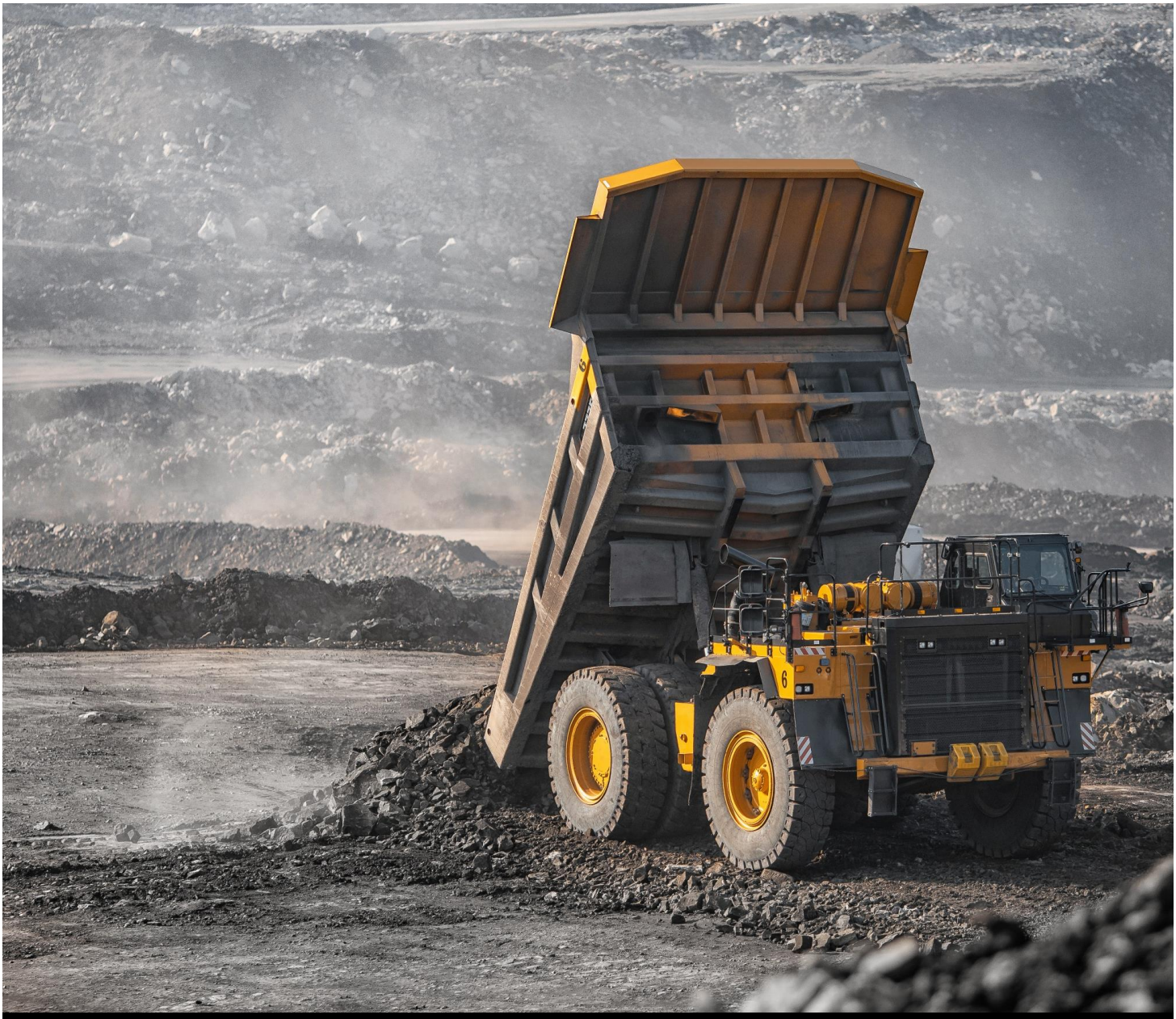


Powering West Virginia

Summary of Key Legislation Related to the Coal Industry

Presented to West Virginia Coal Association 2021 Annual Meeting – August 5-7, 2021

Table of Contents

Coal Mining Bills of Interest 2015 through 2021

Senate Bill 216

Authorizing Department of Commerce to promulgate legislative rules

This is a Department of Commerce rules bundle, which includes a rule that affects comprehensive mine safety programs.

- **Miners Health Safety and Training - Rule Governing the Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia, 56 CSR 08**
    - Language set forth in 36 CSR 31, pertaining to a coal mines comprehensive mine safety program, has been moved to 56 CSR §8.
    - The section has been in effect since 1984 and gives the Director the authority to require a mine operator, who has experienced a substantial number of injuries due to materials handling, to identify a procedure to reduce such injuries and add that procedure to the mines comprehensive mine safety program.

CODE REFERENCE: West Virginia Code §64-10-1 – amended

DATE OF PASSAGE: March 11, 2021

EFFECTIVE DATE: March 11, 2021

ACTION BY GOVERNOR: Signed March 15, 2021

Senate Bill 492

Establishing program for bonding to reclaim abandoned wind and solar generation facilities

This bill establishes a bonding program to decommission and reclaim land burdened by wind and solar electrical generation facilities after closure.

Under the bill, owners of wind generation facilities and solar generation facilities are required to submit a decommissioning plan, which must be certified by a qualified independent licensed professional engineer and must follow standards and technical specifications of the Department of Environmental Protection including dates when operations began and plans with cost estimates for decommissioning the facilities.

The bill empowers the DEP to determine and assess a reclamation bond based on a generation facility's total disturbed acreage less salvage value. The amount of the bond cannot exceed the projected cost of decommissioning, less salvage value. The bond is to be conditioned on the satisfactory decommissioning and reclamation of the facilities.

The bill includes a new exemption from the bonding requirement if a facility is legally bound by a prior decommissioning agreement which is based upon a qualified independent party or was granted a siting certificate by the PSC, conditioned upon the execution of an agreement.

If the owner is exempt because of a prior decommissioning agreement, the owner must submit a copy of the agreement to DEP. These prior agreements are not subject to approval or modification by DEP, but are subject to review and comment.

The bill includes an exemption from bond requirements for facilities with nameplate capacities of less than 1 megawatt, and those operated by regulated public utilities who can successfully demonstrate to the PSC and DEP financial integrity and long-term stability. The bill also allows for reductions in bond amounts under certain circumstances.

The bill also provides that the submission of a bond does not absolve owners from complying with other applicable regulations and requirements. The bill includes appellate rights to the Environmental Quality Board and allows for transfer of ownership provisions.

The bill states that the PSC is to condition all siting certificates on compliance with the article as determined by DEP. Developers who are in compliance with the new article enacted by this bill are not subjected to any municipal, county, or local political subdivision's code, ordinances, rules, or regulations.

There are administrative penalties for failure to submit bonds. A charge of $10,000 for the first day and not more than $500 for each additional day until submitted. The bill creates a "Wind and Solar Decommissioning Account" into which assessed penalties and accrued interest must be paid and held. Also, to be deposited into this fund, and not addressed by the current fiscal note, is an application fee of $100 per megawatt, and a modification fee of $50 per megawatt. This fund will be used by DEP to administer the program.

The DEP will maintain and hold bonds or other surety until released by DEP after DEP is satisfied the property has been properly decommissioned and reclaimed. Bonds will be forfeited when a facility is not properly decommissioned and reclaimed. Also, if deficiencies are not rectified, the Office of Environmental Remediation or a private entity by contract may decommission and reclaim the facilities.

The bill provides the DEP rulemaking authority and the power to file lawsuits to enforce the program and to recoup costs of reclamation.

CODE REFERENCE: West Virginia Code §22-32-1, §22-32-2, §22-32-3, §22-32-4, §22-32-5, §22-32-6, and §22-32-7 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 8, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

Senate Bill 542

Relating generally to public electric utilities and facilities fuel supply for existing coal-fired plants

This bill requires that public electric utilities must maintain a minimum 30-day aggregate fuel supply under contract for the remaining life of their coal-fired generating plants.

It also requires that public electric utilities must provide advance notice to the Office of Homeland Security and Emergency Management, the Public Service Commission, and the Legislature's Joint Committee on Government and Finance, before announcing retirement, closure, or sale of an electricity generating unit.

CODE REFERENCE: West Virginia Code §24-1-1c, §24-2-1q, and §24-2-21 – new

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: July 9, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

Senate Bill 641

Allowing counties to use severance tax proceeds for litter cleanup programs

The bill authorizes counties which receive allocations from the Coal County Reallocated Severance Tax Fund to use those allocations to fund, among a host of projects which can already be financed, litter redress initiatives.

CODE REFERENCE: West Virginia Code §11-13A-6a – amended

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: July 7, 2021

ACTION OF GOVERNOR: Signed April 26, 2021

Senate Bill 677

Relating generally to miners' safety, health, and training standards

This bill authorizes the Director of the Office of Miners' Safety, Health, and Training to discharge a tenured underground mine inspector without first petitioning the Board of Coal Mine Health & Safety. After removal from employment, the inspector may request a hearing before the Board to challenge his discharge; however, the hearing is no longer mandatory.

The bill also provides technical cleanup to several sections of code, and replaces outdated terminology related to use of flame safety lamps for detection of gas with approved gas detectors.

CODE REFERENCE: West Virginia Code §22A-1-2, §22A-1-12, §22A-2-40, §22A-2-46, §22A-2-70, and §22A-9-1 – amended

DATE OF PASSAGE: April 9, 2021

EFFECTIVE DATE: July 8, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

Senate Bill 718

Relating generally to Coal Severance Tax Rebate

The purpose of this bill, which originated in the Senate Committee on Finance, would further clarify the tax rebate granted during the 2019 Regular Session to coal companies for investments in new equipment and improvements to real property.

The original bill provided that a rebate was allowable by comparing the state portion of the severance tax on coal produced from the mine in 2018 with the state portion of severance during the current calendar year. With the passage of time, 2018 has proven to be an outlier. To make the rebate more effective, this bill would remove the 2018 date and rewrite the section of the bill regarding the rebate to allow for a rebate when using the immediately preceding five (5) years of a qualifying investment. The changes to the section also clarify that to be eligible coal production from all the mines of the taxpayer in this state have increased in the pertinent year and there has been an increase in the total number of full-time employees and full-time equivalent employees.

The original bill also required that the rebate could only be used on investments in "new" machinery and equipment. This bill would allow repaired and refurbished equipment to qualify if they are used directly in the production of coal.

Definitions have either been added, deleted, or modified for consistency.

CODE REFERENCE: West Virginia Code §11-13EE-2, §11-13EE-3, §11-13EE-5 and §11-13EE-16 – amended

DATE OF PASSAGE: April 10, 2021

EFFECTIVE DATE: April 10, 2021

ACTION BY GOVERNOR: Signed April 28, 2021

Senate Bill 793

Relating to B&O taxes imposed on certain coal-fired electric generating units

This bill amends §11-13-2q of the business and occupation tax to clarify the definition for coal-fired merchant power plants. It also provides an election for recomputation of the taxable generating capacity of a coal-fired electric power generating unit placed in service prior to January 1, 1995.

Under previous law, the taxable generating capacity of those units was based on the unit's net generation during calendar years 1991 through 1994. This bill allows the owners or operators of those generating units to make an irrevocable election to reduce the taxable generating capacity of those units to 45 percent of the official capability of the generating unit, for taxable periods beginning on and after July 1, 2021.

However, this election is subject to the requirement that the owner agree to keep the generating units in operation until at least January 1, 2025. In the event a generating unit ceases to be operational during the required time period, a recapture tax is imposed. The recapture tax is also be imposed if ownership of the generating unit is transferred on or after July 1, 2021, but before January 1, 2025.

In the event federal law or regulation requires closure of the generating unit, the recapture tax is not applicable to periods after the closure date.

CODE REFERENCE: West Virginia Code §11-13-2q – amended; §11-13-12r – new

DATE OF PASSAGE: March 5, 2020

EFFECTIVE DATE: July 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 810

Implementing federal Affordable Clean Energy Rule

This bill amends the Code relating to the Obama Administrations Clean Power Plan (CPP) so that the West Virginia Department of Environmental Protection can promulgate rules to comply with the Trump Administration's Affordable Clean Energy (ACE) Rule.

CODE REFERENCE: West Virginia Code §22-5-20 – amended

DATE OF PASSAGE: March 4, 2020

EFFECTIVE DATE: June 2, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4439

Clarifying the method for calculating the amount of severance tax attributable to the increase in coal production

The purpose of this bill is to establish the Coal Severance Tax Rebate. The bill sets out legislative findings and defines necessary terminology.

This rebate would be allowed for capital investments in new machinery and equipment directly used in severing coal for sale, profit or commercial use and coal preparation and processing facilities placed in service or use on or after the effective date of this article.

Any new company would have to be engaged in coal production for a period of two years prior to possibly qualifying for this investment tax credit. Any unused tax credit for any single year of investment would be carried forward for a period not to exceed ten years. There is also a provision for suspension if the taxpayer is delinquent in the payment of severance taxes.

Finally, there is a required report from the Tax Commissioner to the Joint Committee on Government and Finance by July 1, 2022 and on the first of July every year thereafter. There are also provisions regarding construction of the statute, severability and rulemaking for the Tax Commissioner.

CODE REFERENCE: West Virginia Code §11-13EE-1 through §11-13EE-16 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 163

Authorizing DEP promulgate legislative rules

This bill contains eight Department of Environmental Protection rules which constitute Bundle 3.

- **Senate Bill 163 Department of Environmental Protection, Emission Standards for Hazardous Air Pollutants, 45 CSR 34**
  - This rule modifies an existing DEP rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Clean Air Act (CAA).
  - The modifications incorporate by reference annual updates to the federal counterpart promulgated by the EPA as of June 1, 2018.
  - These modifications are necessary for the state to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in this State for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by the EPA.
- **Senate Bill 160 Department of Environmental Protection, Ambient Air Quality Standards, 45CSR08**
  - This rule modifies an existing DEP rule which establishes and adopts standards of ambient air quality in West Virginia, specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide, and lead, incorporating, by reference, the national primary and secondary ambient air quality standards as promulgated by the United States Environmental Protection Agency (EPA).
  - The modifications adopt and incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2018. These incorporate, by reference, EPA modifications on retention of standards for the various oxides of nitrogen.
  - These modifications to our rule are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this State.
- **Senate Bill 161 Department of Environmental Protection, Standards of Performance for New Stationary Sources, 45 CSR 16**
  - This rule modifies an existing DEP rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).
  - The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2018. These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in this state.

- **Senate Bill 162 Department of Environmental Protection, Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities, 45 CSR 25**
    - This rule modifies an existing DEP rule which establishes and adopts emission standards for controlling air pollution from Hazardous Waste Treatment, Storage, and Disposal Facilities, as promulgated by the United States Environmental Protection (EPA) in accordance with the federal Resource Conservation and Recovery Act (RCRA).
    - The modifications incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2018. These modifications are necessary to maintain consistency with applicable federal laws and allow West Virginia to continue as the primary enforcement authority of the federal hazardous waste management system (RCRA) in the state.
    - The modifications also incorporate, by reference, annual updates to provisions contained in the State Hazardous Waste Management System Rule, 33 CSR 20, promulgated as of June 1, 2018 and establishes the general procedures and criteria necessary to implement air emissions standards. Additionally, the tables appended are updated in conformity with new Federal guidelines.
- **Senate Bill 164 Department of Environmental Protection, Quality Implementation Plans, 45 CSR 36**
    - This rule repeals an existing DEP rule which establishes general provisions relating to transportation conformity plans, pursuant to the Clean Air Act (CAA), requiring that federally supported highway and transit projects are consistent with state air quality implementation plans in places where air quality does not currently meet federal standards. The circumstances requiring adoption of the Rule no longer exist.
- **Senate Bill 165 Department of Environmental Protection, Provisions for Determining Compliance with Air Quality Management Rules, 45 CSR 38**
    - This rule repeals an existing DEP rule which establishes general provisions relating to data which could be used to determine if a facility complied with emissions standards, pursuant to the Clean Air Act (CAA). The circumstances requiring adoption of the Rule no longer exist, as the requirements of Enhanced Special Monitoring Call of the EPA which gave rise to this Rule have been included in other Rules and this is now duplicative.
- **Senate Bill 166 Department of Environmental Protection, Cross State Air Pollution Rule to Control Annual Nitrogen Oxides Emissions, Annual Sulfur Dioxide Emissions and Ozone Season Nitrogen Oxides Emissions, 45 CSR 43**
    - This rule is new. It establishes a program of mitigating the emissions of certain hazardous materials through emissions trading programs among the states as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Clean Air Act (CAA).
    - The modifications incorporate by reference the federal Cross-State Air Pollution Rules promulgated by EPA as of June 1, 2018.
    - These modifications are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in this State for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA. The modifications also update the promulgation history of the rule.

- **Senate Bill 167 Department of Environmental Protection, Requirements Governing Water Quality Standards, 47 CSR 2**
    - The rule amends a current rule. It establishes requirements governing the discharge of sewage, industrial wastes, and other wastes into the waters of the state and establishes water quality standards for the waters standing or flowing over the surface of the state. The public policy of the State of West Virginia is to maintain reasonable standards of purity and quality of the water of the state consistent with (1) public health and public enjoyment; (2) the propagation and protection of animals, birds, fish, and other aquatic life; and (3) the expansion of employment opportunities, maintenance and expansion of agriculture, and the provision of a permanent foundation for healthy industrial development.
    - As submitted to the Legislative Rule-Making Review Committee, DEP amended the requirements governing Water Quality Standards to adhere to the federal requirement for Triennial Review of Water Quality Standards, as required by the Clean Water Act, Section 303(c)(1). Revisions relating to overlapping mixing zones and harmonic mean flow complied with changes made by the Legislature to W. Va. Code §22- 11-7b. Revisions to human health criteria brought the state's standards in line with nationally-recommended water quality criteria. Revisions to the site-specific criterion process allowed a streamlined process for developing site-specific revisions for copper and other metals. Additional administrative revisions were made to make the rule clearer and more concise.
    - The Legislative Rule-Making Review Committee modified the proposed rule to return the standards to current standards with technical amendments. The Committee on Energy, Industry and Mining approved an amendment to the proposed rule returning the standards to those submitted by the DEP. The Committee Substitute returns the proposed rule to the modified rule recommended by the LRMRC with the addition of a paragraph requiring the Secretary to propose updates to Appendix E on or before April 1, 2020, to put them out for comment, and submit the proposed updates to the 2021 Legislative Session. The Committee Substitute also states that the DEP Secretary shall allow for submission of proposed human health criteria until October 1, 2019.

