia Code of State Rules, to implement the
85 revisions to this article made during the 2017 legislative session. The secretary shall specifically
86 consider the adoption of corresponding federal standards codified at 30 C. F. R. 700 *et. seq.*

**ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION;
ENFORCEMENT.**

§22-6-24. Methods of plugging well.

1 Upon the abandonment or cessation of the operation of any well drilled for natural gas or
2 petroleum, or drilled or converted for the introduction of pressure, whether liquid or gas, or for the
3 introduction of liquid for the purposes provided for in section twenty-five of this article or for the
4 disposal of pollutants or the effluent therefrom the well operator, at the time of such abandonment
5 or cessation, shall fill and plug the well in the following manner:

6 (a) Where the well does not penetrate workable coal beds, it shall either be filled with mud,
7 clay or other nonporous material from the bottom of the well to a point twenty feet above the top
8 of its lowest oil, gas or water-bearing stratum; or a permanent bridge shall be anchored thirty feet
9 below its lowest oil, gas or water-bearing stratum, and from such bridge it shall be filled with mud,
10 clay or other nonporous material to a point twenty feet above such stratum; at this point there
11 shall be placed a plug of cement or other suitable material which will completely seal the hole.
12 Between this sealing plug and a point twenty feet above the next higher oil, gas or water-bearing
13 stratum, the hole shall be filled, in the manner just described; and at such point there shall be

14 placed another plug of cement or other suitable material which will completely seal the hole. In
15 like manner the hole shall be filled and plugged, with reference to each of its oil, gas or water-
16 bearing strata. However, whenever such strata are not widely separated and are free from water,
17 they may be grouped and treated as a single sand, gas or petroleum horizon, and the aforesaid
18 filling and plugging be performed as though there were but one horizon. After the plugging of all
19 oil, gas or water-bearing strata, as aforesaid, a cement plug shall be placed approximately ten
20 feet below the bottom of the largest casing in the well; from this point to the surface the well shall
21 be filled with mud, clay or other nonporous material, except that a final cement plug shall be
22 installed from a point one hundred feet below the surface to the surface. In case any of the oil or
23 gas-bearing strata in a well shall have been shot, thereby creating cavities which cannot readily
24 be filled in the manner above described, the well operator shall follow either of the following
25 methods:

26 (1) Should the stratum which has been shot be the lowest one in the well, there shall be
27 placed, at the nearest suitable point, but not less than twenty feet above the stratum, a plug of
28 cement or other suitable material which will completely seal the hole. In the event, however, that
29 the shooting has been done above one or more oil or gas-bearing strata in the well, plugging in
30 the manner specified shall be done at the nearest suitable point, but not less than twenty feet
31 below and above the stratum shot; or

32 (2) When such cavity shall be in the lowest oil or gas-bearing stratum in the well, a liner
33 shall be placed which shall extend from below the stratum to a suitable point, but not less than
34 twenty feet above the stratum in which shooting has been done. In the event, however, that the
35 shooting has been done above one or more oil or gas-bearing strata in the well, the liner shall be
36 so placed that it will extend not less than twenty feet above, nor less than twenty feet below, the
37 stratum in which shooting has been done. Following the placing of the liner in the manner here
38 specified it shall be compactly filled with cement, mud, clay or other nonporous sealing material.

39 (b) Where the well penetrates one or more workable coal beds and a coal protection string
40 of casing has been circulated and cemented into the surface, the well shall be filled and securely
41 plugged in the manner provided in subdivision (a) of this section, except that expanding cement
42 shall be used instead of regular hydraulic cement, to a point approximately one hundred feet
43 below the bottom of the coal protection string of casing. From the point the well shall be plugged
44 according to the provisions in paragraph (1) or (2) below:

45 (1) A two hundred foot plug of expanding cement shall be placed in the well. From this
46 point, the well shall be filled with mud, clay or other nonporous material to a point one hundred
47 feet below the surface and a plug of cement shall be placed from the point one hundred feet below
48 the surface to the surface with a monument installed therein extending thirty inches above ground
49 level.

50 (2) A one hundred foot plug of expanding cement shall be placed in the well so that the
51 top of such plug is located at a point just below the coal protection string of casing. After such
52 plug has been securely placed in the well, the coal protection string of casing shall be emptied of
53 liquid from the surface to a point one hundred feet below the lowest workable coal bed or to the
54 bottom of the coal protection string of casing, whichever is shallower. A vent or other device
55 approved by the secretary shall then be installed on the top of the coal protection string of casing
56 in such a manner that will prevent liquids and solids from entering the well but will permit ready
57 access to the full internal diameter of the coal protection string of casing when required. The coal
58 protection string of casing and the vent or other device approved by the secretary shall extend,
59 when finally in place, a distance of not less than thirty inches above ground level and shall be
60 permanently marked with the well number assigned by the secretary;

61 (c) Where the well penetrates one or more workable coal beds and a coal protection string
62 of casing has not been circulated and cemented into the surface, the well shall be filled and
63 securely plugged in the manner provided in subsection (a) of this section to a point fifty feet below
64 the lowest workable coal bed. Thereafter, a plug of cement shall be placed in the well at a point

65 not less than forty feet below the lowest workable coal bed. After the cement plug has been
66 securely placed in the well, the well shall be filled with cement to a point twenty feet above the
67 lowest workable coal bed. From this point the well shall be filled with mud, clay or other nonporous
68 material to a point forty feet beneath the next overlying workable coal bed, if such there be, and
69 the well shall then be filled with cement from this point to a point twenty feet above such workable
70 coal bed, and similarly, in case there are more overlying workable coal beds. After the filling and
71 plugging of the well to a point above the highest workable coal bed, filling and plugging of the well
72 shall continue in the manner provided in subsection (a) of this section to a point one hundred feet
73 below the surface, and a plug of cement shall be installed from the point one hundred feet below
74 the surface to the surface with a monument installed therein extending thirty inches above ground
75 level;

76 (d)(1) Where the well penetrates one or more workable coal beds and a coal protection
77 string of casing has not been circulated and cemented into the surface, a coal operator or coal
78 seam owner may request that the well be plugged in the manner provided in subdivision (3) of
79 this subsection rather than by the method provided in subsection (c) of this section. Such request
80 (forms for which shall be provided by the secretary) must be filed in writing with the secretary prior
81 to the scheduled plugging of the well, and must include the number of the well to be plugged and
82 the name and address of the well operator. At the time such request is filed with the secretary, a
83 copy of such request must also be mailed by registered or certified mail to the well operator named
84 in the request.

