

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

House Bill 3331

By Delegate T. Clark

[Introduced March 12, 2025; referred to the
Committee on Energy and Public Works]

1 A BILL to amend and reenact §22A-2A-308, §22A-2A-309, §22A-2A-310, and §22A-2A-401 of the
 2 Code of West Virginia, 1931, as amended; to amend the code by adding five new sections
 3 designated §22A-2A-1002, §22A-2A-1003, §22A-2A-1004, §22A-2A-1005, and §22A-2A-
 4 1006; and to repeal §22A-2A-402, §22A-2A-403, §22A-2A-404, and §22A-2A-405, relating
 5 to diesel powered equipment used in mines; creating rules authority; removing site-specific
 6 testing; establishing regulatory limitations; clarifying approval standards; establishing
 7 diesel equipment operating requirements and exemptions; and providing an effective date;

Be it enacted by the Legislature of West Virginia:

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

§22A-2A-308. ~~Director's authority to promulgate legislative rules; continuation of rules adopted by the commission~~ Authority of the Director to propose rules.

1 ~~(a) The director has the power and authority to propose legislative rules to carry out and~~
 2 ~~implement the provisions of this article in accordance with the provisions of article three, chapter~~
 3 ~~twenty-nine-a of this code. In proposing rules for legislative approval, the director shall consider~~
 4 ~~the highest achievable measures of protection for miners' health and safety through available~~
 5 ~~technology, engineering controls and performance requirements and shall further consider the~~
 6 ~~cost, availability, adaptability and suitability of any available technology, engineering controls and~~
 7 ~~performance requirements as they relate to the use of diesel equipment in underground coal~~
 8 ~~mines. The Director of the Office of Miners' Health, Safety, and Training shall have the authority to~~
 9 ~~propose rules necessary to carry out the provisions of this article. However, any rules or~~
 10 ~~regulations promulgated under this section shall not be more burdensome than federal MSHA~~
 11 ~~regulations as provided in 30 CFR 75.1900 et seq.~~

12 ~~(b) All rules promulgated and adopted by the commission in effect prior to the effective date~~
 13 ~~of this section shall remain in effect until changed or superseded by legislative rule enacted~~

14 pursuant to subsection (a) of this section.

15 (c) ~~The duties imposed upon the director in this article that were previously required to be~~
16 ~~performed by the adoption of rules by the commission and that were satisfied or fulfilled by rules~~
17 ~~adopted by the commission are deemed to be the acts of the director.~~

~~§22A-2A-309. Director's authority to approve site-specific experimental testing prior to~~
~~initial rules~~ Testing requirements for diesel equipment.

1 The director may approve limited site-specific requests for experimental and testing use of
2 diesel-powered equipment in underground coal mines prior to promulgation of initial rules in
3 accordance with subsections (b), (c), (d), (e), (f) and (g), section three hundred ten of this article.

4 Site-specific testing of diesel-powered equipment is no longer required once the
5 equipment has been approved for use under 30 CFR Part 7, Subpart E.

~~§22A-2A-310. Duties of director~~ Additional regulatory limitations on the Director's
authority.

1 (a) ~~It is the duty of the director to carry out and implement this article and to evaluate and~~
2 ~~adopt state-of-the-art technology and methods, reflected in engines and engine components,~~
3 ~~emission control equipment and procedures, which when applied to diesel-powered underground~~
4 ~~mining machinery, shall reasonably reduce or eliminate diesel exhaust emissions and enhance~~
5 ~~protections of the health and safety of miners. The technology and methods adopted by the~~
6 ~~director shall have been demonstrated to be reliable. In making a decision to adopt new~~
7 ~~technology and methods, the director shall consider the highest achievable measures of~~
8 ~~protection for miners' health and safety through available technology, engineering controls and~~
9 ~~performance requirements and shall further consider the cost, availability, adaptability and~~
10 ~~suitability of any available technology, engineering controls and performance requirements as~~
11 ~~they relate to the use of diesel equipment in underground coal mines. Any state-of-the-art~~
12 ~~technology or methods adopted by the director shall not reduce or compromise the level of health~~
13 ~~and safety protection of miners.~~

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

27 ~~(1) Within one hundred eighty days of receipt of an application for use of alternative~~
28 ~~technologies or methods, the director shall complete its investigation. However, the director has~~
29 ~~an additional one hundred eighty days to complete investigations upon applications filed prior to~~
30 ~~the effective date of the reenactment of this section. The time period may be extended with the~~
31 ~~consent of the applicant.~~