CODE REFERENCE: West Virginia Code §64-3-1 – amended

DATE OF PASSAGE: March 5, 2019

EFFECTIVE DATE: March 5, 2019

ACTION BY GOVERNOR: March 26, 2019

Senate Bill 223

Authorizing Department of Commerce promulgate legislative rules

This bill contains eight rules relating to the Department of Commerce, including rules from the Division of Labor, the Office of Miners' Health Safety and Training, and the Division of Natural Resources.

- **Senate Bill 226, Office of Miners' Health Safety and Training, Rule Governing the Safety of Those Employed In and Around Surface Mines in West Virginia, 56 CSR 3**
  - During the 2018 Regular Session, Senate Bill 626 passed which required the Director of the Office of Miners Health, Safety and Training (OMHST) to revise this rule by promulgating an emergency rule to reflect that the Mine Safety and Health Administration (MSHA) approved surface ground control plan shall serve as the state- approved plan. Further, Senate Bill 626 required automated external defibrillators (AED) on all surface mining operations.
  - Specifically, Section 6, relating to the powers and duties of the Director of OMHST, is completely rewritten. In Section 8, the Director of OMHST is directed to execute a bond in the sum of $10,000. The current bond is $2,000. In Section 10, the salary of surface mine inspectors is changed from "not less than $17,000 per year" to not less than "$53,904 per year."
  - In Section 11, the Mine Inspectors' Examining Board is abolished, and the duties of that entity are imposed upon the Board of Coal Mine Health and Safety.
  - In Section 21, the minimum salary of a mine foreman examiner is increased from $13,500 to $31,032. In Section 30, subsection 30.8. is added to provide that the MSHA- approved surface ground control plan shall serve as the state-approved plan.
  - In Section 48, a new subsection 48.4. requires that at least one AED be stored on the permitted area of all surface operations in a controlled environment with manufacturers' recommendations. Further, all mine personnel must be trained on the operation of the AED, and a written record must be retained. In Section 52, the requirement for filing reports was revised from monthly to quarterly.
- **Senate Bill 227, Office of Miners' Health Safety and Training, Submission and Approval of a Comprehensive Mine Safety Program for Coal Mining Operations in the State of West Virginia, 56 CSR 8**
  - During the 2018 Regular Session, Senate Bill 626 passed which required the Director of the Office of Miners Health, Safety and Training to promulgate an emergency rule detailing the requirements for mine safety programs to be established by coal operators as provided in W. Va. Code §22A-1-36(b).
  - This rule amends a current legislative rule. It provides that the comprehensive mine safety program is not subject to annual review by the Director, except when there has been a fatality, a serious accident involving bodily harm, or a pattern of mine safety violations. The Director now has 90 days, as opposed to 30 days, to approve an initial submission of a program or to approve any proposed modifications or revisions. A program's annual evaluation must now include accident investigations conducted during the previous one-year period. Finally, it allows an operator or independent contractor to petition the Director to be removed from annual review.

- **Senate Bill 228, Office of Miners' Health Safety and Training, Operating Diesel Equipment in Underground Mines in West Virginia, 56 CSR 23**
    - During the 2018 Regular Session, Senate Bill 626 passed which required the Director of the Office of Miners Health, Safety and Training to amend the state rules to permit the use of diesel generators in underground mines as long as the generator is vented directly to the return and at least one person is present within sight and sound of the generator.
    - This rule also contains two new sections that relate to the operation of underground diesel-powered electric generators (§28) and electrical provisions for diesel- powered electrical generators (§29).

CODE REFERENCE: West Virginia Code §64-10-1, §64-10-2, and §64-10-3 – amended

DATE OF PASSAGE: March 6, 2019

EFFECTIVE DATE: March 6, 2019

ACTION BY GOVERNOR: Signed March 22, 2019

Senate Bill 635

Relating generally to coal mining activities

The purpose of this bill is to provide a series of changes to our current mining laws. This bill is broken down into four essential parts: 1) Economic Development, 2) Environmental, 3) Underground Coal Mining, and 4) Crimes and Their Punishment.

- **Economic Development**
  - Within the article dealing with the Coalfield Community Development Office, it abolishes the requirement that a community impact statement be provided; requires now that the office consult with the department's Office of Mining and Reclamation on a quarterly basis to review the permit application databases to determine if newly proposed surface mines present economic opportunities for mine operators to cooperate with landowners and local governmental officials; and, states that an operator only need to prepare and submit certain information upon request by the Office.
- **Environmental**
  - Within the article dealing with the Surface and Coal Mine Reclamation Act, it requires the Secretary of the DEP to promulgate rules relating to surface owner protection from material damage due to subsidence. States that the Secretary shall consider the federal standards.
  - Within the article dealing with the Water Pollution Control Act, it requires the Secretary of the DEP to promulgate rules relating to surface coal mine operations. The rules should relate to categories of permitting actions and permitting fees.
  - Within the article dealing with the Aboveground Storage Tank Act, it requires the Secretary of the DEP to promulgate rules relating to incorporating relevant provisions of the Groundwater Protection Rules for Coal Mining contained in 38 CFR 2F for tanks and devices located at coal mining operations.
- **Underground Coal Mining**
  - Within the article dealing with Office of Miners' Health, Safety and Training; Administration; Enforcement, it requires any miner issued a personal assessment to either appeal or pay the fine within 30 days of receipt of the violation; requires that the state's Mine Rescue Team be provided as a backup mine rescue team to operation that cannot secure a backup, and requires that the Office of Miners' Health, Safety and Training use surplus special revenue funds to pay for the rescue team or teams; and, the Act holds harmless the mine owner and the State of West Virginia. If they refuse to effect a rescue for persons in the act of mine trespass due to safety concerns.
  - Within the article dealing with the OMHST's Substance Abuse Enforcement, it allows any employee involved in an accident involving physical injuries or damage to equipment to be drug tested by the employer; and, requires that any miner that fails a drug test to be suspended for at least six months.
  - Within the article dealing with Underground Mines, for ventilation, it requires that a mine operator submit a copy of the MSHA-approved ventilation plan to the director of OMHST once approved. That this shall serve as the state-approved plan as well. For apprentice miners, the director of the OMHST shall promulgate rules to establish a course of instruction. That apprentice miners work within sight and sound of an experienced miner for 90 days

instead of 120 days. For tracking data, it allows the director of the OMHST to use the employers tracking data for the purpose of decertifying any examiner who fails to perform his/her duties. And, finally, it requires that all existing rules under this article be revised to reflect any changes enacted during the 2019 Regular Session.

- Within the article dealing with Use of Diesel-Powered Equipment in Underground Coal Mines, it eliminates the requirement that an operation measure Nitrogen Oxide (NO) unless they are measuring the ambient air (close to the equipment).
- Within the article dealing with Certification of Underground and Surface Coal Miners, it allows a competent miner to supervise up to two red hat miners instead of limiting it to one; and, removes the certification for any miner convicted of mine trespass.

- **Crimes and Their Punishment**
  - Within the article dealing with Crimes Against Property, it removes the provision for entry into an underground coal mine from the section dealing with entry into a building.
  - Within the article dealing with Trespass, it establishes the offense of mine trespass with criminal penalties for first, second, and third offenses upon conviction. First offense is a misdemeanor and jail not less than one week and pay a fine of not less than $1,000 or more than $5,000; second offense is a felony and jail not less than five years and not more than 10 years and fined not less than $5,000 or more than $10,000; and third offense is a felony and jail not less than five years or more than 10 years and fined not less than $10,000 or more than $25,000. The bill creates additional graduated criminal penalties for those who cause bodily injury or death to others while trespassing, provides for double damages for property damages created during a mine trespass; and provides for certain protections insuring the right to demonstrate is not violated.

CODE REFERENCE: West Virginia Code §22A-2A-405, §22A-8-5, §22A-8-10, §61-3-12, and §61-3B-6 – amended; §5B-2A-5,§5B-2A-6, §5B-2A-8, §5B-2A-9, §22-3-14, §22-11-10, §22-30-3, §22-30-24, §22A-1-21, §22A-1-35, §22A-1A-1, §22A-1A-2, §22A-2-2, §22A-2-12, §22A-2-13, §22A-8-5, §22A-2-80 – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: March 9, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 3142

Relating to reducing the severance tax on thermal or steam coal

The bill would reduce the regular severance tax on thermal or steam coal to 2% over a three-year period. The first year of reduction would be at 35% of the 2%, the second year would be at 65% of 2% and in the final year it would increase to the full 2%.

CODE REFERENCE: West Virginia Code §11-13A-3, §11-13A-6 and §11-13A-6a – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 3144

North Central Appalachian Coal Severance Tax Rebate Act

The bill would provide a rebate for capital investment in new machinery, equipment, and improvements to real property directly used in severing coal for sale, profit or commercial use and coal preparation and processing facilities placed in service or use on or after the effective date of this article. The rebate amount would be 35% of the cost of the new machinery, equipment, or improvements to real property. The rebate amount is limited to 80% of the State portion of the severance taxes attributable to the additional coal produced as a result of the new machinery, equipment, or improvements to real property. A taxpayer who fails to use the machinery, equipment, or improvements to real property for at least 5 years in the production of coal in this state shall pay a "recapture tax" equal to the amount of rebate received for the years the machinery, equipment, or real property were prematurely removed from service.

CODE REFERENCE: West Virginia Code §114-13EE-1 through §114-13EE-16 – new

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

House Bill 207

Exempting from business and occupation tax certain merchant power plants

The bill would provide that on or after July 1, 2020, a merchant power plant is exempt from the business and occupation tax on the generating capacity of its generating units located in this State that are owned or leased by the taxpayer and used to generate electricity. When the July 1, 2020 date falls during a taxpayer's taxable year, the tax liability for that year shall be prorated based upon the number of months before and the number of months beginning on and after July 1, 2020, in that taxable year.

For purposes of the bill, the term "merchant power plant" means an electricity generating plant in this state that:

- is not subject to regulation of its rates by the West Virginia Public Service Commission;
- sells electricity it generates only on the wholesale market;
- does not sell electricity pursuant to one or more long-term sales contracts; and,
- does not sell electricity to retail consumers.

CODE REFERENCE: West Virginia Code §11-13-2r – new

DATE OF PASSAGE: July 24, 2019

EFFECTIVE DATE: October 21, 2019

ACTION BY GOVERNOR: Signed July 30, 2019

Senate Bill 163

Authorizing the Department of Environmental Protection promulgate legislative rules

This bill contains 10 rules proposed by the Department of Environmental Protection and two rules which the Department requested be repealed, which constitute Bundle 3.

- **Senate Bill 163 Hazardous Waste Management System, 33 CSR 20**
  - This proposed rule modifies an existing Department of Environmental Protection (DEP) legislative rule that regulates the generation, treatment, storage, and disposal of hazardous waste in this State.
  - The modification proposed by this rule adopts and incorporates by reference current provisions in the federal counterpart, the Resource Conservation and Recovery Act (RCRA) and the regulations promulgated thereunder. The rule is amended to include federal changes through July 1, 2017.
- **Senate Bill 164 Underground Storage Tanks, 33 CSR 30**
  - This proposed rule modifies an existing Department of Environmental Protection (DEP) legislative rule that regulates underground storage tanks in this State.
  - The modification proposed by this rule adopts and incorporates by reference current provisions in the federal counterpart, 40 CFR 280. The rule is amended to include federal changes through July 15, 2015.
  - The modifications to Section 3 are extensive, including additions to the qualifications of Class A, C, and D certificates and an entirely new Class F certificate. The modifications also delete the Secretary's power to do a background check, add a requirement that the applicant submit documentation of active job participations, and add new requirements for National Association of Corrosion Engineer certification levels for Class D and Class E classifications. Application fees are increased from $75 to $185 and the renewal rate is increased to $125 from $50, with the fee covering a three-year period instead of a two-year period. A new section provides that fees shall be adjusted annually to account for inflation or deflation.
  - Section 4 is amended to add a requirement that the Secretary be notified of structural deficiencies of tanks and any work done on interior linings or corrosion protection.
- **Senate Bill 161 West Virginia Surface Mining Reclamation Rule, 38 CSR 2**
  - This proposed rule modifies an existing Department of Environmental Protection legislative rule that governs requirements of a program that deals with the remediation of mine lands and returning them to approximate environmental integrity. The proposed amendment consolidates various provisions relating to blasting under the rubrics of this rule, deletes certain sections of the current rule that have no apparent Federal counterpart, and modifies certain sections to be more closely analogous to the Federal counterpart.
  - Section 6 has been extensively amended. The amendments cover, in extensive detail, the general requirements for blasting operations, filing and composition of blasting plans, public notice of all blasting operations—including appropriate signage, surface blasting on underground mines, the creation, composition and maintenance of the blast record, blasting procedures, including the safety protocols to be followed, blasting controls for structures,

and pre-blast surveys. They include tables and charts setting forth explosive eights, vibrations, and other criteria.
    - In Section 11, the provisions relating to incremental bonding have been amended to mirror the language found in the Federal Code of Federal Regulations and provisions relating to Environmental Security Accounts for Water Quality are eliminated as it has no Federal counterpart.
    - A new Section 25 has been added on the certification of blasters which sets forth requirements for certification, training, the responsibilities of blasters, examination procedures, approval and recertification, certificates, penalties for violations—including suspension and revocation, reinstatement, potential civil and criminal penalties and all hearings and appeals, blasting crews and reciprocity with other states.
    - A new Section 26 has been added setting forth requirements for blasting damage claims, claim filing procedures, investigation and rules governing all aspects of the arbitration of the claims.
    - A new Section 27 has been added setting forth requirements for the assessment, sufficiency, distribution of proceeds from and payment of explosive material fees, and adding language referencing the Code penalties for failure to comply with paying the fees.
- **Senate Bill 155 Standards of Performance for New Stationary Sources, 45 CSR 16**
    - This proposed rule modifies an existing DEP rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).
    - The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2016.
- **Senate Bill 156 Control of Air Pollution from Combustion of Solid Waste, 45 CSR 18**
    - This proposed rule modifies an existing DEP rule which establishes and adopts national standards of performance and other requirements for air pollution caused by the combustion of solid waste, as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the federal Clean Air Act (CAA).
    - The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2017.
    - Section 9 has been amended to substantially change the manner in which hydrogen chloride and mercury emissions are to be calculated. Additionally, combined emissions for units using a coal mill or alkali bypass are given a new method of calculation. An entirely new set of procedures now being specified for electronic media.
- **Senate Bill 157 Control of Air Pollution from Municipal Solid Waste Landfills, 45 CSR 23**
    - This proposed rule modifies an existing DEP rule which establishes and adopts emission standards for controlling air pollution from Municipal Solid Waste Landfills, as promulgated by the United States Environmental Protection (EPA) in accordance with the federal Resource Conservation and Recovery Act (RCRA).
    - The modifications incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2017.
    - Section 7, which is new, sets forth the applicability, compliance times, emissions requirements, collection and control system requirements testing requirements, emission

monitoring requirements, compliance requirements, reporting requirements, and recordkeeping requirements enjoined upon operators of existing municipal solid waste landfills by the EPA.

- **Senate Bill 158 Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities, 45 CSR 25**
    - This proposed rule modifies an existing DEP rule which establishes and adopts emission standards for controlling air pollution from Hazardous Waste Treatment, Storage, and Disposal Facilities, as promulgated by the United States Environmental Protection (EPA) in accordance with the federal Resource Conservation and Recovery Act (RCRA).
    - The modifications incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2017.
    - The modifications also incorporate by reference annual updates to provisions contained in the State Hazardous Waste Management System Rule, 33 CSR 20, promulgated as of June 1, 2017.
- **Senate Bill 159 Emission Standards for Hazardous Air Pollutants, 45 CSR 34**
    - This proposed rule modifies an existing DEP rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the United States Environmental Protection Agency (EPA) pursuant to the Clean Air Act (CAA).
    - The modifications incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2017.
- **Senate Bill 160 Ambient Air Quality Standards, 45 CSR 08**
    - This proposed rule modifies an existing DEP rule which establishes and adopts standards of ambient air quality in West Virginia, specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead, incorporating by reference the national primary and secondary ambient air quality standards, as promulgated by the United States Environmental Protection Agency (EPA).
    - The modifications adopt and incorporate by reference annual updates to the federal counterpart promulgated by EPA as of June 1, 2017. It incorporates by reference EPA modifications on the Ambient Air Quality Standards for Lead and Particulate matter which retain the current lead standard and make a technical correction on the particulate matter standard. Also, new methods of measuring sulfur dioxide and nitrogen dioxide concentrations were approved.
- **Senate Bill 161 West Virginia Surface Mining Reclamation Rule, 38 CSR 2**
    - This proposed rule modifies an existing Department of Environmental Protection legislative rule that governs requirements of a program that deals with the remediation of mine lands and returning them to approximate environmental integrity. The proposed amendment consolidates various provisions relating to blasting under the rubrics of this rule, deletes certain sections of the current rule that have no apparent Federal counterpart, and modifies certain sections to be more closely analogous to the Federal counterpart.
    - The proposed rule makes extensive changes to the section on blasting. It covers, in extensive detail, the general requirements for blasting operations, the filing and composition of blasting plans, public notice of all blasting operations—including appropriate signage, surface blasting on underground mines, the creation, composition and maintenance of the

blast record, blasting procedures, including the safety protocols to be followed, blasting controls for structures, and pre-blast surveys. It includes tables and charts setting forth explosive eights, vibrations, and other criteria.

- A new Section 25 on the certification of blasters setting forth requirements for certification, training, the responsibilities of blasters, examination procedures, approval and recertification, certificates, penalties for violations—including suspension and revocation, reinstatement, potential civil and criminal penalties and all hearings and appeals as per Code, blasting crews and reciprocity with other states.
- A new Section 26 adds an entirely new section setting forth requirements for blasting damage claims, claim filing procedures, investigation and rules governing all aspects of the arbitration of such claims.
- Finally, the proposed rule adds a new Section 27 setting forth requirements for the assessment, sufficiency, distribution of proceeds from and payment of explosive material fees, and adding language referencing the Code penalties for failure to comply with paying the same.
- The Senate Committee on Energy, Industry and Mining adopted amendments to the proposed rule which rewrote paragraph 12.2.a.4 of the proposed rule, relating to a bond release or reduction. It removed reference to compliance with water quality standards and allows the Secretary to approve a request for release without restriction as to Phase. The Committee also rewrote paragraph 12.2.4.B. The paragraph currently requires an operator to irrevocable commit other financial resources to assure long term treatment of drainage. It requires a mechanism whereby the Secretary can assume management of the resources in the case of an operator's default. EIM's amendment removes this requirement and simply requires an operator to provide assurances in a form satisfactory to the Secretary through a contract or other mechanism to provide for long term treatment of the damage.