85 (2) Upon receipt of such request, the secretary shall issue an order staying the plugging
86 of the well and shall promptly determine the cost of plugging the well in the manner provided in
87 subdivision (3) of this subsection and the cost of plugging the well in the manner provided in
88 subsection (c) of this section. In making such determination, the secretary shall take into
89 consideration any agreement previously made between the well operator and the coal operator
90 or coal seam owner making the request. If the secretary determines that the cost of plugging the

91 well in the manner provided in subsection (c) of this section exceeds the cost of plugging the well
92 in the manner provided in subdivision (3) of this subsection, the secretary shall grant the request
93 of the coal operator or owner and shall issue an order requiring the well operator to plug the well
94 in the manner provided in subdivision (3) of this subsection. If the secretary determines that the
95 cost of plugging the well in the manner provided in subsection (c) of this section is less than the
96 cost of plugging the well in the manner provided in subdivision (3) of this subsection, the secretary
97 shall request payment into escrow of the difference between the determined costs by the coal
98 operator or coal seam owner making the request. Upon receipt of satisfactory notice of such
99 payment, or upon receipt of notice that the well operator has waived such payment, the secretary
100 shall grant the request of the coal operator or coal seam owner and shall issue an order requiring
101 the well operator to plug the well in the manner provided in subdivision (3) of this subsection. If
102 satisfactory notice of payment into escrow, or notice that the well operator has waived such
103 payment, is not received by the secretary within fifteen days after the request for payment into
104 escrow, the secretary shall issue an order permitting the plugging of the well in the manner
105 provided in subsection (c) of this section. Copies of all orders issued by the secretary shall be
106 sent by registered or certified mail to the coal operator or coal seam owner making the request
107 and to the well operator. When the escrow agent has received certification from the secretary of
108 the satisfactory completion of the plugging work and the reimbursable extra cost thereof (that is,
109 the difference between the secretary's determination of plugging cost in the manner provided in
110 subsection (c) of this section and the well operator's actual plugging cost in the manner provided
111 in subdivision (3) of this subsection), the escrow agent shall pay the reimbursable sum to the well
112 operator or the well operator's nominee from the payment into escrow to the extent available. The
113 amount by which the payment into escrow exceeds the reimbursable sum plus the escrow agent's
114 fee, if any, shall be repaid to the coal owner. If the amount paid to the well operator or the well
115 operator's nominee is less than the actual reimbursable sum, the escrow agent shall inform the
116 coal owner, who shall pay the deficiency to the well operator or the well operator's nominee within

117 thirty days. If the coal operator breaches this duty to pay the deficiency, the well operator shall
118 have a right of action and be entitled to recover damages as if for wrongful conversion of
119 personality, and reasonable attorney fees.

120 (3) Where a request of a coal operator or coal seam owner filed pursuant to subdivision
121 (1) of this subsection has been granted by the secretary, the well shall be plugged in the manner
122 provided in subsection (a) of this section, except that expanding cement shall be used instead of
123 regular hydraulic cement, to a point approximately two hundred feet below the lowest workable
124 coal bed. A one hundred foot plug of expanding cement shall then be placed in the well beginning
125 at the point approximately two hundred feet below the lowest workable coal bed and extending to
126 a point approximately one hundred feet below the lowest workable coal bed. A string of casing
127 with an outside diameter no less than four and one-half inches shall then be run into the well to a
128 point approximately one hundred feet below the lowest workable coal bed and such string of
129 casing shall be circulated and cemented into the surface. The casing shall then be emptied of
130 liquid from a point approximately one hundred feet below the lowest workable coal bed to the
131 surface, and a vent or other device approved by the secretary shall be installed on the top of the
132 string of casing in such a manner that it will prevent liquids and solids from entering the well but
133 will permit ready access to the full internal diameter of the coal protection string of casing when
134 required. The string of casing and the vent or other device approved by the secretary shall extend,
135 when finally in place, a distance of no less than thirty inches above ground level and shall be
136 permanently marked with the well number assigned by the secretary. Notwithstanding the
137 foregoing provisions of this subdivision, if under particular circumstances a different method of
138 plugging is required to obtain the approval of another governmental agency for the safe mining
139 through of said well, the secretary may approve such different method of plugging if he or she
140 finds the same to be as safe for mining through and otherwise adequate to prevent gas or other
141 fluid migration from the oil and gas reservoirs as the method above specified.

142 (e) Notwithstanding anything in this section to the contrary, where the well to be plugged
143 is an abandoned well that has no known responsible party and the well operator is also a coal
144 operator that intends to mine through the well, the well shall, at a minimum, be plugged as
145 provided in subdivisions (1) and (2) of this subsection.

146 (1) The well will be cleaned out and prepared for plugging or replugging as follows:

147 (A) If the total depth of the well is less than four thousand feet, the operator shall
148 completely clean out the well from the surface to at least two hundred feet below the base of the
149 lowest workable coal bed, but the secretary may require cleaning to a greater depth due to
150 excessive pressure within the well. If the total depth of the well is four thousand feet or greater,
151 the operator shall completely clean out the well from the surface to at least four hundred feet
152 below the base of the lowest workable coal bed. The operator shall provide to the secretary all
153 information it possesses concerning the geological nature of the strata and the pressure of the
154 well, and shall remove all material from the entire diameter of the well, wall to wall;

155 (B) The operator shall prepare down-hole logs for each well. The logs shall consist of a
156 caliper survey and log(s) suitable for determining the top, bottom, and thickness of all coal seams
157 and potential hydrocarbon-producing strata, as well as the location for a bridge plug. The
158 secretary may approve the use of a down-hole camera survey in lieu of down-hole logs. In
159 addition, the owner shall maintain a journal that describes the depth of each material encountered;
160 the nature of each material encountered; the bit size and type used to drill each portion of the
161 hole; the length and type of each material used to plug the well; the length of casing(s) removed,
162 perforated or ripped, or left in place; any sections where casing was cut or milled; and any other
163 pertinent information concerning cleaning and sealing the well. The operator shall maintain all
164 invoices, work orders, and other records relating to all work on the well as part of the journal and
165 provide to the secretary upon request;

166 (C) When cleaning, the operator shall make a diligent effort to remove all the casing in the
167 well. If it is not possible to remove all the casing, then the operator shall take appropriate steps to

168 ensure that the annulus between the casing and between the casings and the well walls are filled
169 with expanding cement, with a minimum five tenths of one percent expansion upon setting, and
170 contain no voids. If the casing cannot be removed, it must be cut or milled at all workable coal
171 bed levels. Any casing which remains shall be perforated or ripped. If the total depth of the well
172 is less than four thousand feet, perforations or rips are required every fifty feet from two hundred
173 feet below the base of the lowest mineable coal bed up to one hundred feet above the uppermost
174 workable coal bed. If the total depth of the well is four thousand feet or greater, perforations or
175 rips are required every fifty feet from four hundred feet below the base of the lowest workable coal
176 bed up to one hundred feet above the uppermost workable coal bed. If the operator, using a
177 casing bond log, demonstrates to the satisfaction of the secretary that all annuli in the well are
178 already adequately sealed with cement, then the operator shall not be required to perforate or rip
179 the casing. When multiple casing and tubing strings are present in the workable coal bed, any
180 casing which remains shall be ripped or perforated and filled with expanding cement in
181 accordance with this paragraph. The operator shall maintain a casing bond log for each casing
182 and tubing string if used in lieu of ripping or perforating multiple strings;

183 (D) If the secretary concludes that the completely cleaned well emits excessive amounts
184 of gas, the operator must place a mechanical bridge plug in the well. If the total depth of the well
185 is less than four thousand feet, the mechanical bridge plug shall be placed in a competent stratum
186 at least two hundred feet below the base of the lowest workable coal bed, but above the top of
187 the uppermost hydrocarbon-producing stratum. If the total depth of the well is four thousand feet
188 or greater, the mechanical bridge plug shall be placed in a competent stratum at least four
189 hundred feet below the base of the lowest mineable coal bed, but above the top of the uppermost
190 hydrocarbon-producing stratum: *Provided*, That the secretary may require a greater distance to
191 set the mechanical bridge plug, regardless of the total depth of the well, based upon excessive
192 pressure within the well. The operator shall provide the secretary with all information the operator

193 possesses concerning the geologic nature of the strata and pressure of the well. If it is not possible
194 to set a mechanical bridge plug, an appropriately sized packer may be used; and

195 (E) If the upper-most hydrocarbon-producing stratum is within three hundred feet of the
196 base of the lowest workable coal bed, the operator shall properly place mechanical bridge plugs
197 as described in paragraph (D) of this subdivision to isolate the hydrocarbon-producing stratum
198 from the expanding cement plug. Nevertheless, if the total depth of the well is less than four
199 thousand feet, the operator shall place a minimum of two hundred feet of expanding cement below
200 the lowest workable coal bed. If the total depth of the well is four thousand feet or greater, the
201 operator shall place a minimum of four hundred feet of expanding cement below the lowest
202 mineable coal bed: *Provided*, That the secretary may require a greater distance to set the
203 mechanical bridge plug, regardless of the total depth of the well, based upon excessive pressure
204 within the well.