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

34 ~~(3) The director may not approve an application made under this section if, at the~~
35 ~~conclusion of the investigation, the director determines that the use of the alternative technology or~~
36 ~~method will reduce or compromise the level of health and safety protection of miners.~~

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

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

43 ~~(c) The director shall establish conditions for the use of diesel-powered equipment in shaft~~
44 ~~and slope construction operations at coal mines.~~

45 ~~(d) The director shall have access to the services of the Board of Coal Mine Health and~~
46 ~~Safety necessary for the director to implement and carry out the provisions of this article. The~~
47 ~~board, at the request of the director, shall provide administrative support and assistance pursuant~~
48 ~~to section six, article six of this chapter to enable the director to carry out the duties imposed upon~~
49 ~~the director in this article.~~

50 ~~(e) Any action taken by the commission, prior to the effective date of the reenactment of~~
51 ~~this section, or by the director to either approve or reject the use of an alternative technology or~~
52 ~~method, or establish conditions under subsection (c) of this section shall be final and binding and~~
53 ~~not subject to further review except where a decision by the commission, prior to the effective date~~
54 ~~of the reenactment of this section, or by the director may be deemed to be an abuse of discretion~~
55 ~~or contrary to law. If any party affected by a decision of the commission, prior to the effective date~~
56 ~~of the reenactment of this section, or by the director believes that the decision is an abuse of~~
57 ~~discretion or contrary to law, that party may file a petition for review with the circuit court of~~
58 ~~Kanawha County in accordance with the provisions of the administrative procedures act relating to~~
59 ~~judicial review of governmental determinations. The court, in finding that any decision made by the~~
60 ~~commission, prior to the effective date of the reenactment of this section, or by the director is an~~
61 ~~abuse of discretion or contrary to law, shall vacate and, if appropriate, remand the case.~~

62 ~~(f) Appropriations for the funding of the commission and to effectuate the purposes of this~~
63 ~~article shall be made to a budget account hereby established for that purpose in the General~~
64 ~~Revenue Fund. Expenditures from this fund are provided for in section six, article six of this~~
65 ~~chapter.~~

66 (a) Any rules promulgated by the director under this section shall not impose requirements
67 on diesel-powered equipment that exceed the standards set forth in 30 CFR Part 7, Subpart E.

68 (b) Any language requiring site-specific testing beyond MSHA-approved testing shall be
69 deleted.

PART 4. EXHAUST EMISSION REQUIREMENTS FOR DIESEL POWER PACKAGES.

1 ~~§22A-2A-401. General provisions relating to requirements for exhaust emissions Diesel~~
2 ~~equipment approved.~~

3 ~~This part is intended to control the potential health hazards of diesel exhaust by requiring~~
4 ~~that diesel-powered machines be equipped with clean-burning engines, that exhaust emissions~~
5 ~~control and conditioning systems may be required on diesel engines as specified by the~~
6 ~~commission, that exhaust emissions be monitored and controlled and that standards be~~
7 ~~established for the allowable concentrations of exhaust emissions in a mine environment.~~

8 Diesel-powered equipment that meets the approval standards set forth in 30 CFR Part 7,
9 Subpart E shall be deemed approved for use in West Virginia underground coal mines.

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

1 [Repealed.]

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

1 [Repealed.]

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

1 [Repealed.]

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

1 [Repealed.]

Part XI. DIESEL EQUIPMENT OPERATING REQUIREMENTS.

§22A-2A-1002. Diesel power package approval.

1 (a) Any language requiring the director's approval of a diesel power package shall be

2 removed.

3 (b) Diesel-powered equipment shall be deemed approved upon compliance with 30 CFR
4 Part 7, Subpart E.

§22A-2A-1003. Emissions testing.

1 All emission testing requirements that are inconsistent with MSHA emissions testing
2 standards are to be removed.

§22A-2A-1004. Maintenance requirements.

1 (a) Language requiring maintenance every 200 hours of operation is hereby removed.

2 (b) Weekly examination required under 30 CFR 75.1914(f) shall satisfy all state
3 maintenance requirements for diesel-powered equipment.

§22A-2A-1005. Exemption from state requirements.

1 Notwithstanding any other provisions of this article, any diesel-powered equipment that
2 meets the approval standards set forth in 30 CFR Part 7, Subpart E shall be exempt from all
3 associated state requirements under these sections.

22A-2A-1006. Effective date.

1 This act shall take effect upon passage.

NOTE: The purpose of this bill is to streamline diesel equipment regulations in West Virginia mines by aligning them with federal MSHA standards, removing unnecessary site-specific testing, eliminating additional approval requirements, and reducing the frequency of maintenance inspections to conform with federal rules.

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