- **Senate Bill 162 Voluntary Remediation and Redevelopment Rule, 60 CSR 3**
  - This proposed rule modifies an existing Department of Environmental Protection legislative rule that implements a program that provides guidelines for brownfield revitalization and provides procedures and standards for that program. The rule is designed to encourage persons to voluntarily implement and remedial plans at sites which may be contaminated without DEP having to take enforcement action by providing financial incentives and establishing limitations of liability for persons who perform remediation on these sites to DEP's standards.
  - The modifications proposed by this rule revise procedures for the Brownfields Revolving Fund (BRF) program. Primarily, all information about the BRF is now placed in the same section of the Rule, greater flexibility is provided for on establishing loan interest rates and procedures for accommodation of a variety of entities, so that conditions for EPA loans can be met, and to gain access to a broader array of funding sources, such as legislative grants of monies or grants from other entities or groups.
  - Section 6 has been amended to remove language providing that voluntary arbitration agreements may contain a provision for alternative dispute resolution.
- **State Construction Grants Program Rule, 47 CSR 33**
  - This rule is being repealed because Congress never reappropriated the money for this grant program.

- **Rules on Freedom of Information Act Requests, 60 CSR 2**
    - The Department requested that this rule be repealed.

CODE REFERENCE: West Virginia Code §64-3-1 – amended

DATE OF PASSAGE: February 16, 2018

EFFECTIVE DATE: February 16, 2018

ACTION BY GOVERNOR: Signed February 27, 2018

Senate Bill 395

Providing for judicial review of appealed decisions of Air Quality Review Board, Environmental Quality Board and Surface Mine Board

Current law provides that judicial review of an order issued by an environmental board following an appeal hearing will take place in the Circuit Court of Kanawha County. This bill would by-pass the circuit court and send appeals directly to the West Virginia Supreme Court of Appeals. The bill requires that a perfected petition of appeal must be filed with the Supreme Court within 30 days of the order's entry. The bill also states that an order is not stayed pending appeal.

Current law requires the Chief or Director to use the Attorney General as counsel for appeals, unless the Attorney General gives the Chief or Director prior written approval to hire outside counsel. This bill eliminates the requirement for use of the Attorney General as counsel and allows the hiring of outside counsel without approval of the Attorney General.

Finally, this bill amends the sections of the Code relating to the Air Quality Board, the Environmental Quality Board, and the Surface Mine Board to reflect that appeal will be made directly to the Supreme Court.

CODE REFERENCE: §22B-1-9, §22B-2-3, §22B-3-3, and §22B-4-3 – amended

DATE OF PASSAGE: March 6, 2018

EFFECTIVE DATE: March 6, 2018

ACTION BY GOVERNOR: Signed March 20, 2018

Senate Bill 525

Relating to certification for emergency medical training – mining

The purpose of this bill is to move the code section governing the licensure of emergency medical technicians – mining from its current place in the chapter governing Public Health into the chapter governing Miner's Health, Safety and Training. The requirements remain identical, and the only substantive change is that references to the abolished Board of Miner Training, Education and Certification are changed to the Board of Coal Mine Health and Safety.

CODE REFERENCE: West Virginia Code §16-4C-6c – repealed; §22A-10-3 – new

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 21, 2018

Senate Bill 626

Relating to coal mining generally (Coal Jobs and Safety Act IV)

This bill is the 2018 effort by the Legislature to bring state environmental and coal safety laws into conformity with the federal counterpart. The bill does the following:

- **Chapter 22 Article 3: Surface Coal Mining and Reclamation Act**
  - This bill alters notice requirements regarding permit applications pursuant to the Surface Coal Mining and Reclamation Act. Notices are to be published in forms and by manners prescribed by the secretary, including electronic methods.
- **Chapter 22 Article 11: Water Pollution Control Act**
  - The bill establishes that any applicant for water quality certification that seeks certification for activities covered by a U.S. Army Corp. of Engineers permit under the Water Pollution Control Act will be granted certification without conditions. The bill removes special language in the code which targets the coal industry, but no other industry. The coal industry must comply with the language being removed anyway, under DEP rules. This change just removes duplicative requirements.
- **Chapter 22A, Article 1: Office of Miner's Health, Safety, and Training**
  - The bill eliminates the requirement that a comprehensive mine safety plan be subject to annual review by the director of West Virginia Office of Miner's Health, Safety, and Training unless it is proven that the operator has a pattern of mine safety violations which warrant annual review or there has been an accident resulting in a death or serious bodily injury.
  - The bill creates a new section, §22A-1-42, providing that the MSHA-approved ground control plan shall serve as the state-approved plan and be the only plan required by the director of West Virginia Office of Miner's Health, Safety, and Training.
  - The proposed bill also requires that surface operations have Automated External Defibrillators as required by the director, who will promulgate rules concerning them.
- **Chapter 22A, Article 2: Underground Mines**
  - The bill provides that the operator's MSHA-approved plan will be the only plan that shall be required by the director of West Virginia Office of Miner's Health, Safety, and Training for the following terms: a. Ventilation plans; b. Belt air plans; c. Seal plans; d. Roof control; e. Emergency shelter plans under the transportation provisions; f. Emergency response plans; g. Tracking and communications plans; and, h. Self-Contained Self-Rescuers storage plans.
  - The bill adds a requirement that 1 additional SCSR than is required by MSHA is to be located at the working section for each person present. The bill requires that operators provide at least 3 SCSRs, which include 1 on the working section, 1 in storage, and 1 on the mantrip. Also, the bill allows for fines and assessments by the director if 3 SCSRs are not present. However, this provision may be changed by the committee amendment.
  - If all state requirements are in the federal plan, there will only be the federal plan. The bill only affects the administrative planning process and does not affect safety laws or their enforcement. Only one MSHA-approved plan is to be accepted by the director, but both federal and state agencies remain responsible for enforcement.

- **Chapter 22A, Article 2A: Use of Diesel-powered equipment in Underground Coal Mines**
    - The proposed bill allows for a diesel-powered generator to be used underground where (1) it is vented directly to a return, (2) there is a person within sight and sound of the generator, and (3) all other safety rules relating to diesel-powered generators are followed.

CODE REFERENCE: West Virginia Code §22-3-9, §22-3-20, §22-11-7a, §22A-1-36, §22A-2-2, §22A-2-3, §22A-2-4, §22A-2-4a, §22A-2-5, §22A-2-25, §22A-2-26, §22A-2-37, §22A-2-55, and §22A-2A-1001 – amended; §22A-1-42 – new

DATE OF PASSAGE: March 8, 2018

EFFECTIVE DATE: June 6, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

House Bill 4626

Relating to West Virginia Innovative Mine Safety Technology Tax Credit Act

The bill adds language to the definition of the "[l]ist of approved innovative mine safety technology" that is to be compiled and maintained by the Board of Coal Mine Health and Safety. Expenditures for eligible safety property on the list are qualified for a tax credit under the West Virginia Innovative Mine Safety Technology Tax Credit Act. The effect of the amendment is to include "proximity detection systems, cameras and underground safety shelters and the refurbishing thereof . . . on the list whether required or not", thus making the costs of these properties eligible for the tax credit as well.

The bill also adds language providing that the list may include safety equipment other than that described in the expressions of legislative intent if "specified herein."

The bill extends the termination date of the tax credit from December 31, 2018, to December 31, 2025.

CODE REFERENCE: West Virginia Code §11-13BB-3, §11-13BB-4, and §11-13BB-14 – amended

DATE OF PASSAGE: March 10, 2018

EFFECTIVE DATE: June 8, 2018

ACTION BY GOVERNOR: Signed March 20, 2018

Senate Bill 134

Authorizing Bureau of Commerce to promulgate legislative rules

This bill authorizes six rules, directs the Board of Coal Mine Health and Safety to amend a current rule and repeals one current legislative rule promulgated by the Division of Natural Resources.

- **Senate Bill 132, Office of Miners' Health, Safety and Training Certification, Recertification and Training of EMT-Miners and the Certification of EMT-M Instructors, 56-22**
    - The Coal Jobs and Safety Act of 2016 transferred the training of miners EMTs from the Office of Emergency Services to the Director of the Office of Miners' Health Safety and Training. The rule conforms to the Act. It adds a definition of "National DOT Curriculum for First Responders."; extends the period of time accepted for recognition as an EMT-M under the Grandfather Clause; and lists 2 new requirements for certification.
    - An initial applicant has up to one year to retake the parts of the test that he or she failed in order to obtain the EMT-M certification. After one year, if the applicant fails to obtain his or her certification, he or she must repeat the entire EMT-M course. The EMT- M curriculum in conjunction with the National DOT Curriculum for First Responders must be followed when teaching the sixty (60) hour EMT-M certification course. Updates in the DOT curriculum will also apply to the EMT-M curriculum.

The 2017 Legislature during the Regular Session directed the Board of Coal Mine Health and Safety to amend the below rule:

- **Board of Coal Mine Health and Safety Rules governing proximity detection systems and haulage safety generally, 36-57**
    - The Legislature directed the Board to amend its current rules to remove the July 1 2017, deadline and insert instead the timeframe set forth in the federal rule relating to proximity detection systems.

CODE REFERENCE: West Virginia Code §64-10-1, §64-10-2, and §64-10-3 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: April 8, 2017

ACTION BY GOVERNOR: Signed April 25, 2017

Senate Bill 687

Relating generally to coal mining, safety and environmental protection (Coal Jobs and Safety Act III)

This bill updates and revises a number of mine health and safety and environmental sections of West Virginia Code.

- **Environmental Provisions**
  - **Reclamation Funds**
    - The originating bill makes a few changes to the surface coal mining and reclamation act bonding requirements. Moneys paid from special reclamation water trust fund shall be paid to help assure a reliable source of capital and operating expenses for the treatment of water discharges from forfeited sites where the secretary has applied for or obtained an NPDES permit. The changes also strike the requirement that the secretary of DEP develop a long-range planning process for selection and prioritization of sites to be reclaimed.
  - **Preblast Survey Requirements**
    - The standard for notifying owners and occupants of manmade dwellings and structures of blasting at surface mining operations is expanded in distance from within five tenths of a mile within of the permitted area or areas to within one-half mile of those areas. The distinction between surface mining operations that are less than 200 or 300 acres is also removed, and the statute now only references surface mining operations.
    - For blasting related to permitted surface disturbances of underground mines, blasting activities associated with specified construction activities is also added to the statutory language and the notification requirement is now limited to all owners and occupants of man-made dwellings and structures within one-half mile (not five-tenths of a mile) of the proposed blasting area.
    - A provision of the statute that required additional preblast surveys and referenced the receipt by the operator of a written waiver or affidavit from residents is removed, as well as language distinguishing the waiver from an occupant of a structure as opposed to an owner of a structure (no waiver is necessary for an occupant).
    - The statutory requirement that the operator file notice of the preblast survey or waiver in the office of the county clerk where the structure is located is also removed.
  - **Bonding Release**
    - The bill also changes the code section applicable to release of bond or deposits related to reclamation work performed and a permittee's approved reclamation plan. Language is removed that requires a minimum bond of $10,000 be retained after grade release, after 60% of the bond or collateral is released for the applicable bonded area once an operator completes backfilling, regrading and drainage control.
    - Language is also removed regarding an additional bond release of 25% two years after the last augmented seeding, fertilizing, irrigation or other work. Language is added regarding bond releases after successful revegetation has been established,

and that notes no bond shall be fully released until all reclamation requirements of this article are fully met.

- Language is removed from the code that applies to operations with an approved variance from approximate original contour. The bill requires the Secretary to propose new rules to implement revisions to the statute related to the releases of bond or deposits and directs the Secretary to specifically consider adopting corresponding federal standards.

- **Well Plugging**
  - The bill proposes a change to the Office of Oil and Gas duties as to the methods of plugging wells. Additional language is added to the code that applies to instances in which the well to be plugged is an abandoned well and the well operator is also a coal operator that intends to mine through the well.
  - The language that is added notes that with respect to wells that are less than 4,000 feet, a mine cooperator need only fill the well to at least 200 feet below the base of the lowest workable coal bed. As to wells that are 4,000 feet or greater, the operator must fill the well to at least 400 feet below the base of the lowest workable coal bed. The change is proposed to make well plugging of abandoned mines in WV consistent with Mine Safety Health Administration (MSHA) regulations, rather than require plugging of wells to a greater depth that the state Office of Oil and Gas currently mandates.
  - The bill notes that the secretary may require filling to a greater depth based on excessive pressure within the well.
- **Water Quality Standards**
  - The bill proposes a change to W.Va. Code §22-11-7b regarding water quality standards and the procedure to determine compliance with the biologic component of the narrative water quality standard.
  - As to rule proposals by the secretary of the DEP that measure compliance with the narrative water quality standard, the new language replaces the term "biologic" with "aquatic life" in qualifying the component to be measured for compliance. The revised bill also removes the following criteria from being considered by the DEP in evaluating the holistic health of the aquatic ecosystem: "Supports a balanced aquatic community that is diverse in species composition."
  - The code still states that rules promulgated may not establish measurements for biologic components of WV's narrative water quality standards that would establish standards less protective than legislatively-approved rules.

- **Mine Safety Provisions**
  - The bill retains all inspection and enforcement authority of the Office of Miners' Health, Safety and Training (OMHS&T). It does not transform the OMHS&T into a compliance assistance office. The bill does not make changes to the state's mine rescue teams.
  - Currently, the Office of Miners' Health, Safety and Training includes the following separate boards and commissions: Board of Coal Mine Health and Safety; Coal Mine Safety and Technical Review Committee; Board of Miner Training, Education and Certification; Mine Inspectors' Examining Board; Board of Appeals; and, the Mine Safety Technology Task Force

- The above boards and commissions will be collapsed to eliminate the duplication of responsibilities, as follows: The Board of Coal Mine Health and Safety will assume all duties and responsibilities of the Board of Miner Training, Education and Certification, the Mine Inspectors' Examining Board, and the Mine Safety Technology Task Force. Those three boards/task force will be abolished under the proposed language of the originating bill.
- In addition to the Board of Coal Mine Health and Safety, the Coal Mine Safety and Technical Review Committee and the Board of Appeals remain intact.
- The bill adds an automated external defibrillator (AED) to the list of mandatory first-aid equipment that an underground coal mine must have at certain locations within the mine.
- The bill proposes a change to the code language that applies to the use of diesel-powered equipment in underground coal mines. The changes reflect the 2015 abolishment of the WV Diesel Equipment Commission, and the transfer of that commission's duties to the director of the OMHS&T.
- The changes also direct OMHS&T to revise the diesel equipment commission's legislative rules, found at 196 C.S.R. §1.1, et seq. to reflect the technological advances that have been made in diesel equipment currently operating in underground mines, and to recognize the scope of existing annual retraining and task training standards that are already mandated by MSHA.
- The bill also directs the Office of Miners' Health, Safety and Training to promulgate rules consistent with the changes proposed in the bill.

CODE REFERENCE: West Virginia Code §22-3-11, §22-3-13a, §22-3-23, §22-6-24, §22-11-7b, §22A-1-2, §22A-1-5, §22A-2-59, §22A-6-3, §22A-6-4, §22A-6-6, §22A-7-3, § 22A-7-5, §22A-7-5a, §22A-7-7, §22A-9-1, §22A-11-1, §22A-11-2, 2§2A-11-3, §22A-11-4, §22A-7-1, §22A-7-2, §22A-2A-1001, §22A-7-2, §22A-11-6 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: April 8, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

House Bill 2857

West Virginia Safer Workplaces Act

This bill creates a new article entitled the "West Virginia Safer Workplace Act", a short title that is given to the article in §21-3E-1.

§21-3E-2 defines a number of terms. "Alcohol" means ethanol, isopropanol or methanol. "Drugs" is defined as any substance considered unlawful for nonprescribed consumption or use under the United States Controlled Substances Act, 21 U.S.C. 812. For purposes of this article, an "employer" includes any person, firm, company, corporation, labor organization, employment agency or joint labor-management committee, which has one or more full-time employees. The term "employer" expressly excludes the United States, the state or other public-sector incorporated municipalities, counties or districts or any Native American tribes. Other terms defined include "employee," "good faith," "prospective employee," "sample," and "split sample."

In §21-3E-3, the article sets forth the public policy of the act. It includes a legislative declaration that the State's public policy is to advance the confidence of workers that they are in a safe workplace and to enhance the viability of their workplaces by permitting employers to require mandatory drug testing of both applicants and current employees. This section includes language to preserve the right to privacy, but to state that the public policy of drug testing outweighs the right to privacy in this area under certain circumstances. The article is made applicable to employers who are not otherwise subject to drug and alcohol testing provisions in other areas of the Code.

§21-3E-4 declares it lawful for employers to test employees or prospective employees for the presence of drugs or alcohol as a condition of continued employment or hiring, but requires employers to adhere to certain safeguards in order to qualify for a bar from being subjected to legal claims for acting in good faith on the results of those tests.

§21-3E-5 permits employers to require samples from employees and prospective employees, and sets forth requirements for the collection of samples to test reliably. An employer may require individual identification, and the collection of samples must be done in conformity with the provisions of this article. The employer may designate the type of sample to be used for testing.

In §21-3E-6, the article imposes obligations on the employer with respect to timing and costs of any testing conducted under the new article. Testing shall occur during, immediately before or after a regular work period. Testing time is work time for purposes of compensation and benefits for current employees. Employers must pay all actual costs for drug and/or alcohol testing for current and prospective employees. Finally, if required tests are conducted at a location other than the normal work site, the employer must provide transportation or pay reasonable transportation costs to current employees.

Testing procedures are set forth in §21-3E-7. Collection of samples must be performed under reasonable and sanitary conditions. Any observer of urine sample collection must be of the same sex as the employee from whom the sample is being collected. Sample collections must be documented. The documentation requirements include labeling to reasonably preclude the possibility of misidentification and the handling of samples in accordance with reasonable chain of custody and confidentiality procedures. Employees must also be afforded an opportunity to provide notification of any information which may be considered relevant to the test, such as identification of currently or recently used prescription drugs, nonprescription drugs or other relevant medical information. Sample collection,

storage and transportation shall be performed in a manner to preclude the possibility of sample contamination, adulteration or misidentification. Confirmatory drug testing must be conducted at a laboratory either certified by the United States Department of Health and Human Services' Substance Abuse and Mental Health Services Administration, approved by the Department of Health and Human Services under the Clinical Laboratory Improvement Acts, or approved by the College of American Pathologists. Drug and alcohol testing must include confirmation of any positive test results. For drug testing, confirmation will be conducted by use of a chemical process different than the one used in the initial drug screen. The second confirming test must be a chromatographic technique. An employer may take adverse employment action based only on a confirmed positive drug or alcohol test. Should a person wish to challenge the results of the initial test, the employee has a right to a split sample, but he or she will be responsible for the associated costs.

§21-3E-8 addresses the requirements of testing policies. Testing or retesting must be carried out within the terms of a written policy which has been distributed to every employee subject to testing and available for review by prospective employees. Upon request or as otherwise appropriate, employers must provide information about the existence and availability of counseling, employee assistance, rehabilitation and/or other drug abuse treatment programs which the employer offers, if any. However, the bill does not require any such programs to be offered.