205 (2) After the well is completely cleaned pursuant to subdivision one of this subsection, the
206 operator shall plug or replug the well to the surface as follows:

207 If the total depth of the well is less than four thousand feet, the operator shall pump
208 expanding cement slurry down the well to form a plug which runs from at least two hundred feet
209 below the base of the lowest workable coal bed to the surface. If the total depth of the well is four
210 thousand feet or greater, the operator shall pump expanding cement slurry down the well to form
211 a plug which runs from at least four hundred feet below the base of the lowest workable coal bed
212 to the surface: *Provided*, That the secretary may, regardless of the total depth of the well, require
213 a lower depth based upon excessive pressure within the well. The expanding cement slurry will
214 be placed in the well under a pressure of at least two hundred pounds per square inch. Portland
215 cement shall be used to fill the area from one hundred feet above the top of the uppermost
216 workable coal seam to the surface: *Provided*, That the secretary may require a higher distance
217 based upon excessive pressure within the well;

218 (f) Any person may apply to the secretary for an order to clean out and replug a previously
219 plugged well in a manner which will permit the safe mining through of such well. Such application
220 shall be filed with the secretary and shall contain the well number, a general description of the
221 well location, the name and address of the owner of the surface land upon which the well is
222 located, a copy of or record reference to a deed, lease or other document which entitles the
223 applicant to enter upon the surface land, a description of the methods by which the well was
224 previously plugged, and a description of the method by which such applicant proposes to clean
225 out and replug the well. At the time an application is filed with the secretary, a copy shall be mailed
226 by registered or certified mail to the owner or owners of the land, and the oil and gas lessee of
227 record, if any, of the site upon which the well is located. If no objection to the replugging of the
228 well is filed by any such landowner or oil and gas lessee within thirty days after the filing of the
229 application, and if the secretary determines that the method proposed for replugging the well will
230 permit the safe mining through of such well, the secretary shall grant the application by an order
231 authorizing the replugging of the well. Such order shall specify the method by which the well shall
232 be replugged, and copies thereof shall be mailed by certified or registered mail to the applicant
233 and to the owner or owners of the land, and the oil and gas lessee, if any, of the site upon which
234 such well is located. If any such landowner or oil and gas lessee objects to the replugging of the
235 well, the secretary shall notify the applicant of such objection. Thereafter, the director shall
236 schedule a hearing to consider the objection, which hearing shall be held after notice by registered
237 or certified mail to the objectors and the applicant. After consideration of the evidence presented
238 at the hearing, the secretary shall issue an order authorizing the replugging of the well if the
239 secretary determines that replugging of the well will permit the safe mining through of such well.
240 Such order shall specify the manner in which the well shall be replugged and copies thereof shall
241 be sent by registered or certified mail to the applicant and objectors. The secretary shall issue an
242 order rejecting the application if the secretary determines that the proposed method for replugging
243 the well will not permit the safe mining through of such well;

244 (g) All persons adversely affected, by a determination or order of the secretary issued
245 pursuant to the provisions of this section shall be entitled to judicial review in accordance with the
246 provisions of articles five and six, chapter twenty-nine-a of this code.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

**§22-11-7b. Water quality standards; implementation of antidegradation procedures;
procedure to determine compliance with the biologic component of the narrative
water quality standard.**

1 (a) All authority to promulgate rules and implement water quality standards is vested in
2 the Secretary of the Department of Environmental Protection.

3 (b) All meetings with the secretary or any employee of the department and any interested
4 party which are convened for the purpose of making a decision or deliberating toward a decision
5 as to the form and substance of the rule governing water quality standards or variances thereto
6 shall be held in accordance with the provisions of article nine-a, chapter six of this code. When
7 the secretary is considering the form and substance of the rules governing water quality
8 standards, the following are not meetings pursuant to article nine-a, chapter six of this code: (i)
9 Consultations between the department's employees or its consultants, contractors or agents; (ii)
10 consultations with other state or federal agencies and the department's employees or its
11 consultants, contractors or agents; or (iii) consultations between the secretary, the department's
12 employees or its consultants, contractors or agents with any interested party for the purpose of
13 collecting facts and explaining state and federal requirements relating to a site specific change or
14 variance.

15 (c) In order to carry out the purposes of this chapter, the secretary shall promulgate
16 legislative rules in accordance with the provisions of article three, chapter twenty-nine-a of this
17 code setting standards of water quality applicable to both the surface waters and groundwaters
18 of this state. Standards of quality with respect to surface waters shall protect the public health and
19 welfare, wildlife, fish and aquatic life and the present and prospective future uses of the water for

20 domestic, agricultural, industrial, recreational, scenic and other legitimate beneficial uses thereof.
21 The water quality standards of the secretary may not specify the design of equipment, type of
22 construction or particular method which a person shall use to reduce the discharge of a pollutant.

23 (d) The secretary shall establish the antidegradation implementation procedures as
24 required by 40 C. F. R. 131.12(a) which apply to regulated activities that have the potential to
25 affect water quality. The secretary shall propose for legislative approval, pursuant to article three,
26 chapter twenty-nine-a of the code, legislative rules to establish implementation procedures which
27 include specifics of the review depending upon the existing uses of the water body segment that
28 would be affected, the level of protection or "tier" assigned to the applicable water body segment,
29 the nature of the activity and the extent to which existing water quality would be degraded. Any
30 final classification determination of a water as a Tier 2.5 water (Water of Special Concern) does
31 not become effective until that determination is approved by the Legislature through the legislative
32 rule-making process as provided in article three, chapter twenty-nine-a of the code.

33 (e) All remaining variances shall be applied for and considered by the secretary and any
34 variance granted shall be consistent with 33 U. S. C. Section 1311(p) of the Federal Water Control
35 Act. At a minimum, when considering an application for a remaining variance the secretary shall
36 consider the data and information submitted by the applicant for the variance; and comments
37 received at a public comment period and public hearing. The secretary may not grant a variance
38 without requiring the applicant to improve the instream water quality as much as is reasonably
39 possible by applying best available technology economically achievable using best professional
40 judgment. Any such requirement will be included as a permit condition. The secretary may not
41 grant a variance without a demonstration by the applicant that the coal remaining operation will
42 result in the potential for improved instream water quality as a result of the remaining operation.
43 The secretary may not grant a variance where he or she determines that degradation of the
44 instream water quality will result from the remaining operation.

