

# **WEST VIRGINIA LEGISLATURE**

## **2025 REGULAR SESSION**

### **Originating**

## **Senate Bill 942**

BY SENATORS ROSE, QUEEN, AZINGER, CHARNOCK,  
FULLER, HART, HELTON, JEFFRIES, PHILLIPS, TAYLOR,  
AND GARCIA

[Originating in the Committee on Energy, Industry,  
and Mining; reported March 29, 2025]



1 A BILL to amend and reenact §22A-2A-101, §22A-2A-308, §22A-2A-309, §22A-2A-310, and  
2 §22A-2A-401 of the Code of West Virginia, 1931, as amended; to amend the code by  
3 adding four new sections, designated §22A-2A-1001, §22A-2A-1002, §22A-2A-1003, and  
4 §22A-2A-1004; and to repeal §22A-2A-402, §22A-2A-403, §22A-2A-404, and §22A-2A-  
5 405, relating to modifying the requirements for diesel-powered equipment used in mines;  
6 authorizing legislative rules; removing site-specific testing; establishing regulatory  
7 limitations; clarifying approval standards; and establishing diesel equipment operating  
8 requirements and exemptions.

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

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

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

1 Diesel-powered equipment for use in underground coal mines may only be approved,  
2 operated and maintained in accordance with rules, requirements and standards established  
3 pursuant to this article: Provided, That diesel-powered equipment may be moved from one mine  
4 in the state to another mine in the state, and operated immediately, so long as the equipment is  
5 in compliance with the provisions of this article and the director is notified before the equipment  
6 is put in service.

**~~§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 may propose rules for~~  
9 ~~legislative approval necessary to carry out the provisions of this article in accordance with the~~  
10 ~~provisions of §29A-3-1 et seq. of this code. Any rule promulgated under this section may not be~~  
11 ~~more burdensome than the federal MSHA regulations as provided in 30 CFR 75.1900 et seq. as~~  
12 ~~the provisions of such regulations exist on July 1, 2025. Any provision of rule, policy, internal~~  
13 ~~procedure, or directive that is contrary to this section or more burdensome than said MSHA~~  
14 ~~regulations is null and void and shall be removed.~~

15 ~~(b) All rules promulgated and adopted by the commission in effect prior to the effective~~  
16 ~~date of this section shall remain in effect until changed or superseded by legislative rule enacted~~  
17 ~~pursuant to subsection (a) of this section.~~

18 ~~(c) The duties imposed upon the director in this article that were previously required to be~~  
19 ~~performed by the adoption of rules by the commission and that were satisfied or fulfilled by rules~~  
20 ~~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~~  
2 ~~of 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~~

~~protections of the health and safety of miners. The technology and methods adopted by the director shall have been demonstrated to be reliable. In making a decision to adopt new technology and methods, the director shall consider the highest achievable measures of protection for miners' health and safety through available technology, engineering controls and performance requirements and shall further consider the cost, availability, adaptability and suitability of any available technology, engineering controls and performance requirements as they relate to the use of diesel equipment in underground coal mines. Any state-of-the-art technology or methods adopted by the director shall not reduce or compromise the level of health and safety protection of miners.~~

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

~~(1) Within one hundred eighty days of receipt of an application for use of alternative technologies or methods, the director shall complete its investigation. However, the director has an additional one hundred eighty days to complete investigations upon applications filed prior to~~

~~the effective date of the reenactment of this section. The time period may be extended with the consent of the applicant.~~

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

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

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

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

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

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

~~(e) Any action taken by the commission, prior to the effective date of the reenactment of this section, or by the director to either approve or reject the use of an alternative technology or method, or establish conditions under subsection (c) of this section shall be final and binding and not subject to further review except where a decision by the commission, prior to the effective date of the reenactment of this section, or by the director may be deemed to be an abuse of discretion or contrary to law. If any party affected by a decision of the commission, prior to the~~

56 ~~effective date of the reenactment of this section, or by the director believes that the decision is an~~  
57 ~~abuse of discretion or contrary to law, that party may file a petition for review with the circuit court~~  
58 ~~of Kanawha County in accordance with the provisions of the administrative procedures act relating~~  
59 ~~to judicial review of governmental determinations. The court, in finding that any decision made by~~  
60 ~~the commission, prior to the effective date of the reenactment of this section, or by the director is~~  
61 ~~an 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 rule promulgated by the director under this section may not impose any  
67 requirement on diesel-powered equipment that exceeds the standards set forth in 30 CFR Part 7,  
68 Subpart E.

69 (b) Any provision of rule, policy, internal procedure, or directive requiring site-specific  
70 testing beyond MSHA-approved testing is null and void and shall be removed.

#### PART 4. EXHAUST EMISSION REQUIREMENTS FOR DIESEL POWER PACKAGES.

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

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

6 Diesel-powered equipment that meets the approval standards set forth in 30 CFR Part 7,  
7 Subpart E is 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-1001. Diesel power package approval.**

1 (a) Diesel-powered equipment shall be deemed approved upon compliance with 30 CFR  
2 Part 7, Subpart E.

3 (b) Any rule, policy, internal procedure, or directive requiring the director's approval of a  
4 diesel power package is null and void and shall be removed.

**§22A-2A-1002. Emissions testing.**

1 All emission testing requirements that are inconsistent with MSHA emissions testing  
2 standards are null and void and shall be removed.

**§22A-2A-1003. Maintenance requirements.**

1 (a) Any rule, policy, internal procedure, or directive requiring maintenance every 200 hours  
2 of operation is null and void and shall be removed.

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

**§22A-2A-1004. 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 is exempt from all associated  
3 state requirements under this article.