Within the terms of the written policy, employers may require the collection and testing of samples for 1) deterrence or detection of possible illicit drug use, possession, sale, conveyance, or distribution or manufacture of illegal drugs, intoxicants or controlled substances in any amount or in any manner or on or off the job or the abuse of alcohol or prescription drugs; 2) investigation of possible individual employee impairment; 3) investigation of accidents in the workplace or incidents of theft or other employee misconduct; 4) maintenance of safety for employees, customers, clients or the public at large; or, 5) maintenance of productivity, quality of products or services or security of property or information. The collection of samples and testing of samples shall be conducted in accordance with the Act and need not be limited to circumstances where there are indications of individual, job-related impairment of an employee or prospective employee. The employer's use and disposition of all drug or alcohol test results are subject to the limitations of this article and applicable federal and state law. Language is included in subsection (f) to clarify that nothing in the article may be construed to encourage, discourage, restrict, limit, prohibit or require on-site drug or alcohol testing.

After a confirmed positive drug or alcohol test result that indicates a violation of the employer's written policy, or an employee's refusal to provide a testing sample, the provisions of §21-3E-9 permits the employer to then use the test result or refusal to submit as a valid basis for disciplinary and/or rehabilitative action. Such actions may include a requirement that the employee enroll in an approved counseling or treatment program, suspension of the employee, termination of employment, refusal to hire a prospective employee or other adverse employment action in conformity with the employer's written policy including any applicable collective bargaining agreement.

§21-3E-10 addresses employees in sensitive positions where an accident could cause loss of human life, serious bodily injury or significant property or environmental damage. After a confirmed positive test of an employee in a sensitive position, the employer may permanently remove the employee from the sensitive position and transfer or reassign the employee to an available nonsensitive position with comparable pay and benefits or may take other action consistent with the employer's policy provided there

are not applicable contractual provisions that expressly prohibit such action. Employers obligated to perform drug testing under a federal or state mandated drug testing statute will be required to follow any additional requirements mandated under those laws.

§21-3E-11 provides legal protections from civil claims to employers who comply with the provisions of the West Virginia Safer Workplace Act. No cause of action can be brought against any employer who has established a policy and initiated a testing program in accordance with the new article for: 1) actions based on the results of a positive drug or alcohol test or the refusal of an employee or job applicant to submit to a drug test; 2) failure to test for drugs or alcohol or failure to test for a specific drug or other controlled substance; 3) failure to test for, or if tested for, failure to detect, any specific drug or other substance, any medical condition or any mental, emotional or psychological disorder or condition; or, 4) termination or suspension of any substance abuse prevention or testing program or policy.

In §21-3E-12, the bill provides that no cause of action exists against an employer who has an established drug or alcohol testing program in accordance with this new article unless the employer's action was based on a "false positive" test result and the employer had actual knowledge the result was in error and ignored the true test result because of disregard for the truth and/or the willful intent to deceive or be deceived. Should a claim be made under this article where the allegation is based on a claim of a false positive test, there is a rebuttable presumption that the test was valid if the employer complied with the provisions of the article, and the employer is not liable for monetary damages if it relied on a false positive test reasonably and in good faith. No liability exists for any action taken based on a "false negative" drug or alcohol test. Likewise, §21-3E-13 provides that no cause of action for defamation or similar claims exists against employers with an established testing program under this article, unless the results of a test were disclosed to a person other than the employer, an authorized agent or representative, the tested employee or the tested prospective employee and all elements of the cause of action are satisfied.

§21-3E-14 clarifies that this article does not create a cause of action against an employer who does not establish a program or policy on substance abuse prevention or implement drug or alcohol testing.

§21-3E-15 addresses confidentiality, providing that all communications related to the drug or alcohol testing program are confidential and may not be used in any proceeding except in a proceeding related to an action taken by an employer under this new article.

Finally, §21-3E-16 provides that employees who test positive at levels above those set forth in the employer's policy may be terminated and forfeit his or her eligibility for unemployment compensation benefits and indemnity benefits under the Workers' Compensation Laws. The drug-free workplace program must notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in his or her body and that policy must also state that employees risk forfeiture of unemployment and/or workers' compensation benefits. Employers who fail to provide this notice waive their right to assert that eligibility for benefits is entirely forfeited.

CODE REFERENCE: West Virginia Code §21-3E-1 through §21-3E-16 – new

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 26, 2017

Senate Bill 567

Providing protection against property crimes committed against coal mines, railroads, utilities and other industrial facilities

Current law provides that it is a crime to destroy certain commercial and industrial property. This bill adds oil, timber and timber processing facilities to the list. It creates the offense of knowingly and willfully damaging or destroying property of protected entities and hindering, impairing or disrupting directly or indirectly the normal operation, with a penalty of $5,000 to $10,000, plus the cost to repair, or 1-5 years incarceration, or both.

In addition, the bill contains a new subsection to allow a railroad company, public utility, business or owner of the property that is damaged or disrupted to seek restitution, if ordered by the court.

CODE REFERENCE: West Virginia Code §61-3-29 – amended

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed March 30, 2016

Senate Bill 691

Modifying certain air pollution standards

This bill makes technical clean-ups to one section of code that was modified substantially during the 2015 legislative session by passage of House Bill 2004, and requires the Department of Environmental Protection to submit its proposed plan to comply with the EPA's Clean Power Plan to the Legislature for approval prior to its submission. In subsection (c), the bill changes the word "shall" to "may" in two places – first to permit, rather than require, the plan to be on a "unit- specific performance basis," and secondly, to permit either a rate-based or mass-based model to be utilized. The term "meter-based" is also modified to "mass-based."

CODE REFERENCE: West Virginia Code §22-5-20 – amended

DATE OF PASSAGE: March 10, 2016

EFFECTIVE DATE: March 10, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

House Bill 4435

Authorizing the Public Service Commission to approve expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects

The bill amends the provisions of the West Virginia Code relating to the powers and duties of the Public Service Commission (PSC). The bill adds a new section to the code authorizing expedited cost recovery of electric utility coal-fired boiler modernization and improvement projects. The procedure created in the bill by which the PSC would approve the modernization and improvement plan would be in lieu of the current requirement for a certificate of convenience and necessity for improvements to utilities.

Pursuant to the new procedure provided in the bill, an electric utility would file a multiyear comprehensive plan for modernizing and improving the coal-fired boilers at the utility's power plants with the PSC. The plan would describe the improvement plan, the projected costs and how the costs would be paid for, the timeline for the improvements and evidence demonstrating the need for the improvements and that they will better provide and maintain adequate, efficient, safe, reliable and reasonably priced electric generation. The electric utility must also publish a notice of the application, as a Class 1 legal advertisement, which includes the anticipated rate increase by average percentage and money amount for customers within a class of service, that the PSC is to hold a hearing regarding the application within 180 days of the notice and that a final order will be entered within 270 days of the filing date. After the notice and hearing, the PSC shall approve the program and allow expedited recovery of costs related to the expenditures for the modernization program if it finds the plan to be just, reasonable, based upon prudent investments that are used and useful to the utilities' West Virginia ratepayers, not contrary to the West Virginia public interest and will allow for the provision and maintenance of adequate, efficient, safe, reliable and reasonably priced electricity generated from coal.

CODE REFERENCE: West Virginia Code §24-2-1I – new

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION OF GOVERNOR: Signed March 24, 2016

House Bill 4726

Relating to coal mining generally (Coal Jobs and Safety Act II)

This bill is otherwise known as the Coal Jobs and Safety Act of 2016 and is in two parts: 1) Environmental and 2) Health, Safety and Training. The intent of the bill is to continue the reform efforts of the Coal Jobs and Safety Act of 2015 and make regulatory changes to both the Department of Environmental Protection (DEP) and the Office of Miners' Health Safety and Training (WVMHS&T) in order to create more efficiencies in carrying out the duties of both offices, while creating more certainty for the coal industry.

The environmental part of the bill would do the following: Update and make new legislative findings; Eliminate the DEP's Office of Explosives and Blasting (those duties are now transferred to the Division of Mining and Reclamation; Mandates that the DEP revise and promulgate rules on hydrologic protection and stormwater runoff analyses on mining operations and to promulgate rules that conform with the federal regulation requirements to minimize the disturbances to the prevailing hydrologic balance at a mine site and in associated off-site areas; Requires the DEP to follow deadlines for taking action on applications for site-specific water quality criteria (requiring a decision within 90 days); and Requires the DEP to conduct hydrologic impact assessments.

The miners' health, safety and training part of the bill would do the following: Transfer certification authority for mining emergency medical technicians (EMTs) to the Office of Miners' Health, Safety and Training; Modify certain ventilation and roof or rib requirements; Provide that state mine rescue teams may serve as a backup team to mine company teams; Requires the State Board of Appeals to allow evidence of substance abuse testing procedures and test results be introduced through notarized affidavits from Medical Review Officers and testify if necessary; Provide for testimony by telephone under oath, that the penalty for not reporting accidents in 15 minutes to the Office of Miners' Health, Safety and Training be modified to "up to $100,000" from $100,000; Provide that the Director of Office of Miners' Health, Safety and Training shall have the authority to modify assessed penalties and penalties may be modified by the State Board of Appeals based on a vote of two Board members, and allowing company input into state supervisory training and how it is scheduled during the year; and Provide that if a miners' wireless emergency communications device fails, that a miner shall be assigned to be in sight or sound of a certified miner until such time that the device is replaced.

CODE REFERENCE: West Virginia Code §22-3A-1, §22-3A-2, §22-3A-3, §22-3A-4, §22-3A-5, §22-3A-6, §22-3A-7, §22-3A-8, §22-3A-9, §22-3A-10, §16-4C-6c, §22-3-2, §22-3-4, §22-3-13, §22-3-13a, §22-3-22a, §22-3-30a, §22-3-34, §22-3-35, §22-3-36, §22-3-37, §22-3-38, §22-3-39, §22-11-6, §22A-1-13, §22A-1-14, §22A-1-15, §22A-1-31, §22A-1-35, §22A-1A-2, §22A-2-3, §22A-2-8, §22A-2-14, §22A-2-20, §22A-2-25, §22A-2-36, §22A-2-55, §22A-2-66, §22A-2-77, §22A-7-7 – amended

DATE OF PASSAGE: March 11, 2016

EFFECTIVE DATE: June 9, 2016

ACTION OF GOVERNOR: April 1, 2016

Senate Bill 357

The Coal Jobs and Safety Act of 2015

This bill creates the Coal Jobs and Safety Act of 2015. Legislative findings related to the Act are contained in §22A-1-41.

First, the bill permits construction of a coal waste pile or other coal waste storage area using demonstrated technologies or measures consistent with good engineering practices to prevent acid mine drainage discharge in §22-3-13.

The bill directs the state Department of Environmental Protection (DEP) to promulgate rules relating to contemporaneous reclamation (see §22-3-13) and the granting of inactive status with respect to a permit previously issued (see §22-3-19), giving consideration in both cases to the adoption of federal standards.

With respect to the state's Water Pollution Control Act, the bill amends §22-11-6 to extend the Clean Water Act safe harbor for compliance with National Pollutant Discharge Elimination System (NPDES) permits to Section 303 of the Clean Water Act, and with all applicable state and federal permit conditions, with certain limitations. The bill also authorizes the Secretary of DEP to promulgate an emergency rule revising aluminum water quality values using a hardness-based equation. The bill requires, in §22-11-8, that NPDES permit water quality standards be based upon the qualities of the individual discharge point and the receiving stream, and not a wholesale incorporation of state and federal water quality standards. A new section, §22-11-22a, sets forth civil penalties for violations of the provisions of any permit issued under this article.

The bill amends provisions related to the drug testing of miners. In §22A-1A-1, the bill extends the requirement for immediate temporary suspension of miners' cards in the case of a positive test for substance abuse to miners represented by a collective bargaining agreement, where it previously applied only to miners who were not so represented. Positive tests for prescription drugs cannot be excused with a prescription dated more than one year prior to the date of the drug test result.

§22A-2-6, relating to the moving of mining equipment in areas of active working, is completely rewritten by the bill. This section now requires that mining equipment being transported or trammed underground, other than ordinary sectional movements, shall be transported or trammed by qualified personnel. If it is transported in an area where trolley wire is energized, the bill prohibits anyone from being in by the equipment in the ventilating split that is passing over such equipment, except for those directly involved with transporting or tramming the equipment and shall be under the supervision of a certified foreman. To avoid accidental contact with power lines, face equipment shall be insulated and assemblies removed, if necessary, so as to provide clearance.

A proviso is added to §22A-2-28 and §22A-2-37 to permit the use of sideboards on shuttle cars on which cameras are installed. Also, §22A-2-37 is amended to extend the distance from which track may stop from the nearest working face from five hundred to fifteen hundred feet, require shelter holes to be spaced no more than one hundred five feet apart and authorizes the mine foreman to permit persons to ride on a locomotive when safe riding facilities are provided.

Finally, the bill abolishes the Diesel Equipment Commission, transferring its duties and powers to the director of the Office of Miners' Health Safety and Training (see §22A-2A-301, §22A-2A-302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306 and §22A-2A-307).

Additional references to the Diesel Equipment Commission are modified throughout the code to eliminate references to the Diesel Equipment Commission give the Director of the Office of Miners' Health, Safety and Training (defined as "director" in §22A-2A-204a) the authority previously given to the Commission (see §22A-2A-101; §22A-2A-308; §22A-2A-309; §22A-2A-310; §22A-2A-402; §22A-2A-403; §22A-2A-404; §22A-2A-405; §22A-2A-501; §22A-2A-601; §22A-2A-602; §22A-2A-603; and §22A-2A-604).

CODE REFERENCE: West Virginia Code §22A-2A-302 through §22A- 2A-307 – repealed; §22-3-13, §22-3-19, §22-11-6, §22-11-8, §22A-1A-1, §22A-2-6, §22A-2-28, §22A-2-37, §22A-2A-101, §22A-2A-301, §22A-2A-308, §22A-2A-309, §22A-2A-310, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405, §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603, and §22A-2A-604 – amended; §22-11-22a, §22A-1-41, and §22A-2A-204a – new

DATE OF PASSAGE: March 3, 2015

EFFECTIVE DATE: June 1, 2015

ACTION BY GOVERNOR: Signed March 12, 2015

House Bill 2001

Repealing portions of the Alternative and Renewable Energy Portfolio Act

This bill repeals, in its entirety, the Alternative and Renewable Energy Portfolio Act, Article 2F of Chapter 24. This Act passed the House in the Regular Session of 2009 in a slightly different form, but was later passed in a Special Session in the late Spring of that year. Various minor changes were made between the two versions.

The provisions to be repealed mandate the Public Service Commission to establish a system of tradable credits stemming from the established, verified and monitored generation and sale of electricity generated from alternative and renewable energy resource facilities, as defined by section three of the article. The credits thus established were to be available for electrical power generators to trade, sell or otherwise be used to meet the portfolio standards established by section five of the article. Under the provisions of that section, each electric utility in this state is required to own an amount of credits equal to a certain percentage of electricity, sold by the electric utility in the preceding year to retail customers in West Virginia. These credits are to be phased in over a ten year period. For the period beginning January 1, 2015, and ending December 31, 2019, each utility is to own credits in an amount equal to at least ten percent of the electric energy sold by the electric utility. For the period beginning January 1, 2020, and ending December 31, 2024, an electric utility is to own credits in an amount equal to at least fifteen percent of the electric energy sold to retail customers. Commencing on January 1, 2025, this percentage is to equal 25% of all electrical energy sold.

Functionally, this means power generators have to either generate the mandated percentage from a renewable source themselves, or, alternatively, purchase the credits from power generators who have an excess of the mandated percentage generated from power generation operations derived from alternative and renewable energy resource facilities. On or before January 1, 2011, each electric utility subject to the provisions of the article was required to prepare an alternative and renewable energy portfolio standard compliance plan and to file an application with the Public Service Commission seeking approval of such plan. On or after January 1, 2015, and each year thereafter, the Commission is required to determine whether each electric utility doing business in this state is in compliance with these requirements. If, after notice and a hearing, the Commission determines that an electric utility has failed to comply with an alternative and renewable energy portfolio standard, the Commission is required by the article to impose a compliance assessment on the electric utility, in amounts delineated by guidelines contained in the article.

In furtherance of the provisions of the article, a regime of cost recovery and rate incentives is currently provided. These are designed to stimulate electric utility investment in alternative and renewable energy resources.

Additionally, and importantly, as shall be seen, the Public Service Commission was required to adopt a rule requiring that all electric utilities provide a rebate or discount at fair value, to be determined by the commission, to customer-generators for any electricity generation that is delivered to the utility under a net metering arrangement; to, further, consider adopting, by rule, a requirement that all sellers of electricity offer net metering rebates or discounts to customer-generators, and to institute a general investigation for the purpose of adopting rules pertaining to net metering.

The Public Service Commission was permitted by the article to enter into interagency agreements with the Department of Environmental Protection and the Division of Energy to carry out the responsibilities mandated by the article, including conducting an ongoing alternative and renewable energy resource planning assessment for this state, including recommending to the Legislature additional compliance goals for alternative and renewable energy portfolio standards beyond 2025. The Public Service Commission was required to consider adopting, by rule, alternative and renewable energy portfolio requirements for rural electric cooperatives, municipally owned electric facilities or utilities serving less than thirty thousand residential electric customers in this state.

The article also established in the state Treasury a special revolving fund to be jointly administered by the Public Service Commission and the Division of Energy designated the "Alternative and Renewable Energy Resources Research Fund." Moneys in the fund are to be used to award matching grants for demonstration, commercialization, research and development projects relating to alternative and renewable energy resources and energy efficiency technologies. Rulemaking authority was also provided to the Public Service Commission for the making of all rules required by the article.

The effect of the bill is to completely repeal all of the provisions of this article.

This Committee Substitute was drafted to address concerns raised in the Energy Committee regarding the effect of repeal of the entire article on net metering and interconnectivity; according to reports in the media this morning, the "Senate Energy Committee members delayed advancing their version of the bill Thursday, to allow a rewrite that will repeal most of the Alternative Energy Portfolio Act — but retain the net metering provisions."

CODE REFERENCE: West Virginia Code §24-2F-1 through §24-2F-12 – repealed

DATE OF PASSAGE: January 28, 2015

EFFECTIVE DATE: January 28, 2015

ACTION BY GOVERNOR: Signed February 3, 2015

House Bill 2004

Providing a procedure for the development of a state plan under section 111(d) of the Clean Air Act

This bill requires the involvement and approval of the Legislature in the development of the State's plan as required by section 111(d) of the Clean Air Act. First, the bill establishes a new subsection setting forth legislative findings that details how the plan "necessitates establishment and creation of law affecting the economy and energy policy of this State," and declaring a compelling state interest to require legislative review and passage of law prior to submission of the plan to the Environmental Protection Agency (EPA).