45 (f) The secretary shall propose rules measuring compliance with the aquatic life
46 component of West Virginia's narrative water quality standard requires evaluation of the holistic
47 health of the aquatic ecosystem and a determination that the stream: (i) contains appropriate
48 trophic levels of fish, in streams that have flows sufficient to support fish populations; and (ii) the
49 aquatic community is composed of benthic invertebrate assemblages sufficient to perform the
50 biological functions necessary to support fish communities within the assessed reach, or, if the
51 assessed reach has insufficient flows to support a fish community, in those downstream reaches
52 where fish are present. The secretary shall propose rules for legislative approval in accordance
53 with the provisions of article three, chapter twenty-nine-a of this code that implement the
54 provisions of this subsection. Rules promulgated pursuant to this subsection may not establish
55 measurements for biologic components of West Virginia's narrative water quality standards that
56 would establish standards less protective than legislatively-approved rules that existed at the time
57 of enactment of the amendments to this subsection by the Legislature during the 2012 regular
58 session.

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

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

§22A-1-2. Definitions.

1 Unless the context in which used clearly requires a different meaning, the following
2 definitions apply to this chapter:

3 (a) *General.* —

4 (1) Accident: The term "accident" means any mine explosion, mine ignition, mine fire, or
5 mine inundation, or injury to, or death of any person.

6 (2) Agent: The term "agent" means any person charged with responsibility for the
7 operation of all or a part of a mine or the supervision of the miners in a mine.

8 (3) Approved: The term “approved” means in strict compliance with mining law, or, in the
9 absence of law, accepted by a recognized standardizing body or organization whose approval is
10 generally recognized as authoritative on the subject.

11 (4) Face equipment: The term “face equipment” means mobile or portable mining
12 machinery having electric motors or accessory equipment normally installed or operated in by the
13 last open crosscut in an entry or room.

14 (5) Imminent danger: The term “imminent danger” means the existence of any condition
15 or practice in a coal mine which could reasonably be expected to cause death or serious physical
16 harm before such condition or practice can be abated.

17 (6) Mine: The term “mine” includes the shafts, slopes, drifts or inclines connected with, or
18 intended in the future to be connected with, excavations penetrating coal seams or strata, which
19 excavations are ventilated by one general air current or divisions thereof, and connected by one
20 general system of mine haulage over which coal may be delivered to one or more points outside
21 the mine, and the surface structures or equipment connected or associated therewith which
22 contribute directly or indirectly to the mining, preparation or handling of coal, or construction
23 thereof.

24 (7) Miner: The term “miner” means any individual working in a coal mine.

25 (8) Operator: The term “operator” means any firm, corporation, partnership or individual
26 operating any coal mine, or part thereof, or engaged in the construction of any facility associated
27 with a coal mine.

28 (9) Permissible: The term “permissible” means any equipment, device or explosive that
29 has been approved as permissible by the Federal Mine Safety and Health administration and/or
30 the United States Bureau of Mines and meets all requirements, restrictions, exceptions, limitations
31 and conditions attached to such classification by that agency or the bureau.

32 (10) Person: The term “person” means any individual, partnership, association,
33 corporation, firm, subsidiary of a corporation or other organization.

34 (11) Work of preparing the coal: The term “work of preparing the coal” means the breaking,
35 crushing, sizing, cleaning, washing, drying, mixing, storing and loading of bituminous coal or
36 lignite and such other work of preparing such coal as is usually done by the operator of the coal
37 mine.

38 (b) *Office of Miners’ Health, Safety and Training.* —

39 (1) Board of appeals: The term “board of appeals” means as provided for in article five of
40 this chapter.

41 (2) Director: The term “director” means the Director of the Office of Miners’ Health, Safety
42 and Training provided for in section three of this article.

43 (3) Mine inspector: The term “mine inspector” means a state mine inspector provided for
44 in section eight of this article.

45 (4) Office: The term “office” means, when referring to a specific office, the Office of Miners’
46 Health, Safety and Training provided for in this article. The term “office”, when used generically,
47 includes any office, board, agency, unit, organizational entity or component thereof.

48 (c) *Mine areas.* —

49 (1) Abandoned workings: The term “abandoned workings” means excavation, either caved
50 or sealed, that is deserted and in which further mining is not intended, or open workings which
51 are ventilated and not inspected regularly.

52 (2) Active workings: The term “active workings” means all places in a mine that are
53 ventilated and inspected regularly.

54 (3) Drift: The term “drift” means a horizontal or approximately horizontal opening through
55 the strata or in a coal seam and used for the same purposes as a shaft.

56 (4) Excavations and workings: The term “excavations and workings” means any or all parts
57 of a mine excavated or being excavated, including shafts, slopes, drifts, tunnels, entries, rooms
58 and working places, whether abandoned or in use.

59 (5) Inactive workings: The term "inactive workings" includes all portions of a mine in which
60 operations have been suspended for an indefinite period, but have not been abandoned.

61 (6) Mechanical working section: The term "mechanical working section" means an area of
62 a mine: (A) In which coal is loaded mechanically; (B) which is comprised of a number of working
63 places that are generally contiguous; and (C) which is of such size to permit necessary
64 supervision during shift operation, including pre-shift and on-shift examinations and tests required
65 by law.

66 (7) Panel: The term "panel" means workings that are or have been developed off of
67 submain entries which do not exceed three thousand feet in length.

68 (8) Return air: The term "return air" means a volume of air that has passed through and
69 ventilated all the working places in a mine section.

70 (9) Shaft: The term "shaft" means a vertical opening through the strata that is or may be
71 used for the purpose of ventilation, drainage, and the hoisting and transportation of individuals
72 and material, in connection with the mining of coal.

73 (10) Slope: The term "slope" means a plane or incline roadway, usually driven to a coal
74 seam from the surface and used for the same purposes as a shaft.

75 (11) Working face: The term "working face" means any place in a coal mine in which work
76 of extracting coal from its natural deposit in the earth is performed during the mining cycle.

77 (12) Working place: The term "working place" means the area of a coal mine in by the last
78 open crosscut.

79 (13) Working section: The term "working section" means all areas of the coal mine from
80 the loading point of the section to and including the working faces.

81 (14) Working unit: The term "working unit" means an area of a mine in which coal is mined
82 with a set of production equipment; a conventional mining unit by a single loading machine; a
83 continuous mining unit by a single continuous mining machine, which is comprised of a number
84 of working places.

85 (d) *Mine personnel.* —

86 (1) Assistant mine foreman: The term “assistant mine foreman” means a certified person
87 designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of
88 the persons employed therein.

89 (2) Certified electrician: The term “certified electrician” means any person who is qualified
90 as a mine electrician and who has passed an examination given by the office, or has at least three
91 years of experience in performing electrical work underground in a coal mine, in the surface work
92 areas of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine
93 equipment manufacturing industry or in any other industry using or manufacturing similar
94 equipment, and has satisfactorily completed a coal mine electrical training program approved by
95 the office or any person who is qualified as a mine electrician in any state that recognizes certified
96 electricians licensed in West Virginia.

97 (3) Certified person: The term “certified person”, when used to designate the kind of person
98 to whom the performance of a duty in connection with the operation of a mine shall be assigned,
99 means a person who is qualified under the provisions of this law to perform such duty.