Subsection (b) prohibits the Department of Environmental Protection (DEP) from submitting a plan to the EPA without specific legislative action granting such authority. This subsection clarifies that DEP is permitted to develop a proposed state plan in consultation with the DEP Advisory Council and other entities, in accordance with this section.

In subsection (c), the bill sets forth the timing of a proposed state plan to the Legislature, including requiring DEP to make certain determinations of feasibility of a state plan. The plan must be on a unit-specific performance basis, and must also be based upon either a rate-based model or a meter-based model. In addition to submitting the plan to the Legislature, DEP is also directed to publish the report and any proposed state plan on its website. The Legislature may approve the state plan in either regular session or special session.

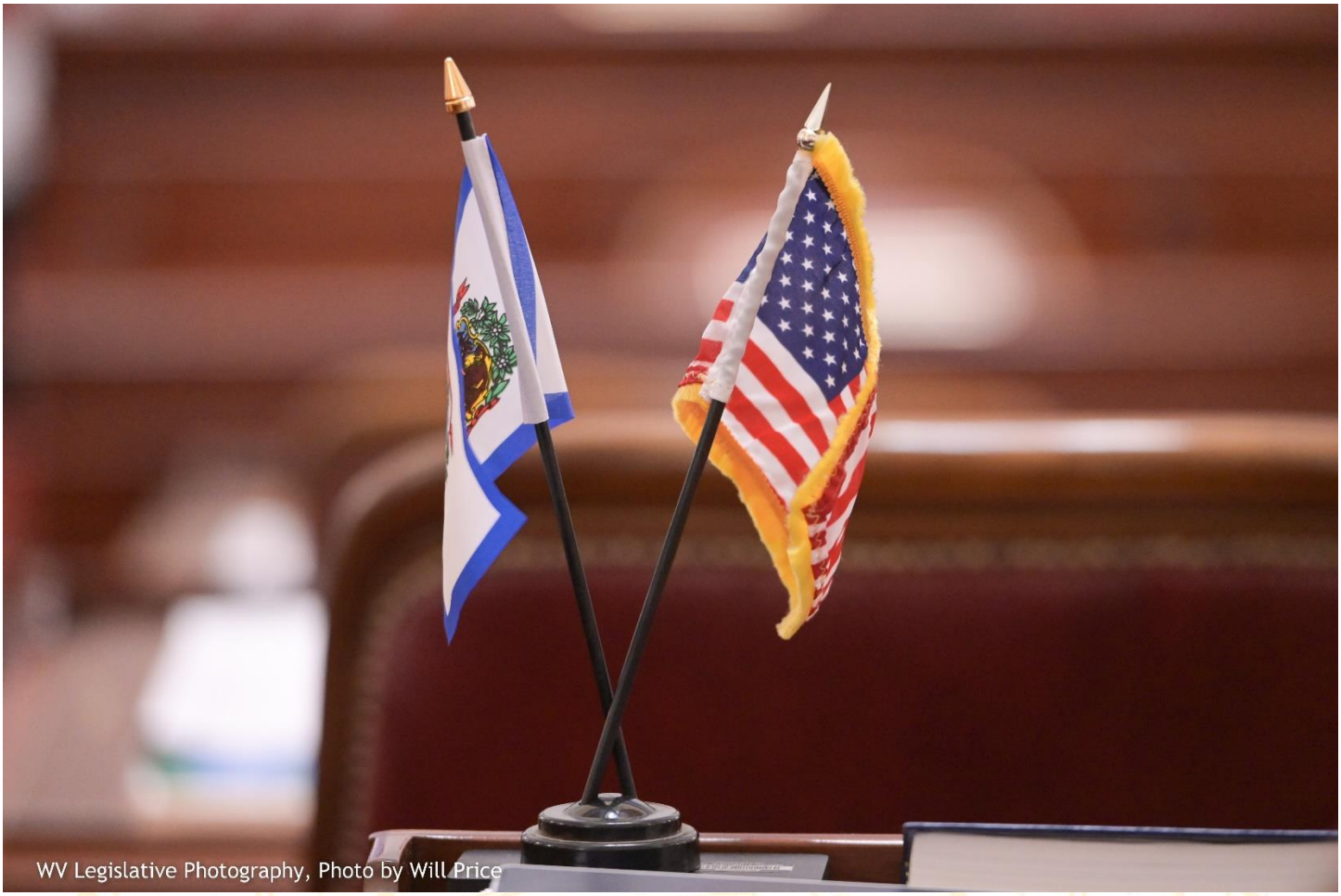
If the EPA fails to issue, or withdraws, its federal rules or guidelines for reducing carbon dioxide, then the requirements of this section are void, and no state plan is necessary. If the Legislature refuses to approve DEP's proposed state plan, DEP must submit a modified plan for reconsideration by the Legislature.

CODE REFERENCE: West Virginia Code §22-5-20 – amended

DATE OF PASSAGE: February 19, 2015

EFFECTIVE DATE: February 19, 2015

ACTION BY GOVERNOR: Signed March 3, 2015


WV Legislative Photography, Photo by Will Price

Other Bills of Note: 2015-2021

Senate Bill 275

Relating generally to WV Appellate Reorganization Act of 2021

The bill amends 24 sections and creates 29 new sections of Code, establishing the West Virginia Intermediate Court of Appeals ("ICA"); eliminating the Workers' Compensation Office of Administrative Judges ("Office of Judges"); transferring the powers and duties of the Office of Judges to the Workers' Compensation Board of Review ("Board of Review"); and making other related changes.

The bill creates and amends several sections in the Election Code, W. Va. Code §3- 1-1 et seq., to provide general procedures for the election of judges to the ICA. These sections provide for election timing and frequency; nonpartisan election by division; ballots; certificates of announcement of candidacy; and filling vacancies.

The bill amends one section in Chapter 6 (General Provisions Respecting Officers) to provide a start date for terms of office of ICA judges.

The bill creates one new section in Chapter 16 (Public Health) providing for transfer of appellate jurisdiction over final decisions issued by the West Virginia Health Care Authority in certificate of need reviews from the Office of Judges to the ICA; and sets forth effective dates as well as transition procedures.

The bill creates and amends several sections within the Workers' Compensation Act, W. Va. Code §23-1-1 et seq., to provide for termination of the Office of Judges; transfer of its powers and duties to the Board of Review; transfer of appellate jurisdiction over decisions of the Office of Judges and Board of Review in workers compensation matters; effective dates; and procedures to effectuate the transition.

The bill amends two sections in the State Administrative Procedures Act, §29A-1-1 et seq., to provide for effective dates for the ICA to assume jurisdiction over contested cases as well as procedures to effectuate the transition; provide that circuit courts lack jurisdiction to review contested cases after a date certain; and authorize review of decisions of the ICA under Chapter 29A by the Supreme Court.

The bill creates a new article within Chapter 51 (Courts and their Officers) establishing the ICA which provides as follows:

- Provides a short title, definitions, and legislative findings;
- Creates the ICA as a three-judge court of record;
- Provides qualifications for the office of ICA judge and limitations on their activities;
- Provides for the Clerk of the Supreme Court of Appeals of West Virginia ("Supreme Court") to act as Clerk of the ICA;
- Provides that the ICA has no original jurisdiction;
- Establishes the court's appellate jurisdiction over certain matters as well as certain matters over which the ICA is expressly without jurisdiction;
- Provides for discretionary jurisdiction of the Supreme Court over any civil case filed in the ICA;
- Provides for appellate jurisdiction of the ICA over judgments or final orders in criminal matters if the Supreme Court adopts a policy of discretionary review of criminal appeals;
- Sets forth extraordinary circumstances under which the Supreme Court may grant a motion for direct review of a case on appeal to the ICA, and the procedures therefor;

- Provides for initial appointment of the three ICA judges by the Governor from recommended candidates submitted by the Judicial Vacancy Advisory Commission:
- Provides for ICA appointees to begin their duties as judge on July 1, 2022;
- Provides for 10-year terms for ICA judges following initial terms;
- Provides for the filling of vacancies in the judge's offices and temporary assignments where a judge is temporarily unable to serve;
- Provides for supervisory control by the Supreme Court over the ICA;
- Provides that pleadings, practice, and procedure, including all filings, in all matters before the ICA will be governed by rules promulgated by the Supreme Court;
- Requires appeals to the ICA to be filed with the Clerk of the Supreme Court;
- Authorizes filing and appeal bonds for filing appeals to the ICA;
- Provides for discretion by the ICA whether to require oral argument; authorizes the Chief Justice of the Supreme Court to exercise supervisory control over the ICA;
- Requires the administrative director of the Supreme Court to provide necessary facilities, furniture, fixtures, and equipment necessary for the ICA, and to make existing courtrooms available for its use;
- Authorizes the administrative director to contract with other facilities to provide space suitable for the ICA;
- Requires the administrative director to provide administrative support and authorizes employment of additional staff, as necessary;
- Provides for selection of a Chief Judge of the ICA under rules to be established by the Supreme Court; requires a written decision on the merits "as a matter of right in each appeal that is properly filed and within the jurisdiction of the" ICA, and the court's opinions, orders and decisions are binding precedent "unless the opinion, order, or decision is overruled or modified by the Supreme Court of Appeals";
- Provides that while appeals from orders or judgments of the ICA may be made to the Supreme Court, the Supreme Court has discretion to grant or deny any such appeal, and discretion to stay such order or judgment;
- Provides for annual compensation of an ICA judge of $142,500;
- Requires the Attorney General to appear as counsel for the State in all cases pending in the ICA to the same extent required by law in cases pending in the Supreme Court; and
- Provides a severability clause for the new article.

The bill creates a new section in a separate article of Chapter 51 providing for appeals of family court decisions to the ICA after a date certain and deprive circuit courts of jurisdiction over such matters within the jurisdiction of the ICA after a date certain; and amends another section in a separate article providing for inclusion of ICA judges in the judicial retirement system.

Lastly, the bill amends one section in Chapter 58 (Appeal and Error) to provide for appeals of circuit court decisions after a date certain to the ICA and authorizes the filing of petitions to appeal ICA decisions to the Supreme Court.

CODE REFERENCE: West Virginia Code §3-1-16, §3-4A-11a, §3-5-7, §3-5-13, §3-10-3, §3-10-3a, §6-5-1, §23-5-1, §23-5-3, §23-5-4, §23-5-5, §23-5-6, §23-5-8, §23-5-9, §23-5-10, §23-5-11, §23-5- 12, §23-5-13, §23-5-15, §23-5-16, §29A-5-4, §29A-6-1, §51-9-1a, §58-5-1 – amended; §3-5-6e, §16-2D-16a, §23-1-1h, §23-5-1a, §23-5-3a, §23-5-5a, §23-5-6a, §23-5-8a, §23-5-8b, §23-5-9a, §23-5-10a, §23-5-11a, §23-5-12a,

§23-5-13a, §23-5-16a, §51-2A-24, §51-11-1, §51-11-2, §51-11-3, §51-11-4, §51-11-5, §51-11-6, §51-11-7, §51-11-8, §51-11-9, §51-11-10, §51-11-11, §51-11-12, §51-11-13 – new

DATE OF PASSAGE: April 1, 2021

EFFECTIVE DATE: June 30, 2021

ACTION BY GOVERNOR: Signed April 8, 2021

Senate Bill 277

Creating COVID-19 Jobs Protection Act

This bill prohibits civil actions for any loss, damages, personal injury, or death arising from COVID-19 against any individual or entity, including health care providers, institutions of higher education, businesses, manufacturers, and volunteers. "Arising from COVID-19" includes, but is not limited to:

- Implementing policies and procedures designed to prevent or minimize the spread of COVID-19;
- Testing;
- Monitoring, collecting, reporting, tracking, tracing, disclosing, or investigating COVID-19 exposure or other COVID-19 related information;
- Using, designing, manufacturing, providing, donating, or servicing precautionary, diagnostic, collection, or other health equipment or supplies, such as personal protective equipment;
- Closing or partially closing to prevent or minimize the spread of COVID-19;
- Delaying or modifying the schedule or performance of any medical procedure;
- Providing services or products in response to government appeal or repurposing operations to address an urgent need for personal protective equipment, sanitation products, or other products necessary to protect the public;
- Providing services or products as an essential business, health care facility, health care provider, first responder, or institution of higher education; and
- Actions taken in response to federal, state, or local orders, recommendations, or guidelines lawfully set forth in response to COVID-19.

This bill expressly does not preclude an employee from filing a claim for workers' compensation benefits. It also does not preclude certain types of product liability claims or claims against any person who engaged in intentional conduct with actual malice.

CODE REFERENCE: West Virginia Code §55-19-1, §55-19-2, §55-19-3, §55-19-4, §55-19-5, §55-19-6, §55- 19-7, §55-19-8, and §15-19-9 – new

DATE OF PASSAGE: March 11, 2021

EFFECTIVE DATE: March 11, 2021; retroactive to January 1, 2020

ACTION BY GOVERNOR: Signed March 19, 2021

Senate Bill 518

Relating to grounds for administrative dissolution of certain companies, corporations, and partnerships

The purpose of this bill is to provide a more efficient process for the Secretary of State to administratively dissolve fraudulent businesses registered in the State of West Virginia, while protecting and maintaining due process rights for reinstatement or appeal for business owners.

This bill amends §31B-8-809, §31E-13-1320, §31D-14-1420, and §47-9-10a by adding an additional grounds for administrative dissolution, authorizing the Secretary of State to commence a proceeding to administratively dissolve a registered business if a misrepresentation has been made of any material matter in any application, report, affidavit, or other record submitted by the company.

This bill also preserves the process for reinstatement or appeal. A registered business administratively dissolved may apply to the Secretary of State for reinstatement within two years after the effective date of dissolution pursuant to the existing procedure set forth in the code or appeal the Secretary of State's denial of reinstatement pursuant to the existing procedure set forth in the code.

This bill amends code sections of codes pertaining to limited liability companies (§31B-8-809), nonprofits (§31E-13-1320), corporations (§31D-14-1420), and limited partnerships (§47-9-10a).

CODE REFERENCE: West Virginia Code §31B-8-809, §31E-13-1320, §31D-14-1420, and §47-9-10a – amended

DATE OF PASSAGE: April 5, 2021

EFFECTIVE DATE: July 4, 2021

ACTION BY GOVERNOR: Signed April 15, 2021

Senate Bill 673

Relating to venue for bringing civil action or arbitration proceedings under construction contracts

This bill requires that construction contracts entered into after July 1, 2021, involving a contractor whose principal place of business is in West Virginia, must provide that any civil action or arbitration permitted by the contract must take place in West Virginia.

CODE REFERENCE: West Virginia Code §56-1-1b – new

DATE OF PASSAGE: April 6, 2021

EFFECTIVE DATE: July 1, 2021

ACTION BY GOVERNOR: Signed April 26, 2021

House Bill 2009

Relating to limitations on the use of wages and agency shop fees by employers and labor organizations for political activities

This bill amends two sections in the Wage Payment and Collection Act, W. Va. Code §21-5-1 et seq. The changes to these sections preclude deductions of union, labor organization, or club dues or fees from the wages of public employees, except for municipal employees covered by a collective bargaining agreement with a municipality which is in effect on July 1, 2021. It expands the definition of "deductions" to include union and club fees, labor organization dues or fees, and any form of insurance offered by an employer; defines a new term, "assignment", which incorporates the definition of "assignment of earnings" from the Consumer Credit & Protection Act. The bill also replaces the notarization requirement for assignments with a requirement that an assignment or order must be in writing. It also expressly protects the right of private employers and employees to agree between themselves as to payroll deductions, and expressly protects the right of employees to join, become a member of, contribute to, donate to, or pay dues to a union, labor organization, or club. The bill amends one section in the Consumer Credit and Protection Act, W. Va. Code §46A-1-1 et seq., by adding union or club fees, labor organization dues or fees, and any form of insurance offered by an employer as deductions which are excluded under the definition of "assignment of earnings".

The bill makes the following additional changes elsewhere in the Code to correspond with the changes described above:

The bill creates one new section in Chapter 7 (County Commissions and Officers) which provides that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of county officers or employees. The bill amends one section in Chapter 8 (Municipal Corporations) by providing that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of municipal officers or employees, except for municipal employees covered by a collective bargaining agreement with a municipality which is in effect on July 1, 2021.

The bill amends one section in Chapter 12 (Public Moneys and Securities) by removing language that currently allows state officers and employees to authorize voluntary deductions for payment of membership dues or fees to an employee association; authorizing the Auditor to approve and authorize voluntary other deductions as defined in the Wage Payment and Collection Act; removing a proviso regarding existing arrangements for dues deductions between employers or political subdivisions and employees; and clarifying that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of state officers or employees.

Finally, the bill amends one section in Chapter 18A (School Personnel) by providing that no deductions or assignments of earnings are allowed for union, labor organization, or club dues or fees from the compensation of teachers or other school employees.

CODE REFERENCE: West Virginia Code §8-5-12, §12-3-13b, §18A-4-9, §21-5-1, §21-5-3, §46A-2-116 – amended; §7-5-25 – new

DATE OF PASSAGE: March 19, 2021

EFFECTIVE DATE: June 17, 2021

ACTION BY GOVERNOR: Signed March 30, 2021

Senate Bill 449

Authorizing Department of Commerce promulgate legislative rules

This bill is known as the Department of Commerce Rules bundle, which authorizes and directs the promulgation of 19 rules, including two related to the Office of Miners' Health, Safety and Training.

- **Senate Bill No. 454 Office of Miners' Health, Safety and Training, Substance Abuse Screening, Standards and Procedures, 56 CRS 19**
  - This rule is in response to Senate Bill 635, which passed during the 2019 Regular Session. The change requires the Board of Appeals to suspend a miner's certification for a minimum of six months, if the miner tests positive on a drug or alcohol test. The previous rule for alcohol and THC was a minimum of three months of suspension.
  - The rule is also amended to include the requirement that an employee involved in an accident that results in physical injuries or damage to equipment or property may be subject to a drug test by his or her employer. Additionally, the rule removes the types of drug and alcohol test failures that an employer reports to the Director, and now simply requires the employer to report all positive drug and alcohol tests to the Director.
  - The rule is amended to increase the suspension period from nine months to 18 months for those miners who refuse a drug test or possess or submit an adulterated or substituted urine sample.
- **Senate Bill No. 455 Office of Miners' Health, Safety and Training, Rules Governing the Certification, Recertification and Training of EMT Miners and the Certification of EMT-Instructors, 56 CSR 22**
  - This rule closes loopholes that allow EMT-Ms to miss the required annual training modules but still maintain their certification. The amendments to this rule also change who may becoming an EMT-M-Instructor. The applicants must possess a current certification that is equal to or greater than an EMT-M in order to become an Instructor. The current EMT-M-Instructors are grandfathered and allowed to continue to teach even though they may not possess a certification equal to or greater than an EMT-M.
  - The rule also adds a definition of the term "recertified or recertification" which requires the taking of either an eight-hour module of continuing education each year or a 32-hour module every three years. However, the terms do not include recertification for a person who lost the original certification by not completing two continuing education modules.

CODE REFERENCE: West Virginia Code §64-10-1 et seq. – amended

DATE OF PASSAGE: February 12, 2020

EFFECTIVE DATE: February 12, 2020

ACTION BY GOVERNOR: Signed March 5, 2020

Senate Bill 545

Authorizing transfer of moneys from Insurance Commission Fund to Workers' Compensation Old Fund

The bill would give the Insurance Commissioner the authority to transfer special revenue moneys contained in the Insurance Commission Fund to the Workers' Compensation Old Fund. The authority to transfer funds would be limited to any fiscal year in which the Insurance Commissioner has determined, and an independent auditor has attested, that a deficit balance existed in the Workers' Compensation Old Fund for the prior fiscal year.

DATE OF PASSAGE: March 4, 2020

EFFECTIVE DATE: March 4, 2020

ACTION BY GOVERNOR: Signed March 24, 2020

House Bill 2646

Providing a safe harbor for employers to correct underpayment or nonpayment of wages and benefits due to separated employees

This bill provides a safe harbor for employers to correct underpayment or nonpayment of wages and fringe benefits due to employee separation prior to the filing of a lawsuit. The bill prohibits an employee from seeking liquidated damages or attorney's fees when bringing an action for the underpayment or nonpayment of wages and fringe benefits due upon the employee's separation from employment without first making a written demand to the employer. "Written demand" is defined as a writing from the employee to the employer, including an email, stating that the employer has not paid all of the wages or fringe benefits which the employee is owed.

Upon separation or with issuance of the final paycheck, the employer must inform the employee who the employer's authorized representative is and where to send a written demand through both email and regular mail. If the employer fails to comply with this requirement, the employee is not subject to the requirements of the bill. After a written demand is received, the bill provides the employer seven calendar days to correct the alleged underpayment or nonpayment of wages and fringe benefits prior to the filing of a lawsuit. The bill prohibits an employee from seeking liquidated damages or attorney's fees without first making this written demand.

This bill also states that if a class action is brought by multiple employees for the underpayment or nonpayment of wages and fringe benefits, the written demand should state that it is a demand for all similarly situated employees. However, if the employer corrects underpayment or nonpayment of wages and fringe benefits for only the named employee in a class action, then the rest of the members of the class may continue with their suit.

CODE REFERENCE: West Virginia Code §21-5-4a – new

DATE OF PASSAGE: March 6, 2020

EFFECTIVE DATE: June 4, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4217

Authorizing Department of Environmental Protection promulgate legislative rules

This bill is known as the Department of Environmental Protection Rules bundle which authorizes and directs the promulgation of 10 rules, constituting Bundle 3.

- **House Bill 4217 Department of Environmental Protection, Division of Air Quality, Ambient Air Quality Standards, 45 CSR 08**
  - This rule modifies a current legislative rule which establishes and adopts standards of ambient air quality in West Virginia, specifically relating to sulfur oxides, particulate matter, carbon monoxide, ozone, nitrogen dioxide and lead. The rule incorporates, by reference, the national primary and secondary ambient air quality standards promulgated by the United States Environmental Protection Agency (EPA).
  - The modifications adopt and incorporate, by reference, annual updates to the federal counterpart promulgated by the EPA as of June 1, 2019. These incorporate EPA modifications on the retention of standards for the various oxides of nitrogen.
  - These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in the state.
- **House Bill 4218 Department of Environmental Protection, Division of Air Quality, Standards of Performance for New Stationary Sources, 45 CSR 16**
  - This rule modifies a current legislative rule which establishes and adopts national standards of performance and other requirements for new stationary sources of air pollution, as promulgated by the EPA pursuant to the federal Clean Air Act (CAA).
  - The modifications adopt and incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2019. These modifications are necessary to maintain consistency with the federal counterpart and allow West Virginia to continue as the primary enforcement authority of federal new source performance standards in the state.
- **House Bill 4270 Department of Environmental Protection, Division of Air Quality, Control of Air Pollution from Hazardous Waste Treatment, Storage and Disposal Facilities, 45 CSR 25**
  - This rule modifies a current legislative rule which establishes and adopts emission standards for controlling air pollution from Hazardous Waste Treatment, Storage, and Disposal Facilities, as promulgated by the EPA in accordance with the federal Resource Conservation and Recovery Act (RCRA).
  - The modifications incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2019. These modifications are necessary to maintain consistency with applicable federal laws and allow West Virginia to continue as the primary enforcement authority of the federal hazardous waste management system (RCRA) in the state.
  - The modifications also incorporate, by reference, annual updates to provisions contained in the State Hazardous Waste Management System Rule, 33 CSR 20, promulgated as of June 1, 2019 and establish the general procedures and criteria necessary to implement air emissions standards.

- **House Bill 4219 Department of Environmental Protection, Division of Air Quality, Emission Standards for Hazardous Air Pollutants, 45 CSR 34**
    - This rule modifies a current legislative rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the EPA pursuant to the Clean Air Act (CAA).
    - The modifications incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2019.
    - These modifications are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in the state for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA.
- **House Bill 4220 Department of Environmental Protection, Division of Air Quality, Control of Ozone Season Nitrogen Oxides Emissions, 45 CSR 40**
    - This rule modifies a current legislative rule which establishes a program of national emission standards for hazardous air pollutants as promulgated by the EPA pursuant to the Clean Air Act (CAA).
    - The modifications incorporate, by reference, annual updates to the federal counterpart promulgated by EPA as of June 1, 2019.
    - These modifications are necessary for the State to fulfill its responsibilities under the CAA and will allow the DEP to continue to be the primary enforcement authority in the state for National Emission Standards for Hazardous Air Pollutants (NESHAP) promulgated by EPA.
    - The rule updates definitions and adds extensive provisions for monitoring, recordkeeping, and reporting requirements.
- **House Bill 4348 Division of Mining and Reclamation, West Virginia Surface Mining Reclamation Rule, 38 CSR 02**
    - This rule modifies a current legislative rule. This rule governs surface mining reclamation, including permit applications; property access; water drainage and erosion; land use; wildlife and revegetation; insurance and bonding; performance standards; subsidence control; and inspection and enforcement.
    - The rule changes are being made in response to Senate Bill 635 which passed during the 2019 Regular Session. Senate Bill 635 amended W. Va. Code §22-3-14, which is a part of the Surface Coal Mining Reclamation Act regulating surface effects of underground mining. Senate Bill 635 added a new subsection (e) requiring the Secretary to promulgate a rule before the 2020 Regular Session pertaining to surface owner protection from material damage due to subsidence. Under the bill, the Secretary is instructed to consider the adoption of certain specified federal standards.
    - The objective of the rule change is to clarify the agency's limitations in adjudicating property rights disputes brought on by subsidence damage.
    - The House amended two sections in the rule. The first amendment clarifies language in paragraph 11.3.a.3, providing that companies electing to execute bonds must diligently pursue listing on the United States Treasury Department's list of approved sureties. Paragraph 16.2.c.2 currently allows an operator to correct material damage caused by subsidence to any structures or facilities or compensate the owner in the full amount of the diminution in value of the structures or facilities resulting from the subsidence. The House adopted an amendment to allow the owner to make the election, with a limitation on

compensation to repair the damage, not to exceed 120% of the pre-mining value of the structure or facility. A statement is added that the paragraph does not create any additional property rights, nor may it be construed to vest the Secretary with the jurisdiction to adjudicate property rights disputes.

- **House Bill No. 4221 Division of Mining and Reclamation, Groundwater Protection Rules for Coal Mining Operation, 38 CSR 02F**
    - This rule modifies a current legislative rule. It establishes practices for groundwater protection which are to be followed by any person who conducts coal mining operations. The rule is established under the Groundwater Protection Act, the Water Pollution Control Act, and the Surface Coal Mining and Reclamation Act.
    - The changes are being made in response to Senate Bill 635 which passed during the 2019 Regular Session. The statutory change added a subsection (g) to W. Va. Code §22-30-24, the Aboveground Storage Tank Act. The added subsection (g) states that the Secretary of Department of Environmental Protection (DEP) shall promulgate legislative rules for consideration by the Legislature in its 2020 Regular Session to incorporate the relevant portions of the Aboveground Storage Tank Act into the Groundwater Protection Rules for Coal Mining for tanks located at coal mining operations.
    - The purpose of the changes is to vest all enforcement authority in one division of the DEP with respect to coal mines, rather than having two divisions responsible for enforcement. The Division of Mining and Reclamation will take over, from the Division of Water and Waste Management, enforcement of rules pertaining to storage tanks at coal mining sites.
    - The changes incorporate the entirety of the Above Ground Storage Tank Act into the rule by reference.
- **House Bill 4222 Department of Environmental Protection, Division of Water & Waste Management, Hazardous Waste Management System, 33 CSR 20**
    - This rule amends a current legislative rule regulating the generation, treatment, storage, and disposal of hazardous waste to the extent necessary for the protection of public health, safety, and the environment. The rule adopts and incorporates, by reference, the federal regulations set forth in 40 CFR Parts 260 through 279 that are in effect as of August 21, 2019. The new rule adopts the most recent hazardous waste regulations and is necessary to maintain the West Virginia program's approval, primacy, and consistency with the federal program.
- **House Bill 4223 Department of Environmental Protection, Voluntary Remediation and Redevelopment Rule, 60 CSR 03**
    - This rule amends a current legislative rule. It is the result of the Voluntary Remediation and Redevelopment Act, located in W.Va. Code §22-22-1 et seq.
    - The changes will update and modernize the existing rule based on current science and current practice. Many of the changes are the result of comments and feedback from years of implementation of the rule.
    - Most of the changes are to the Risk Protocol and Remediation Standards section, which clarify the requirements related to performing risk assessments. Additionally, language will be added to clarify that presumptive remedies can be considered in the exposure assessment to eliminate the need to perform a more costly site-specific risk assessment.

- Several changes are to the Licensed Remediation Specialist Program. The Voluntary Remediation and Redevelopment Act requires the use of a Licensed Remediation Specialist for supervision of all remediations completed through the program. This is to ensure that the safety, health, and welfare of the public are protected.
- The changes to this section strengthen the program by requiring 1) evidence of accredited educational degrees earned to meet minimum education requirements; 2) a passing score set by the rule at 70% for the Licensed Remediation Specialist examination; and 3) appropriate continuing education, including mandatory training specific to the program.
- The changes to the Risk Protocol were made to update the requirements related to performing risk assessments to better reflect the current standard of practice.
- The changes also increase fees associated with the program which have not been increased since the original filing in 1997. The current fees do not adequately cover program costs.

- **House Bill 4311 Oil and Gas Conservation Commission, Rules of the Commission, 39 CSR 01**
  - This rule amends a current legislative rule. Generally, it defines the operations of the Oil and Gas Conservation Commission (OGCC). The rules are promulgated primarily to prevent waste, protect correlative rights of owners, and to conserve oil and gas fields throughout the state.
  - The rule change was prompted by the needs of oil and gas operators who are developing deep wells into shale formations. A deep well is a well which penetrates below the top of the Onondaga Limestone formation.
  - Current deep well spacing requirements are 3,000 feet minimum between wells and 400 feet minimum between wells and lease or unit boundaries. It has been widely acknowledged by both industry and government officials that these deep well minimum spacing requirements are unworkable for deep wells drilled into tight formations, such as the Utica and Rogersville shales. Currently, operators are being granted exceptions for these types of wells, almost as a matter of routine.
  - For horizontal deep wells the minimum distances between new wells and older wells and new wells and unit and lease boundaries are defined. These are default minimums. If needed, the OGCC has the authority to create exceptions to these distances. The new spacing language provides that the productive interval of each new horizontal deep well shall be:
    - Unless otherwise agreed to, no less than 1,000 feet from the productive interval measured perpendicularly from a previously permitted deep well operated by a different operator;
    - No less than 800 feet from the productive interval measured perpendicularly from a previously permitted deep well operated by the same operator;
    - Unless otherwise agreed to, no less than 500 feet from a lease or unit boundary measured perpendicularly for wells where the adjoining lease or unit is operated by different operators;
    - No less than 400 feet from a lease or unit boundary measured perpendicularly for wells where the adjoining lease or unit is operated by the same operator;
    - No less than 150 feet from the productive interval nearest the heel or toe of a previously permitted deep well and no less than 75 feet from a lease or unit boundary; and

        - For a horizontal well, no spacing limitations for non-productive intervals before or after the productive interval.
    - The vertical deep well spacing is updated with respect to the minimum distances between a well and the lease or unit boundaries. The distance is changed from 400 feet to
    - 500 feet, so that vertical deep well spacing will be consistent with the spacing requirements of horizontal deep wells.

CODE REFERENCE: West Virginia Code §64-3-1 et seq. – amended

DATE OF PASSAGE: March 3, 2020

EFFECTIVE DATE: June 1, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

House Bill 4615

West Virginia Critical Infrastructure Protection Act

This bill provides numerous protections for critical infrastructure. The bill defines critical infrastructure and critical infrastructure facility and creates new criminal offenses.

The bill provides that any person who willfully and knowingly trespasses or enters property containing a critical infrastructure facility without permission by the owner of the property or lawful occupant thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $250 nor more than $1,000, confined in jail not less than 30 days nor more than one year, or both fined and confined. If the intent of the trespasser is to willfully damage, destroy, vandalize, deface, or tamper with equipment, or impede or inhibit operations of the critical infrastructure facility, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000, confined in a jail for not more than one year, or both fined and confined.

If a person who willfully damages, destroys, vandalizes, defaces, or tampers with the equipment in a critical infrastructure facility causes damage in excess of $2,500, the person is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 but not more than $5,000, imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

Additionally, any person or organization who conspires with any person to commit the offense of trespass against a critical infrastructure facility is guilty of a misdemeanor and, upon conviction thereof shall be fined in an amount of not less than $2,500 nor more than $10,000. Any person or organization who conspires with any person or organization to willfully damage, destroy, vandalize, deface, or tamper with equipment in a critical infrastructure facility and who does cause damages in excess of $2,500 is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 but not more than $20,000. Finally, any person who is arrested for or convicted of the new offenses may be held civilly liable for any damages to personal or real property while trespassing, in addition to the penalties imposed by the bill, and any person or entity that compensates, provides consideration to, or remunerates a person for trespassing as described in this section may also be held liable for damages to personal or real property committed by the person compensated or remunerated for trespassing.

CODE REFERENCE: West Virginia Code §61-10-34 – amended

DATE OF PASSAGE: March 7, 2020

EFFECTIVE DATE: June 5, 2020

ACTION BY GOVERNOR: Signed March 25, 2020

Senate Bill 1

Increasing access to career education and workforce training

The purpose of this bill is to establish an Advanced Career Education (ACE) program and create the WV Invests Grant Program, both of which are for the purpose of increasing access to career education and workforce training.

The purpose of ACE programs (§18-2E-11) is to: 1) Connect secondary schools with community and technical colleges and four-year colleges that offer associate degrees to prepare secondary students for success in post- secondary education and the workforce; and 2) to provide more opportunities for secondary students to earn post-secondary college credits, certifications, and associate degrees. [§18-2E-11(b)(1) and (2)]

The community and technical colleges, public baccalaureate institutions, career technical education centers, county boards of education, or both are required to establish partnerships that establish ACE programs. An ACE program would feature multiple defined pathways that begin when a student is in high school and end with the student obtaining a credential or an associate degree. The bill also requires that the ACE programs be available to public, non-public, and home school students. [§18-2E-11(c)]

An ACE program is required to include of a curriculum of courses leading to an associate degree or advanced certification that has been determined to satisfy an area of workforce need as determined the Department of Commerce. The Department of Commerce is required to at least annually provide written notification to the State Board of Education and the WV Council for Community and Technical College Education of a determination of areas of workforce need within the state. These areas of workforce need could be determined on a statewide basis or regional basis. [§182E-11(d)]

The State Superintendent, the Chancellor of the Council for Community and Technical College Education, the Chancellor of the Higher Education Policy Commission, or their designees, are required to facilitate the ACE programs. [§18-2E-11(e)(1 through 5)] At a minimum, an ACE program must satisfy the following objectives:

- Provide additional opportunities to students to attain college credentials through ACE pathways;
- Increase the number of students in this state that attain college credentials through ACE pathways;
- Allow students to attain college credentials through ACE at little or no cost;
- Ensure that ACE provides a clear roadmap to the courses and requirements necessary to attain college credentials; and
- Ensure that course requirements within ACE pathways are not duplicated.

The State Board and the Council are required to jointly promulgate guidelines for the administration of ACE programs and pathways. [§18-2E-11(f) (1 through 5)] The guidelines are required to be adopted by both the State Board and the Council. At a minimum, the guidelines are required to include the following:

- That ACE program partnerships be reduced to written partnership agreements;
- The information required to be in the partnership agreements;
- That ACE programs and pathways must meet the requirements of the accrediting entity for the community and technical college or the baccalaureate institution awarding the associate degrees;

- That partnership agreements must be approved by the State Superintendent, the Chancellor for the Council for Community and Technical College Education and he Chancellor of the Higher Education Policy Commission; and
- Any other necessary provisions.