100 (4) Interested persons: The term “interested persons” includes the operator, members of
101 any mine safety committee at the mine affected and other duly authorized representatives of the
102 mine workers and the office.

103 (5) Mine foreman: The term “mine foreman” means the certified person whom the operator
104 or superintendent shall place in charge of the inside workings of the mine and of the persons
105 employed therein.

106 (6) Qualified person: The term “qualified person” means a person who has completed an
107 examination and is considered qualified on record by the office.

108 (7) Shot firer: The term “shot firer” means any person having had at least two years of
109 practical experience in coal mines, who has a knowledge of ventilation, mine roof and timbering,
110 and who has demonstrated his or her knowledge of mine gases, the use of a flame safety lamp,

111 and other approved detecting devices by examination and certification given him or her by the
112 office.

113 (8) Superintendent: The term "superintendent" means the person who has, on behalf of
114 the operator, immediate supervision of one or more mines.

115 (9) Supervisor: The term "supervisor" means a superintendent, mine foreman, assistant
116 mine foreman or any person specifically designated by the superintendent or mine foreman to
117 supervise work or employees and who is acting pursuant to such specific designation and
118 instructions.

119 (e) *Electrical.* —

120 (1) Armored cable: The term "armored cable" means a cable provided with a wrapping of
121 metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.

122 (2) Borehole cable: The term "borehole cable" means a cable designed for vertical
123 suspension in a borehole or shaft and used for power circuits in the mine.

124 (3) Branch circuit: The term "branch circuit" means any circuit, alternating current or direct
125 current, connected to and leading from the main power lines.

126 (4) Cable: The term "cable" means a standard conductor (single conductor cable) or a
127 combination of conductors insulated from one another (multiple conductor cable).

128 (5) Circuit breaker: The term "circuit breaker" means a device for interrupting a circuit
129 between separable contacts under normal or abnormal conditions.

130 (6) Delta connected: The term "delta connected" means a power system in which the
131 windings or transformers or a.c. generators are connected to form a triangular phase relationship,
132 and with phase conductors connected to each point of the triangle.

133 (7) Effectively grounded: The term "effectively grounded" is an expression which means
134 grounded through a grounding connection of sufficiently low impedance (inherent or intentionally
135 added or both) so that fault grounds which may occur cannot build up voltages in excess of limits
136 established for apparatus, circuits or systems so grounded.

137 (8) Flame-resistant cable, portable: The term “flame-resistant cable, portable” means a
138 portable flame-resistant cable that has passed the flame tests of the federal mine safety and
139 health administration.

140 (9) Ground or grounding conductor (mining): The term “ground or grounding conductor
141 (mining)”, also referred to as a safety ground conductor, safety ground and frame ground, means
142 a metallic conductor used to connect the metal frame or enclosure of any equipment, device or
143 wiring system with a mine track or other effective grounding medium.

144 (10) Grounded (earthed): The term “grounded (earthed)” means that the system, circuit or
145 apparatus referred to is provided with a ground.

146 (11) High voltage: The term “high voltage” means voltages of more than one thousand
147 volts.

148 (12) Lightning arrester: The term “lightning arrester” means a protective device for limiting
149 surge voltage on equipment by discharging or by passing surge current; it prevents continued
150 flow of follow current to ground and is capable of repeating these functions as specified.

151 (13) Low voltage: The term “low voltage” means up to and including six hundred sixty
152 volts.

153 (14) Medium voltage: The term “medium voltage” means voltages from six hundred sixty-
154 one to one thousand volts.

155 (15) Mine power center or distribution center: The term “mine power center or distribution
156 center” means a combined transformer or distribution unit, complete within a metal enclosure from
157 which one or more low-voltage power circuits are taken.

158 (16) Neutral (derived): The term “neutral (derived)” means a neutral point or connection
159 established by the addition of a “zig-zag” or grounding transformer to a normally underground
160 power system.

161 (17) Neutral point: The term “neutral point” means the connection point of transformer or
162 generator windings from which the voltage to ground is nominally zero, and is the point generally
163 used for system groundings in wye-connected a.c. power system.

164 (18) Portable (trailing) cable: The term “portable (trailing) cable” means a flexible cable or
165 cord used for connecting mobile, portable or stationary equipment in mines to a trolley system or
166 other external source of electric energy where permanent mine wiring is prohibited or is
167 impracticable.

168 (19) Wye-connected: The term “wye-connected” means a power system connection in
169 which one end of each phase windings or transformers or a.c. generators are connected together
170 to form a neutral point, and a neutral conductor may or may not be connected to the neutral point,
171 and the neutral point may or may not be grounded.

172 (20) Zig-zag transformer (grounding transformer): The term “zig-zag transformer
173 (grounding transformer)” means a transformer intended primarily to provide a neutral point for
174 grounding purposes.

§22A-1-5. Offices continued in the Office of Miners’ Health, Safety and Training.

1 (a) There are hereby continued in the Office of Miners’ Health, Safety and Training the
2 following offices:

3 (1) The Board of Coal Mine Health and Safety established pursuant to article six of this
4 chapter;

5 (2) The Coal Mine Safety and Technical Review Committee established pursuant to article
6 six of this chapter; and

7 (3) The Board of Appeals provided for pursuant to the provisions of article five of this
8 chapter.

9 (b) Nothing in this article may authorize the director or the secretary of the Department of
10 Commerce, Labor and Environmental resources to alter, discontinue or abolish any office, board
11 or commission or the functions thereof, which are established by status.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-59. First-aid equipment.

1 (a) Each operator of an underground coal mine shall maintain a supply of first-aid
2 equipment at each of the following locations:

3 (1) At the mine dispatcher's office and on the surface in close proximity to the mine entry.

4 (2) At the bottom of each regularly traveled slope or shaft; however, where the bottom of
5 such slope or shaft is not more than one thousand feet from the surface, such first-aid supplies
6 may be maintained on the surface at the entrance of the mine.

7 (3) At a point in each working section not more than five hundred feet outby the active
8 working face or faces.

9 (b) The first-aid equipment required to be maintained shall include at least the following:

10 (1) One stretcher.

11 (2) One broken-back board.

12 (3) Twenty-four triangular bandages.

13 (4) Eight four-inch bandage compresses.

14 (5) Sixteen two-inch bandage compresses.

15 (6) Twelve one-inch adhesive compresses.

16 (7) One foille.

17 (8) Two cloth blankets.

18 (9) One rubber blanket.

19 (10) Two tourniquets.

20 (11) One one-ounce bottle of aromatic spirits of ammonia.

21 (12) Two inflatable plastic arm splints.

22 (13) Two inflatable plastic leg splints.

23 (14) Six small splints, metal or wooden.

24 (15) Two cold packs.

25 (16) One automated external defibrillator (AED) unit.

26 (c) All first-aid supplies required to be maintained under the section shall be stored in
27 suitable sanitary, dust-tight, moisture-proof containers and such supplies shall be accessible to
28 the miners.

29 (d) No first-aid material shall be removed or diverted without authorization, except in case
30 of accident in or about the mine.

31 (e) On all occasions when a person becomes sick or injured underground to the extent
32 that he or she must go to the surface, he or she shall be accompanied by one or more persons.

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

PART X. EXISTING RULES TO BE REVISED.

§22A-2A-1001. Existing state rules to be revised.