Additionally, the bill requires that the Division of Vocational Education and the Council annually report certain information to the Governor and LOCEA. The reporting requirements are set out in the bill. [§18-2E-11 (g)]

This bill also provides that students that have completed a secondary education program in a public, private, or home school and have continued to be enrolled in a program leading to an advanced certification or an ACE program are considered adults enrolled in regular secondary programs under the definition of "net enrollment" for state aid purposes. The number of adults enrolled in secondary vocational programs that may be included in "net enrollment" for state aid purposes is increased from 1,000 to 2,500. The bill also provides that, beginning with the 2021 fiscal year, a career technical education center can only receive funding for enrollment if the center has satisfied certain ACE requirements including the requirement to partner with at least one community and technical college. [§18-9A-2(I)(1)(A)]

This bill also creates the WV Invests Grant Program (§18C-9-1 et seq.) which is to be administered by the vice chancellor for administration. Necessary terms are defined. [§18C-9-3] Under the program, the Council is to award grants pursuant to the following:

- A grant can only be awarded to applicants satisfying the eligibility requirements;
- The maximum amount of the grant is the cost of tuition charged to all students for coursework leading to completion of the chosen associate degree or certificate, less all other state and federal aid for which the student is eligible;
- Grant payments are to be made directly to the eligible institutions;
- In the event that a grant recipient transfers from one eligible institution to another, the grant is transferable only with approval of the vice chancellor for administration;
- The grant can be used at any eligible institution to seek an associate degree or certificate in an eligible post-secondary program; and
- If the grant recipient terminates enrollment for any reason during the academic year, the unused portion must be returned by the institution to the council for return to the WV Invests Grant Fund for allocation and expenditure. [§18C-9-4]

The bill also requires the Council to report to the Legislature and Governor on the WV Invests Grant Program, which must include research and data concerning student success and grant retention. [§18C-9-4(c)] The Council is required to propose legislative rules to implement the provisions of this article that provide for: (1) Application requirements and deadlines; (2) appeal procedures for the denial or revocation of the grant; and (3) any other necessary provisions. Authority for an emergency rule is also included. [§18C-9-4(d) and (e)]. To be eligible for a WV Invests Grant, an individual must satisfy the following requirements [§18C- 9-5 (a)(1 through11)]:

- Be a citizen or legal resident of the United States and have been a resident of West Virginia for at least one year immediately preceding the date of application;
- Have completed a secondary education program in a public, private, or home school;
- Have not been previously awarded a post-secondary degree;

- Be at least 18 years of age (except that individuals younger than 18 can qualify upon completion of a secondary education program in a public, private, or home school);
- Meet the admission requirements of, and be admitted into, an eligible institution;
- Satisfactorily meet any additional qualifications of financial need, enrollment, academic promise, or achievement as established by the Council through rule;
- Have filed a completed FAFSA;
- Be enrolled in an eligible post-secondary program;
- Be enrolled in at least six credit hours per semester;
- Have completed a WV Invests Grant application as provided by the Council in accordance with a schedule established by the Council; and
- Have, prior to the start of each semester, satisfactorily passed a drug test administered by the eligible institution with the applicant being responsible for the actual cost of the drug test.

Also, each grant can be renewed until the course of study is completed, as long as the following qualifications, as determined by the vice chancellor for administration and Council, are satisfied[§18C-9-5(b)(1 through 5)]:

- Maintaining satisfactory academic standing, including a cumulative GPA of at least 2.0;
- Making adequate progress toward completion of the eligible post-secondary program;
- Satisfactory participation in a community service program authorized by the Council (Council is required to promulgate rules to provide for the administration of this requirement, including, but not limited to, requiring completion of at least eight hours of unpaid community service during the time of study, which may include, but is not limited to, participating with nonprofit, governmental, institutional or community-based organizations designed to improve the quality of life for community residents, meet the needs of community residents or foster civic responsibility);
- Continued satisfaction of the initial eligibility requirements; and
- Satisfaction of any additional eligibility criteria established by the Council through legislative rule.

The bill also requires that each recipient of a WV Invests Grant enter into an agreement with the vice chancellor for administration, which requires repayment of an amount of the grants awarded to the recipient, in whole or in part, if a recipient chooses to reside outside the state within two years following obtainment of the degree or certificate for which the grant was awarded. The Council is prohibited from requiring a recipient to repay grants, in whole or in part, unless the prospective recipient has been informed of this requirement in writing before initial acceptance of the grant award.

Each WV Invests Grant agreement must include the following:

- Disclosure of the full terms and conditions under which assistance under this article is provided and under which repayment can be required; and
- A description of the appeals procedure.

Recipients who are not in compliance with the agreement must be required to repay the amount of the grant awards received, plus interest, and where applicable, reasonable collection fees on a schedule and at a rate of interest, prescribed in the Council's rules. The Council also must provide for proration of the amount to be repaid by a recipient who maintains employment in the state for a period of time within the two-year time period.

The bill further provides that a recipient is not in violation of the agreement during any period in which the recipient is meeting any of the following conditions:

- Pursuing a half-time course of study at an accredited institution of higher education;
- Serving as a member of the armed forces of the United States;
- Failing to comply with the terms of the agreement due to death or permanent or temporary disability as established by sworn affidavit of a qualified physician; or
- Satisfying the provisions of any additional repayment exemptions prescribed by the Council through rule.

Lastly, the bill creates in the State Treasury a special revenue fund to be known as the "WV Invests Fund" which is to be expended for the purpose of administering the WV Invests Grant Program.

CODE REFERENCE: West Virginia Code §18-2-6 and §18-9A-2 – amended; §18-2E-11 and §18C-9-1 through §18C-9-6 – new.

DATE OF PASSAGE: March 7, 2019

EFFECTIVE DATE: June 5, 2019

ACTION BY GOVERNOR: Signed March 25, 2019

House Bill 2049

Relating to a prime contractor's responsibility for wages and benefits

This bill amends W. Va. Code §21-5-7, providing that when a contract employee is seeking redress for unpaid wages and benefits, the employee must: (1) notify the prime contractor by certified mail only that wages or fringe benefits have not been paid within 100 days of the date the wages or fringe benefits become payable to the employee and (2) commence the action within one-year of the date the employee delivered notice to the prime contractor.

Subsection (c) requires employers of employees to whom wages and benefits are owed to whenever feasible provide immediately upon request by the employee or the prime contractor complete payroll records relating to work performed under the contract with the prime contractor.

Subsection (d) requires a union or other plan administrator that represents an employee to whom wages and benefits are owed to, whenever feasible, immediately, upon notice of a claim cooperate with the employee and prime contractor, identify and quantify wages and benefits owed for work performed under the contract with the prime contractor. Further, if the union or any of its agents or other plan administrators become aware that an employer is not timely in the payment of wages and benefits, the union or other plan administrator shall immediately notify the affected employee and the prime contractor from whom the affected employee provided work.

CODE REFERENCE: West Virginia Code §21-5-7 – amended

DATE OF PASSAGE: March 9, 2019

EFFECTIVE DATE: June 7, 2019

ACTION BY GOVERNOR: Signed March 26, 2019

House Bill 2550

Creating a matching program for the Small Business Innovation and Research Program and the Small Business Technology Transfer Program

This bill would allow the Department of Commerce to provide 3 types of grants to eligible businesses to use as matching funds for Small Business Innovation and Research (SBIR) or Small Business Technology Transfer (SBTT) funding. To be eligible, the business must:

- Be a for-profit WV based business;
- Received a Phase I or Phase II award from the appropriate federal agency and indicate that they have filed the necessary final report for Phase I and fully intend to apply for Phase II;
- Meet all SBIR and SBTT requirements;
- May not be in receipt of duplicate funding from other sources to use as a match;
- That at least 51% of the research for the project would be conducted in WV and that the business will remain in WV throughout the duration of the project; and
- Must demonstrate the ability to conduct the necessary research

The bill sets out an application process and includes necessary elements to be included on the application.

The Secretary may award a WV Phase Zero grant of $2500 upon successful submission of an approved Phase I SBIR and SBTT proposal. A business is only eligible for one grant per federal submission, up to a maximum of five over the lifetime of the entity.

The Secretary may award grants up to a maximum of $100,000 to match funds received through a SBIR and SBTT Phase I proposal. Seventy-five percent is granted to the business upon receipt of the SBIR and SBTT Phase I award. The additional 25% upon submission of the Phase II application. A business is only eligible for one grant per federal submission, up to a maximum of five over the lifetime of the entity.

The Secretary may award grants up to a maximum of $100,000 to match funds received through a SBIR and SBTT Phase II proposal. Seventy-five percent of the yearly match is granted to the business upon receipt of the SBIR and SBTT Phase II award. In year two 75% of the yearly amount is awarded. The additional 25% upon submission of the Phase II final report. A business is only eligible for one grant per federal submission, up to a maximum of five over the lifetime of the entity.

CODE REFERENCE: West Virginia Code §5B-8-1 through §5B-8-5 – new

DATE OF PASSAGE: March 8, 2019

EFFECTIVE DATE: June 6, 2019

ACTION BY GOVERNOR: Signed March 27, 2019

Senate Bill 290

Relating to DEP standards of water quality and effluent limitations

This bill prevents the DEP from setting benchmarks for substances or conditions present in storm water discharges that are more restrictive than the water quality criterion, the federal benchmark, the chronic aquatic life water quality criterion or the ambient aquatic life advisory concentration. The bill also requires the DEP to set benchmarks for storm water with the permittee that utilize mixing zones appropriate for relevant conditions. Finally, the bill requires the DEP to develop guidance for determining how benchmarks in permits demonstrate the adequacy of storm water best management practices.

CODE REFERENCE: West Virginia Code §22-11-6 – amended

DATE OF PASSAGE: March 8, 2018

EFFECTIVE DATE: June 6, 2018

ACTION BY GOVERNOR: Signed March 27, 2018

Senate Bill 222

Relating to disqualification for unemployment benefits

This bill addresses the standards for disqualification from unemployment compensation benefits in circumstances involving a strike or bona fide labor dispute. The bill provides that an individual is disqualified from benefits for any week or portion thereof in which he or she did not work as a result of a strike or bona fide labor dispute. A lockout is not considered a strike or bona fide labor dispute and no person may be disqualified due to a lockout. An employee can show he or she has been displaced from employment because of a lockout by presenting himself or herself physically for work at the workplace on the first day of the lockout or the first day he or she is able to be present at the workplace and the employer denied the individual the opportunity to perform work.

Employees are not entitled to benefits if non-striking employees or contractors operate the facility or perform the employees' duties unless they are permanent replacements. A permanent replacement is an employee currently employed and has been notified that he or she is permanently replacing the striking worker. Employees or contractors hired for shorter periods of time such as the length of the strike or bona fide labor dispute may not be determined to have permanently replaced the striking employee.

CODE REFERENCE: West Virginia Code §21A-6-3 – amended

DATE OF PASSAGE: April 3, 2017

EFFECTIVE DATE: July 2, 2017

ACTION BY GOVERNOR: Signed April 8, 2017

Senate Bill 224

Repealing requirement for employer's bond for wages and benefits

The purpose of this bill is to remove the requirement that certain employers within the State of West Virginia must post a wage bond for the first five years of their operation. In §21-5-14, the bill shortens the length of time that a construction or mineral severance, production or transportation business must be in operation to be exempt from the wage bond requirement from five years to one year. Additionally, certain other businesses are exempted from the wage bond requirement if they satisfy one of three conditions: (1) it has been in business in another state for at least five years, (2) it has at least $100,000 in assets, or (3) it is a subsidiary of a parent company that has been in business for at least five years. In §21-5-15, the penalties for knowingly, willfully and fraudulently disposing of or relocating assets with the intent to deprive employees of their wages and benefits are increased, with the possible fine increasing from $30,000 to $60,000.

CODE REFERENCE: §21-5-14 and §21-5-15 – amended

DATE OF PASSAGE: April 8, 2017

EFFECTIVE DATE: July 7, 2017

ACTION BY GOVERNOR: Signed April 24, 2017

Senate Bill 330

Relating to WV Workplace Freedom Act

This bill strikes two provisions from the West Virginia Workplace Freedom Act for clarification. The definition of the term "state" is stricken from the Definitions section of the Act. Additionally, a Construction provision is stricken that dealt with collective bargaining agreements in the building and construction industry.

CODE REFERENCE: West Virginia Code §21-5G-1 and §21-5G-7 – amended

DATE OF PASSAGE: March 17, 2017

EFFECTIVE DATE: June 15, 2017

ACTION BY GOVERNOR: Vetoed March 28, 2017; Overridden April 7, 2017

Senate Bill 1

Establishing WV Workplace Freedom Act

This bill establishes the West Virginia Workplace Freedom Act and makes changes to two sections of the West Virginia Labor-Management Relations Act to make those sections consistent with the new Act. The bill prohibits requiring a person, as a condition or continuation of employment, to become or remain a member of a labor organization, pay any dues or other fees or charges, however denominated, of any kind to any labor organization, or pay any charity or third party in lieu of those payments any amounts equivalent to or a pro rata portion of dues or other fees required of members of a labor organization.

The bill makes any contract or other understanding or practice, whether written or oral, which excludes from employment any person because of membership with or refusal to join any labor or employee organization unlawful, null and void, and of no legal effect. Violations of the West Virginia Workplace Freedom Act carry criminal penalties. Any labor organization, employer, public body or other person directly or indirectly violating the Act is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $5,000. Each day of violation is considered a separate and distinct offense. The bill creates avenues of civil relief and damages.

In addition to the criminal penalties set forth in the Act, any person injured as a result of any violation or threatened violation of the Act has a cause of action, and, if proven in a court of competent jurisdiction, may be entitled the following relief against a person or persons violating or threatening to violate the Act: (1) compensatory damages; (2) costs and reasonable attorney fees, which shall be awarded if the injured person substantially prevails; (3) punitive damages; (4) preliminary or injunctive relief; and (5) any other appropriate equitable relief.

The bill specifically excludes from its scope any employee or employer covered by the federal Railway Labor Act, 45 U.S.C. 151 et seq., any employee of the United States or a wholly owned corporation of the United States, any employee employed on property over which the United States government has exclusive jurisdiction for purposes of labor relations and where the provisions of this article would otherwise conflict or be preempted by federal law. This bill addresses its construction and applicability. The bill states it is neither intended nor should it be construed to change or affect any collective bargaining or collective bargaining agreements in the building and construction industry. It applies to any written or oral contract or agreement entered into, modified, renewed or extended after July 1, 2016. The provisions of this bill do not otherwise apply to or abrogate a written or oral contract or agreement in effect on or before June 30, 2016.

CODE REFERENCE: West Virginia Code § 21-1A-3 and §21-1A-4 – amended; §21-5G-1 through §21-5G-7 – new

DATE OF PASSAGE: February 5, 2016

EFFECTIVE DATE: May 5, 2016

ACTION BY GOVERNOR: Vetoed February 11, 2016; Overridden February 12, 2016

Senate Bill 7

Establishing wrongful conduct rule prohibiting recovery of damages in certain circumstances

This bill amends W. Va. Code §55-7-13d, specifically subsection (c), which addresses a plaintiff's involvement in a felony criminal act. The bill provides a defendant is not liable for damages as a result of negligence or gross negligence, if a plaintiff's damages arise out of that plaintiff's commission, attempted commission or immediate flight from the commission or attempted commission of a felony. The plaintiff's injuries must have been suffered as a proximate result of those actions for the bar to apply. However, in some cases, such as wrongful death or adjudicated incompetency, the plaintiff may not be the actual injured person. The bill provides that it is the conduct of the injured person that generates the defense and not necessarily the named plaintiff.

The bill clarifies that the burden of proof for this defense rests on the party seeking to assert the defense. The bill provides that if the plaintiff has been convicted of, pleaded guilty or pleaded no contest to a felony, the court shall dismiss the claim, if the court determines as a matter of law, that the person's damages were suffered as a proximate result of the felonious conduct to which the plaintiff pleaded guilty or no contest, or upon which the plaintiff was convicted. The bill also offers a definition of damages. It includes all damages which may be recoverable for personal injury, wrongful death, property damage and also damages recoverable in a wrongful death action, including damages suffered by family members, such as loss of companionship and loss of income or services of the decedent. Further, the bill provides that if a criminal action is pending, the court shall stay the action at the request of the defendant until resolution of the criminal matter, including appeals, unless the court finds that the conviction would not constitute a valid defense under the bill.

The bill also establishes that the amendments to W.Va. Code §55-7-13d apply to causes of action accruing on or after its effective date. The bill also amends W. Va. Code §55-7B-5(d) of the Medical Professional Liability Act. It establishes that an action related to the prescription or dispensation of controlled substances may not be maintained against a health care provider pursuant to this article by or on behalf of a person whose damages arise as a proximate result of a violation of the Uniform Controlled Substances Act as set forth in §60A, the commission of a felony, a violent crime which is a misdemeanor, or any other state or federal law related to controlled substances. Additionally, the bill provides that an action may be permitted if the health care provider dispensed or prescribed a controlled substance in violation of state or federal law that proximately caused injury or death.

CODE REFERENCE: West Virginia Code §55-7-13d & 55-7B-5 – amended

DATE OF PASSAGE: February 24, 2016

EFFECTIVE DATE: May 24, 2016

ACTION BY GOVERNOR: Signed March 2, 2016

Senate Bill 29

Tolling statute of limitations in certain cases

This bill creates an exception to §55-2-21 for third party complaints. Currently, after a civil action is commenced, the statute of limitations on any claim that can be asserted in that civil action is tolled for the pendency of that civil action, including the statutory period on third-party complaints. The bill provides that this section tolls the running of any statute of limitation with respect to any claim for which the statute of limitation has not expired on the effective date of this section, but only for so long as the action tolling the statute of limitations is pending. This bill shortens the period during which the statute of limitations is tolled for bringing third party claims during the pendency of a law suit to the longer of 180 days following service of process of the original suit or the time remaining on the applicable statute of limitations. The bill provides a third- party defendant the same time period to bring a third-party complaint against any non-party person or entity (180 days from the date of service of process of the original complaint, or the time remaining on the applicable statute of limitations, whichever is longer).

Third party complaints are claims filed by a defendant against some person or entity that was not made a party to the original suit. This bill gives such entities the benefits of repose bestowed by any applicable statutes of limitation that they would enjoy but for the fact that a law suit, of which they may or may not have any knowledge at all, is pending. This bill preserves the ability of a defendant to bring a third party complaint even after the limited tolling period expired if that defendant did not discover any cause of action it might have against a third party until after the expiration of the limited tolling period. This bill specifically preserves that so-called "discovery rule" as well as the doctrine of equitable tolling sometimes used by courts in such situations.

CODE REFERENCE: West Virginia Code §55-2-21 – amended

DATE OF PASSAGE: March 7, 2016

EFFECTIVE DATE: June 5, 2016

ACTION BY GOVERNOR: Signed March 23, 2016

Senate Bill 619

2016 Regulatory Reform Act

The bill provides for a comprehensive regulatory reform regarding the state's rulemaking process. The bill does the following:

First of all, under §29A-3-5, the bill requires all agencies proposing legislative rules to respond to public comments received during the rulemaking process. The agency must also explain why comments were incorporated or not incorporated into the rule. Failure to do so adequately is grounds for rejection of the proposed rule.

Under §29A-3-11(a), the bill removes the requirement that agencies submit 15 copies of the proposed rules to the Legislative Rule-Making Review Committee (LRMRC); instead, the Committee may request any number of copies. Along with the rule, an agency must also submit a detailed description of the objective or purpose of the rule and the proposed changes to the rule and an explanation of the statutory authority for the rule, including a detailed summary of the effect of each provision with citation to the specific statute which empowers the agency to enact such a provision. The agency must also submit an economic impact statement addressing the probable effect of the rule on the economy, which they prepare in coordination with the WVU and Marshall business and economic centers.

§29A-3-11(b) addresses what the LRMRC must determine while reviewing proposed rules. The bill adds that the committee must make a determination as to whether the proposed rule will be overly burdensome on business and industry, and it provides a non-exhaustive list of criteria to consider. It also requires the Committee review whether the agency has complied with the public comment requirements.

§29A-3-11(c) gives the Committee the option of recommending to the legislature that the full body reject the proposed rule. Currently, the Committee may recommend complete or partial authorization, authorization with amendments or that the rule be withdrawn.