1 (a) By August 31, 2017, the director shall revise state rules promulgated pursuant to the
2 authority of this chapter as follows:

3 (1) to reflect the abolishment of the West Virginia Diesel Equipment Commission and
4 transfer of duties and responsibilities to the director, pursuant to section 301 of this article;

5 (2) to reflect that a mine operator shall be permitted to replace a filter or catalyst of the
6 same make and model without contacting the Office of Miners' Health, Safety and Training;

7 (3) to reflect that ASE certified diesel mechanics shall make repairs and adjustments to
8 diesel fuel injection systems, engine timing or exhaust emissions control and conditioning
9 systems;

10 (4) to permit a mine operator to dispose of used intake air filters, exhaust diesel particulate
11 matter filters and engine oil filters in their original containers or other suitable enclosed containers
12 and to remove them from the underground mine to the surface no less than once in a twenty-four
13 hour period;

14 (5) to require that records of emissions tests, 200-hour maintenance tests and repairs shall
15 be countersigned once each week by the certified mine electrician or mine foreman, that
16 scheduled maintenance and an independent analysis of engine oil occur at two hundred hours of
17 engine operation, and that diagnostic testing of engine operation occur at two hundred hours;

18 (6) to remove the requirement that a portable carbon monoxide (CO) sampling device be
19 installed into the untreated exhaust gas coupling provided in the operator's cab;

20 (7) to modify the time and duration for which the CO sampler must be started to measure
21 and record CO levels from every minute for five minutes to every thirty seconds for ninety
22 seconds;

23 (8) to modify the alternative condition by which equipment fails under 196 C. S. R. §1-21,
24 to omit the reference to the average CO reading for untreated exhaust gas is greater than twice
25 the baseline; and

26 (9) to remove the requirement for eight hours of annual diesel equipment operator
27 refresher training separate from that required by MSHA regulations.

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

5 (1) The Governor shall appoint, by and with the advice and consent of the Senate, three
6 members to represent the viewpoint of those operators in this state. When such members are to
7 be appointed, the Governor shall request from the major trade association representing operators
8 in this state a list of three nominees for each such position on the board. All such nominees shall
9 be persons with special experience and competence in health and safety. There shall be

10 submitted with such list a summary of the qualifications of each nominee. If the full lists of
11 nominees are submitted in accordance with the provisions of this subdivision, the Governor shall
12 make the appointments from the persons so nominated. For purposes of this subdivision, the
13 major trade association representing operators in this state is that association which represents
14 operators accounting for over one half of the coal produced in mines in this state in the year prior
15 to the year in which the appointment is to be made.

16 (2) The Governor shall appoint, by and with the advice and consent of the Senate, three
17 members who can reasonably be expected to represent the viewpoint of the working miners of
18 this state. When members are to be appointed, the Governor shall request from the major
19 employee organization representing coal miners within this state a list of three nominees for each
20 position on the board. The highest ranking official within the major employee organization
21 representing coal miners within this state shall submit a list of three nominees for each such
22 position on the board. The nominees shall have a background in health and safety. The Governor
23 shall make the appointments from the requested list of nominees.

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

26 (4) The Director of the Office of Miners' Health, Safety and Training or his or her designee
27 shall serve as an *ex officio*, nonvoting member.

28 (b) Members serving on the board on January 1, 2017, shall continue to serve for a
29 minimum of three years until June 30, 2020. The term is three years. Members are eligible for
30 reappointment.

31 (c) Commencing on July 1, 2017, the board shall assume all powers and responsibilities
32 of the Board of Miners' Training, Education and Certification established pursuant to article seven
33 of this chapter, the mine inspectors' examining board established pursuant to article nine of this
34 chapter, and the Mine Safety Technology Task Force established pursuant to article eleven of
35 this chapter.

36 (d) The Governor shall appoint, subject to the approval of a majority of the members of
37 the board appointed under subdivisions (1) and (2), subsection (a) of this section, a Health and
38 Safety Administrator in accordance with the provisions of section six of this article, who shall
39 certify all official records of the board. The Health and Safety Administrator shall be a full-time
40 officer of the Board of Coal Mine Health and Safety with the duties provided for in section six of
41 this article. The Health and Safety Administrator shall have such education and experience as the
42 Governor deems necessary to properly investigate areas of concern to the board in the
43 development of rules governing mine health and safety. The Governor shall appoint as Health
44 and Safety Administrator a person who has an independent and impartial viewpoint on issues
45 involving mine safety. The Health and Safety Administrator shall be a person who has not been
46 during the two years immediately preceding appointment, and is not during his or her term, an
47 officer, trustee, director, substantial shareholder, contractor, consultant or employee of any coal
48 operator, or an employee or officer of an employee organization or a spouse of any such person.
49 The Health and Safety Administrator shall have the expertise to draft proposed rules and shall
50 prepare such rules as are required by this code and on such other areas as will improve coal mine
51 health and safety.

52 (e) The board shall meet at least once during each calendar month, or more often as may
53 be necessary, and at other times upon the call of the chair, or upon the request of any three
54 members of the board. Under the direction of the board, the Health and Safety Administrator shall
55 prepare an agenda for each board meeting giving priority to the promulgation of rules as may be
56 required from time to time by this code, and as may be required to improve coal mine health and
57 safety. The Health and Safety Administrator shall provide each member of the board with notice
58 of the meeting and the agenda as far in advance of the meeting as practical, but in any event, at
59 least five days prior thereto. No meeting of the board shall be conducted unless said notice and
60 agenda are given to the board members at least five days in advance, as provided herein, except
61 in cases of emergency, as declared by the director, in which event members shall be notified of

62 the board meeting and the agenda: *Provided*, That upon agreement of a majority of the quorum
63 present, any scheduled meeting may be ordered recessed to another day certain without further
64 notice of additional agenda.

65 When proposed rules are to be finally adopted by the board, copies of such proposed
66 rules shall be delivered to members not less than five days before the meeting at which such
67 action is to be taken. If not so delivered, any final adoption or rejection of rules shall be considered
68 on the second day of a meeting of the board held on two consecutive days, except that by the
69 concurrence of at least four members of the board, the board may suspend this rule of procedure
70 and proceed immediately to the consideration of final adoption or rejection of rules. When a
71 member fails to appear at three consecutive meetings of the board or at one half of the meetings
72 held during a one-year period, the Health and Safety Administrator shall notify the member and
73 the Governor of such fact. Such member shall be removed by the Governor unless good cause
74 for absences is shown.

75 (f) Whenever a vacancy on the board occurs, nominations and appointments shall be
76 made in the manner prescribed in this section: *Provided*, That in the case of an appointment to fill
77 a vacancy, nominations of three persons for each such vacancy shall be requested by and
78 submitted to the Governor within thirty days after the vacancy occurs by the major trade
79 association or major employee organization, if any, which nominated the person whose seat on
80 the board is vacant. The vacancy shall be filled by the Governor within thirty days of his or her
81 receipt of the list of nominations.

82 (g) A quorum of the board is four members which shall include at least two members
83 representing the viewpoint of operators and at least two members representing the viewpoint of
84 the working miners, and the board may act officially by a majority of those members who are
85 present, except that no vote of the board may be taken unless all six voting members are present.

§22A-6-4. Board powers and duties.

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

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

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

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

18 (2) No rules promulgated by the board shall reduce or compromise the level of safety or
19 protection afforded miners below the level of safety or protection afforded by this chapter.

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

26 (4) The director shall cause proposed rules and a notice thereof to be posted as provided
27 in section eighteen, article one of this chapter. The director shall deliver a copy of such proposed
28 rules and accompanying notice to each operator affected. A copy of such proposed rules shall be
29 provided to any individual by the director's request. The notice of proposed rules shall contain a
30 summary in plain language explaining the effect of the proposed rules.

31 (5) The board shall afford interested persons a period of not less than thirty days after
32 releasing proposed rules to submit written data or comments. The board may, upon the expiration
33 of such period and after consideration of all relevant matters presented, promulgate such rules
34 with such modifications as it may deem appropriate.

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

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

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

50 (d) To carry out its duties and responsibilities, the board is authorized to employ such
51 personnel, including legal counsel, experts and consultants, as it deems necessary. In addition,

52 the board, within the appropriations provided for by the Legislature, may conduct or contract for
53 research and studies and is entitled to the use of the services, facilities and personnel of any
54 agency, institution, school, college or university of this state.

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

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

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

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

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

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

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

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

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

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

90 (7) In addition to the report by the board, as herein contained, each individual member of
91 said board has right to submit a separate report, setting forth any views contrary to the report of
92 the board, and the separate report, if any, shall be appended to the report of the board and be
93 considered a part thereof.

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

1 (a) The Governor shall appoint the Health and Safety Administrator of the board for a term
2 of employment of one year, and the Health and Safety Administrator employed on January 1,
3 2017 shall complete a three-year term until June 30, 2020, unless he or she is determined to have
4 committed misfeasance, malfeasance or nonfeasance as referenced herein. The Health and
5 Safety Administrator shall be entitled to have his or her contract of employment renewed on an
6 annual basis except where such renewal is denied for cause: *Provided*, That the Governor has
7 the power at any time to remove the Health and Safety Administrator for misfeasance,

8 malfeasance or nonfeasance: *Provided, however,* That the board has the power to remove the
9 Health and Safety Administrator without cause upon the concurrence of five members of the
10 board.

11 (b) The Health and Safety Administrator shall work at the direction of the board,
12 independently of the Director of the Office of Miners' Health, Safety and Training and has such
13 authority and shall perform such duties as may be required or necessary to effectuate this article.

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

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

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

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

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

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

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

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

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

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

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

1 The Legislature hereby finds and declares that:

2 (a) The continued prosperity of the coal industry is of primary importance to the State of
3 West Virginia;

4 (b) The highest priority and concern of this Legislature and all in the coal mining industry
5 must be the health and safety of the industry's most valuable resource - the miner;

6 (c) A high priority must also be given to increasing the productivity and competitiveness of
7 the mines in this State;

8 (d) An inordinate number of miners, working on both the surface in surface mining and in
9 and at underground mines, are injured during the first few months of their experience in a mine;

10 (e) These injuries result in the loss of life and serious injury to miners and are an
11 impediment to the future growth of West Virginia's coal industry;

12 (f) Injuries can be avoided through proper miner training, education and certification;

13 (g) Mining is a technical occupation with various specialties requiring individualized
14 training and education; and

15 (h) It is the general purpose of this article to:

16 (1) Require adequate training, education and meaningful certification of all persons
17 employed in coal mines;

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

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

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

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

§22A-7-3. Definitions.

1 Unless the context in which a word or phrase appears clearly requires a different meaning,
2 the words defined in section two, article one of this chapter have when used in this article the

3 meaning therein assigned to them. These words include, but are not limited to, the following:
4 Office, director, mine inspector, operator, miner, shotfirer and certified electrician.

5 "Board" means the Board of Coal Mine Health and Safety established by section four of
6 this article.

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

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

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

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

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

15 (d) The board shall set minimum standards for a program of continuing education and
16 training of certified persons and other miners on an annual basis: *Provided*, That the standards
17 shall be consistent with the provisions of section seven of this article. Prior to issuing the
18 standards, the board shall conduct public hearings at which the parties who may be affected by

19 its actions may be heard. The education and training shall be provided in a manner determined
20 by the director to be sufficient to meet the standards established by the board.

21 (e) The board may, in conjunction with any state, local or federal agency or any other
22 person or institution, provide for the payment of a stipend to prospective miners enrolled in one
23 or more of the programs of miner education, training and certification provided in this article or
24 any other provision of this code.

25 (f) The board may also, from time to time, conduct any hearings and other oversight
26 activities required to ensure full implementation of programs established by it.

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

29 (h) The board may, upon its own motion or whenever requested to do so by the director,
30 consider two certificates issued by this State to be of equal value or consider training provided or
31 required by federal agencies to be sufficient to meet training and education requirements set by
32 it, the director, or by the provisions of this code.

33 (i) As part of the annual training required by this section, the board shall include training
34 of certified persons and other miners, instruction on miners' rights as they relate to the operation
35 of unsafe equipment as provided in section seventy-one, article two of this chapter, his or her right
36 to withdrawal from unsafe conditions as provided in section seventy-one-a of article two of this
37 chapter and his or her rights under section twenty-two, article one of this chapter.

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

1 The Board of Coal Mine Health and Safety is directed to conduct a study of the overall
2 program of education, training and examination associated with the various miner specialties
3 requiring certification under this article or any other provision of this code. The study shall identify
4 ways to enhance miner education and training to adequately reflect technological advances in
5 coal mining techniques and best practices used in modern coal mines, and improve supervision
6 of apprentice miners. Furthermore, the board shall place particular emphasis in its study on ways

7 to improve education and training in the areas of proper mine ventilation, methane monitoring and
8 equipment deenergization, fire-boss procedures and overall core mining competencies.

§22A-7-7. Continuing education requirements for underground mine foreman-fire boss.

1 (a) An underground mine foreman-fire boss certified pursuant to this article on or after the
2 effective date of this section shall complete the continuing education requirements in this section
3 within two years of their certification and every two years thereafter. The continuing education
4 requirements of this section may not be satisfied by the completion of other training requirements
5 mandated by the provisions of this chapter.

6 (b) In order to receive continuing education credit pursuant to this section, a mine foreman-
7 fire boss shall satisfactorily complete a mine foreman-fire boss continuing education course
8 approved by the board and taught by a qualified instructor approved by the director. The mine
9 foreman-fire boss shall not suffer a loss in pay while attending a continuing education course. The
10 mine foreman-fire boss shall submit documentation to the office certified by the instructor that
11 indicates the required continuing education has been completed prior to the deadlines set forth in
12 this subsection: *Provided*, That a mine foreman-fire boss may submit documentation of continuing
13 education completed in another state for approval and acceptance by the board.

14 (c) The mine foreman-fire boss shall complete at least eight hours of continuing education
15 every two years.

16 (d) The content of the continuing education course shall include, but not be limited to:

17 (1) Selected provisions of this chapter and 30 U. S. C. § 801, *et seq.*;

18 (2) Selected provisions of the West Virginia and federal underground coal mine health and
19 safety rules and regulations;

20 (3) The responsibilities of a mine foreman-fire boss;

21 (4) Selected policies and memoranda of the Office of Miners' Health, Safety and Training,
22 the Board of Coal Mine Health and Safety, and from any safety analysis performed by the
23 company;

24 (5) A review of fatality and accident trends in underground coal mines; and

25 (6) The board shall solicit input from mining companies on the substance of the training
26 and discuss how the training shall be scheduled during the year.

27 (e) The board may approve alternative training programs tailored to specific mines.

28 (f) A mine foreman-fire boss who fails to complete the requirements of this section shall
29 have his or her certification suspended pending completion of the continuing education
30 requirements. During the pendency of the suspension, the individual may not perform statutory
31 duties assigned to a mine foreman-fire boss under West Virginia law. The office shall send notice
32 of any suspension to the last address the certified mine foreman-fire boss reported to the director.
33 If the requirements are not met within two years of the suspension date, the director may file a
34 petition with the Board of Appeals pursuant to the procedures set forth in section thirty-one, article
35 one of this chapter and, upon determining that the requirements have not been met, the Board of
36 Appeals may revoke the mine foreman-fire boss' certification, which shall not be renewed except
37 upon successful completion of the examination prescribed by law for mine foremen-fire bosses
38 or upon completion of other training requirements established by the board: *Provided*, That an
39 individual having his or her mine foreman-fire boss certification suspended pursuant to this section
40 who also holds a valid mine foreman-fire boss certification from another state may have the
41 suspension lifted by completing training requirements established by the board.

42 (g) The office shall make a program of instruction that meets the requirements for
43 continuing education set forth in this section regularly available in regions of the State, based on
44 demand, for individuals possessing mine foreman-fire boss certifications who are not serving in a
45 mine foreman-fire boss capacity: *Provided*, That the office may collect a fee from program
46 participants to offset the cost of the program.

47 (h) The office shall make available to operators and other interested parties a list of
48 individuals whose mine foreman-fire boss certification is in suspension or has been revoked.

ARTICLE 9. MINE INSPECTORS' EXAMINING BOARD.

**§22A-9-1. Mine Inspectors' Examining Board abolished and duties imposed upon the
Board of Coal Mine Health and Safety.**

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

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

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

11 (2) Adopt and promulgate reasonable rules relating to the examination, qualification and
12 certification of candidates for appointment as mine inspectors, and hearing for removal of
13 inspectors, required to be held by section twelve, article one of this chapter. All of such rules shall
14 be printed and a copy thereof furnished by the secretary of the board to any person upon request.
15 The board shall determine whether applicants have the necessary experience to take the mine
16 inspector examination, and the examination of candidates for appointment as a mine inspector
17 shall be conducted by the board and it shall rank all applicants;

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

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

31 (4) The board shall keep and preserve the written examination papers, manuscripts,
32 grading sheets, and other papers of all applicants for appointment as mine inspector for a period
33 of two years. Specimens of the examinations given, together with the correct solution of each
34 question, shall be preserved;

35 (5) The board shall issue a letter or written notice of qualification to each successful eligible
36 candidate;

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

39 (7) The board shall hear and determine appeals of mine inspectors from suspension
40 orders made by the director pursuant to the provisions of section four, article one of this chapter:
41 *Provided*, That an aggrieved inspector, in order to appeal from any order of suspension, shall file
42 such appeal in writing with the Board of Coal Mine Health and Safety not later than ten days after
43 receipt of notice of suspension. On such appeal the board shall affirm the act of the director unless
44 it be satisfied from a clear preponderance of the evidence that the director has acted arbitrarily;

45 (8) The board and office shall make an annual report to the Governor and the director
46 concerning the administration of mine inspection personnel in the state service, making such
47 recommendations as the board considers to be in the public interest.

ARTICLE 11. MINE SAFETY TECHNOLOGY.

§22A-11-1. Legislative findings, purposes and intent.

1 The Legislature hereby finds and declares:

2 (1) That the first priority and concern of all persons in the coal mining industry must be the
3 health and safety of its most precious resource - the miner;

4 (2) That in furtherance of this priority, the provisions of article two of this chapter are
5 designed to protect the health and safety of this State's coal miners by requiring certain minimum
6 standards for, among other things, certain health and safety technology used by each
7 underground miner;

8 (3) That the proper implementation of this technology in West Virginia's underground
9 mines would benefit from the specialized oversight of persons with experience and competence
10 in coal mining, coal mine health and safety and the expanding role of technology; and

11 (4) That, in furtherance of provisions of this section, it is the intent of the Legislature to
12 direct that the Board of Coal Mine Health and Safety, on a continuous basis, evaluate and study
13 issues relating to the commercial availability and functional and operational capability of existing
14 and emerging technologies in coal mine health and safety, as well as issues relating to the
15 implementation, compliance and enforcement of regulatory requirements governing the
16 technologies.

**§22A-11-2. Mine Safety Technology Task Force abolished and duties imposed upon the
Board of Coal Mine Health and Safety.**

1 (a) The Mine Safety Technology Task Force hereby abolished. All duties and
2 responsibilities imposed upon the Mine Safety Technology Task Force are transferred and hereby
3 imposed upon the Board of Coal Mine Health and Safety. On the effective date of the reenactment

4 of this article and section of the code, all equipment and records necessary to effectuate the
5 purposes of this article shall be transferred to the Board of Coal Mine Health and Safety.

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

1 (a) The board shall provide technical and other assistance to the office related to the
2 implementation of the new technological requirements set forth in the provisions of section fifty-
3 five, article two of this chapter, as amended and reenacted during the regular session of the
4 Legislature in 2006 and requirements for other mine safety technologies.

5 (b) The board, working in conjunction with the director, shall continue to study issues
6 regarding the commercial availability, the functional and operational capability and the
7 implementation, compliance and enforcement of the following protective equipment:

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

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

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

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

17 (c) The board shall on a continuous basis study, monitor and evaluate:

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

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

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

23 (4) Market forces impacting the development of new technologies, including issues
24 regarding the costs of research and development, regulatory certification and incentives designed
25 to stimulate the marketplace.

26 (d) On or before July 1 of each year, the board shall submit a report to the Governor and
27 the director that shall include, but not be limited to:

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

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

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

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

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

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

41 (g) The board shall annually compile a proposed list of approved innovative mine safety
42 technologies and transmit the list to the Director of the Office of Miners' Health, Safety and
43 Training as provided in section four, article thirteen-bb, chapter eleven of this code. The list shall
44 be approved by unanimous vote of the board.

§22A-11-4. Approval of devices.

1 Prior to approving any protective equipment or device that has been evaluated by the
2 board pursuant to the provisions of subsection (b), section three of this article, the director shall
3 consult with the board and review any applicable written reports issued by the board and the

4 findings set forth in the reports and shall consider the findings in making any approval
5 determination.

§22A-11-5. Existing state rules to be revised.

1 By August 31, 2017, all existing state rules promulgated pursuant to the authority of this
2 chapter shall be revised to reflect the changes in this chapter enacted by the Legislature during
3 the 2017 regular session.

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

Paul D. Mansueti
.....
Chairman, Senate Committee

Greg Hulse
.....
Chairman, House Committee

Originated in the Senate.

In effect from passage.

Clark A. Burner
.....
Clerk of the Senate

Steph J. Dennis
.....
Clerk of the House of Delegates

Walter B. Combs
.....
President of the Senate

Robert H. Anderson
.....
Speaker of the House of Delegates

OFFICE WEST VIRGINIA
SECRETARY OF STATE

2017 APR 26 P 7 59

FILED

The within *is approved* this the *26th*
Day of *April*, 2017.

Jim Justice
.....
Governor

PRESENTED TO THE GOVERNOR

APR 20 2017

Time 10:40 am