§29A-3-19 is a newly proposed section that mandates expiration provisions be incorporated into all rules newly proposed or modified after April 1, 2016. Newly proposed rules shall include a 5 year expiration provision and all modified rules shall include an expiration provision setting forth some termination date. Emergency rules and rules promulgated by the Department of Environmental Protection are exempted from this requirement. The section also gives the Committee the authority to establish a procedure for timely review of rules prior to the expiration of rules promulgated by agencies that have affirmatively sought renewal prior to expiration. This may include a requirement that the agency show cause as to why the expiring rule is required and necessary to be continued. All rules are to remain in effect after the expiration date and until the rule is reauthorized or modified.

§29A-3-19 also requires the Secretary of State to provide notice to a promulgating agency 18 months prior to a rule's expiration. The agency shall respond with certain information about the rule, and shall include such response in documents required for reauthorization.

§29A-3-20 is a newly proposed section, which requires all executive agencies with rule making authority to review all rules, guidelines, policies and recommendations under their jurisdiction which have federal counterparts, and determine whether the state equivalent is more stringent than the federal. The agency must also provide for a comment period and submit a report to the Joint Committee on Government and Finance on or prior to November 1, 2017. The report shall include a description of the state rules,

guidelines, policies and recommendations that are more stringent than their federal counterparts and comments received from the comment period.

§29A-3-20 also requires each agency review all rules within four years to determine whether the rules should be continued without change, modified or repealed to minimize the economic impact of the rules on small businesses. It requires the agency submit a report on or before July 1, 2020 to the LRMRC, which must include a description of each rule, a determination as to whether the rule should be continued or modified and the reasoning for said determination.

§29A-3A-20 is a newly proposed section that applies the same expiration requirements to rules promulgated by the Higher Education Policy Commission.

CODE REFERENCE: West Virginia Code §29A-3-5 and §29A-3-11 – amended; §29A-3-19, §29A-3-20, and §29A-3A-20 – new

DATE OF PASSAGE: March 12, 2016

EFFECTIVE DATE: June 10, 2016

ACTION BY GOVERNOR: Signed April 1, 2016

Senate Bill 3

Relating to liability of possessor of real property for harm to trespasser

This bill codifies the duty that possessors of real property owe to trespassers under the common law of the State of West Virginia. It does nothing to alter the duty owed and does not disturb any statutes that limit the liability of land possessors under various circumstances. This bill insulates the laws of West Virginia from a provision of the new Restatement (Third) of Torts §51, which departs substantially from the common law duty owed to trespassers as it currently exists and, if adopted, would extend to trespassers the same duty of reasonable care owed to invitees and licensees, and makes an exception to that duty only for what it terms "flagrant trespassers."

To foreclose the adoption of this new standard into the common law of West Virginia, this bill codifies the existing common law of the State as it relates to duties of landowners to trespassers, which provides that landowners generally owe to trespassers only a duty to refrain from willful or wanton injury. The situations already identified at common law where a land possessor may also be subject to liability for the injury or death of a trespasser, including (1) the possessor discovers the trespasser in a position of peril and fails to exercise ordinary care not to cause injury to the trespasser, (2) he maintains a highly dangerous condition or instrumentality on the property under certain circumstances or (3) a child trespasser is injured or killed due to a dangerous instrumentality or condition on the property under certain circumstances, are preserved.

CODE REFERENCE: West Virginia Code §55-7-27 – new

DATE OF PASSAGE: January 29, 2015

EFFECTIVE DATE: April 29, 2015

ACTION BY GOVERNOR: Signed February 9, 2015

Senate Bill 12

Relating to payment of separated employee's outstanding wages

This bill requires employers to pay outstanding wages due to separated employees by the next regular payday on which the wages would otherwise be due and payable. Under current law, employers must pay discharged employees their final paychecks no later than the next regular payday or four (4) business days, whichever comes first, but must pay employees who quit or resign no later than the next regular payday, unless the employee resigns providing one pay period's written notice of the intention to quit, in which case the final wages are required to be paid at the time of quitting.

The bill makes that time frame for payment of final wages uniform regardless of form of separation from employment, requiring that final paychecks be delivered no later than the next regular payday on which the wages would otherwise be due and payable. An exception is made for fringe benefits that are provided to an employee pursuant to an employment agreement but "to be paid at a future date or upon additional conditions which are ascertainable," which wages are to be paid pursuant to the terms of the agreement between employer and employee.

Final paychecks may be delivered in person through any manner proscribed in §21-5-3, which allows for payment in lawful money, by cash order (including checks), by deposit or electronic transfer or any other manner agreed to between employer and employee, as well as through regular pay channels, direct deposit or, if requested by the employee, by mail. The bill establishes the date final paychecks would be considered paid as the date the mailed payment is postmarked if the employee requests to be paid via mail. The bill reduces the liquidated damages available for violation of this section from three (3) times the unpaid amount to two (2) times the unpaid amount.

Lastly, the bill clarifies that §21-5-4 only regulates the timing of wage payments upon separation from employment and does not regulate whether overtime pay is due. It also clarifies that liquidated damages are not available for employees claiming they were misclassified as exempt from overtime under any state or federal wage and hour laws.

CODE REFERENCE: West Virginia Code §21-5-1 and §21-5-4 – amended

DATE OF PASSAGE: March 13, 2015

EFFECTIVE DATE: June 11, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

Senate Bill 13

Relating to liability of a possessor of real property for injuries caused by open and obvious hazards

This bill reinstates and codifies the open and obvious doctrine of landowner liability as it existed in the State of West Virginia prior to the decision of the West Virginia Supreme Court of Appeals in the case of Hersh v. E-T Enterprises, Limited Partnership, 752 S.E.2d 336 (Nov. 12, 2013). The open and obvious doctrine is a common law rule of liability which imposes upon landowners, lessees or other lawful occupants a duty to either warn of, or mitigate, hazards upon their property which are not "open and obvious" to any entrant upon a property; that is, those dangers which may be concealed, hidden, or otherwise not obvious to a reasonable person or not within open view. The Court's decision explicitly abolished the open and obvious doctrine in West Virginia; this bill restores it through codification.

To that end, the bill states that a possessor of real property owes no duty of care to protect others against dangers that are "open, obvious, reasonably apparent or as well known to the person injured as they are to the owner or occupant." The new section of code also clarifies that no new causes of action are created by this section, and states the legislative intent of the section to reinstate the law on open and obvious as it existed prior to the Supreme Court of Appeals' Hersh decision. Lastly, the bill directs the court, as a matter of law, to take into consideration the "nature and severity, or lack thereof, of violations of any statute relating to a cause of action."

CODE REFERENCE: West Virginia Code §55-7-27 – new

DATE OF PASSAGE: February 18, 2015

EFFECTIVE DATE: February 18, 2015

ACTION BY GOVERNOR: Signed March 3, 2015

Senate Bill 140

Amending State Administrative Procedures Act

This bill was recommended for passage by the Legislative Rule-Making Review Committee. The bill makes a number of changes to Chapter 29A, the State Administrative Procedures Act, in order to better align the Code with current practice and to add additional code sections to facilitate the rule-making process.

Two new sections are added to state code. The first, §29A-1-3a, clarifies that technical amendments to a current rule (including typos, punctuation, internal code citations, addresses and phone numbers) do not require the rule to go through the legislative rule-making review committee. Instead, agencies can file the corrected rule with the Secretary of State's office. The second new section, §29A-1-3b, concerns void rules and clarifies that when an agency ceases to exist, the agency rules are automatically void.

One section of code, §29A-2-8, is repealed. This code section placed limitations on an agency's ability to duplicate its own rules, or to obtain copies of those rules other than from the Secretary of State, except under certain circumstances. Additional amendments to the Code made by this bill include:

A new definition added in §29A-1-2 defining "legislative exempt rule," as a rule that is "promulgated by an agency or relating to a subject matter that is exempt from the rule-making provisions" of chapter 29A. Additional changes are made throughout the chapter to identify the manner in which legislative exempt rules are to be handled.

Amendments to §29A-3-1a clarifying that an agency seeking to amend an existing rule must re-file the entirety of the rule rather than simply those parts of the bill that are being changed, and further clarifying that new language be underlined and removed language must be stricken through in the rule submitted to rule-making.

§29A-3-4 sets forth the procedures for filing legislative exempt rules and notices thereof with the Secretary of State's Office, but clarifies that legislative exempt rules and other procedural and interpretive rules are not void for failure to comply with these procedures. §29A-3-8 adds language on the effective date of legislative rules to allow the effective date to be set by other sections of applicable code. Similar changes in §29A-3-13 modify the effective date of non-exempt legislative rules that are filed with the State Register to the filing date, or to another date fixed by the agency.

Finally, §29A-3-15 modifies the procedures for handling emergency legislative rules. The bill adds a requirement that an agency filing a proposed emergency rule include therewith "a listing of state agencies, professions, businesses and other identifiable interest groups affected by the proposed emergency rule." An agency's good faith failure to provide a comprehensive list is not a basis for disapproval of the emergency rule. The bill also clarifies that an emergency rule expires upon an agency's failure to file a proposed rule addressing the same subject matter following the close of the public comment period.

CODE REFERENCE: West Virginia Code §29A-1-2, §29A-3-1a, §29A-3-4, §29A-3-8, §29A-3-13 and §29A-3-15 – amended; §29A-1-3a and §29A-1-3b – new; §29A-2-8 – repealed

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: March 14, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

Senate Bill 423

Amending Aboveground Storage Tank Act

This bill made significant modifications to the Aboveground Storage Tank Act passed by the Legislature during the 2014 session. Overall, the bill now focuses enforcement and regulatory efforts on tanks with a capacity of 10,000 gallons or above within zones of critical concern of public water utilities. Certain definitions are amended and new ones have been added. The bill provides that the owner or operator of a tank must certify its compliance with an approved industry standard or program, or to the standards developed by the Department of Environmental Protection (DEP) by rule. Releases are defined in the same way as in other programs administered by the Department of Environmental Protection. Spill prevention and response plans are required. Much of Article 31 of Chapter 22 has been deleted, although key provisions have been moved to Article 30.

The bill adds a new section of code to the chapter relating to public health. §16-1-9f directs the Secretary of the Department of Health and Human Resources, in coordination with DEP and the Division of Homeland Security and Emergency Management, to compile an inventory of all potential sources of significant contamination within a public water system's zone of critical concern, and then to identify which of those sources are not currently permitted or subject to regulation by DEP.

Within the Aboveground Storage Tank Act itself (Article 30), slight modifications were made to the legislative findings set forth in §22-30-2.

The bill amends the definition of an "aboveground storage tank" ("AST") in §22-30-3.

The substance of the definition is maintained, but the definition now acknowledges that certain tanks, specifically those that contain hazardous waste that are regulated pursuant to 40 C.F.R. §§ 264 and 265 (excluding those subject to regulation under 40 C.F.R. § 265.201), fall within the definition of an AST but are not regulated tanks. Twelve categories of tanks are specifically exempted from the definition of an AST:

- Shipping containers already subject to federal law or regulation governing hazardous materials including railroad freight cars;
- Barges or boats;
- Swimming pools;
- Process vessels;
- Devices containing drinking water, surface or groundwater, demineralized water, non-contact cooling water or water stored for fire or emergency purposes;
- Devices containing food for human or animal consumption that are regulated under the Federal Food, Drug and Cosmetic Act;
- Devices located on a farm used exclusively for farm, but not commercial, purposes, except where that device is located in a zone of critical concern;
- Devices holding wastewater that is actively being treated or processed;
- Empty tanks in inventory or being offered for sale;
- Pipeline facilities including gathering lines regulated under the Natural Gas Pipeline Safety Act (1968) or Hazardous Liquid Pipeline Safety Act (1979), or intrastate pipeline regulated by the West Virginia Public Service Commission or other state law comparable to the NGPSA or HLPSA;

- Liquid traps, atmospheric and pressure vessels or associated gathering lines related to oil and gas production or gathering lines; and
- Electrical equipment.

New definitions are added for "first point of isolation," "regulated level 1 aboveground storage tank," "regulated level 2 aboveground storage tank," "regulated aboveground storage tank," and "zone of peripheral concern," while additional definitions, such as "process vessel," "public water system," "release" and "zone of critical concern" are modified.

In §22-30-4, the bill deletes the requirement that an inventory of tanks include all tanks, "regardless of whether it is an operational or nonoperational storage tank." Tank owners or operators are required to submit a registration form for their tanks no later than July 1, 2015, even if the tank is placed into service after the effective date of this section. The information required to be included in the registration form is modified to delete the requirement that the tank owner or operator identify the nearest groundwater public water supply intake or surface water downstream public water supply intake, and to add information concerning the circumstances under which the registration must be updated. The Secretary of DEP is no longer required to make certain determinations about the tank's design, construction and leak performance. Finally, new fees are codified: $40 registration fee for all ASTs placed in service before July 1, 2015, and $20 per tank for those placed into service thereafter.

The AST regulatory program is detailed in §22-30-5, and has been substantially modified by the bill. This section directs DEP to develop a regulatory program for new and existing regulated ASTs and secondary containment that takes into account the size, location and contents of the tanks. This program must set out "tiered requirements" for regulated tanks, with Level 1 tanks being regulated to a higher standard than Level 2 tanks due to their proximity to an intake. The rules promulgated by DEP must include (1) criteria for the design, construction and maintenance of ASTs, (2) criteria for the design, construction, maintenance or methods of secondary containment, (3) criteria for the design, operation, maintenance or methods of leak detection including visual inspections, and inventory control system, together with tank testing or comparable system designed to identify AST leaks, (4) record keeping requirements, (5) requirements for the development of maintenance and corrosion prevention plans, (6) requirements for closure of ASTs, and necessary remediation resulting from an AST release, (7) assessment of registration fee, annual operation and response fees, (8) the issuance of a certificate to operate ("CTO") after submission of an application, with review and approval by WVDEP, and (9) a procedure for administrative resolution of violations including assessment of civil penalties.

Additionally, Section 5 gives the Secretary of DEP authority to, at the request of the permittee, modify portions of permits and other plans issued pursuant to other provisions of Chapter 22 in order to include conditions pertaining to the management and control of regulated tanks. The plans and permits that may be so amended include those issued pursuant to (1) the Surface Coal Mining and Reclamation Act, (2) the Office of Oil and Gas's authority found in W. Va. Code §§22-6 and 22-6A, or plans required under 35 C.S.R. 1, (3) the National Pollution Discharge Elimination System, and (4) the Solid Waste Management Act, as well as any groundwater protection plans developed pursuant to W. Va. Code §22-12. If a plan or permit is so modified to conform to the requirements of this Act, it is deemed to comply with the requirements of the Act, so long as the registration requirements are met.

The bill amends §22-30-6 to require regulated ASTs to be evaluated by a qualified individual (as defined in the bill), and to require owners and operators of ASTs to submit certifications of that evaluation

to DEP. Initial certifications of evaluation must be completed within 180 days of the effective date of the rules promulgated by DEP. These evaluations are no longer required to be done annually, and the bill now permits DEP to set the timeline for subsequent review by legislative rule, but provides that the time in between evaluations may be no less than one year.

In §22-30-7, the provisions concerning financial responsibility are modified to limit the applicability of the section to owners and operators of regulated ASTs, and it gives the secretary of DEP authority to determine which bonds and other guarantees of performance satisfy the requirements of this section, which generally requires evidence of adequate financial resources to undertake any necessary corrective action. With respect to corrective action, §22-30-8 is amended to eliminate the requirement that the operator or owner of an AST develop a "preliminary corrective action plan" considering the types of fluids and tanks. Further, the Secretary of DEP is authorized to use money from the Protect Our Water Fund to undertake corrective action in the event of an actual release from an AST.

The requirement to prepare and submit a spill prevention and response plan, or SPRP, as required by §22-30-9, is limited to regulated ASTs, and may be submitted for a facility or location. SPRPs must be submitted no less frequently than every five years, a change from the three year submission timetable under current law, unless an event occurs that requires updating sooner. The bill modifies the specific contents of the SPRP as well, and the requirements that these plans be site-specific and developed in consultation with the Bureau for Public Health are removed. In lieu of an SPRP meeting these requirements, AST owners or operators may certify that their AST is subject to a groundwater protection plan or spell prevention control and countermeasures plan, and such plan must be made available for review by the Secretary of DEP. §22-30-10 directs owners and operators of regulated ASTs to give notice to the applicable public water system and relevant emergency response organizations of the contents of the ASTs, as well as provide the location of the Safety Data Sheets associated with the stored fluids. An alternative disclosure method is also provided. In both cases, the information provided is protected from disclosure under §22-30-14, which addresses public access to information provided under this article. §22-30-11 permits the signage required under the Act to be "displayed nearby." Minor changes are made to §22-30-12 to provide for the collection of an annual operating fee in addition to an initial registration fee.

The bill modifies the section, §22-30-13, that creates the Protect Our Water Fund. This section has been amended to allow monies from this fund to be expended to address "releases" from ASTs, and not merely leaks, and to limit the applicability of the section to regulated ASTs, rather than all ASTs. A cap is placed on the contents of the fund, and thereby the fees that can be collected, of $1 million at the end of three years, and $1 million in the aggregate thereafter.

The provisions of §22-30-14, addressing public access to information, are modified to restrict public access to information designated by the Division of Homeland Security and Emergency Management as restricted from public access, including trade secrets and proprietary business information, and requires that such information be "secured and safeguarded" by the department. A criminal misdemeanor penalty for unauthorized disclosure is added that carries penalties of up to 1 year in prison and a $5,000 fine if convicted. If there is a release into the waters of the State that could affect a public water supply, information about the release must be promptly made available to emergency responders.

In §22-30-15, the bill changes the inspection schedule, providing that "level 1" ASTs be inspected at least once every five years, and that a schedule for inspection of "level 2" ASTs be established by legislative rule. In §22-30-16, authority is given to the Environmental Quality Board to stay orders entered by the

Secretary of DEP alleging violations of the Act. Appeal to the Environmental Quality Board is authorized, pursuant to §22-30-18, to challenge any "action, decision or order of the secretary," whereas current law allows for appeals only from an "order."

Civil and criminal penalties are modified in §22-30-17. First, the language in the section is amended to refer to "certificates to operate" rather than "permits." Similar changes are made in §22-30-24. The misdemeanor for "knowingly and intentionally violat[ing] any provision of this article" is expanded to also cover violation of "any rule or order issued under or subject to the provisions of this article," while felony charges are reserved only for subsequent willful violations. A person cannot be subject to criminal prosecution for pollution when carrying out a corrective action plan approved by the secretary of DEP. Finally, civil penalties collected may be deposited either in the Protect Our Water Fund or in the AST Administrative Fund. Technical changes are made to §22-30-19, which addresses duplicative enforcement.

In §22-30-21, the bill directs the Division of Homeland Security and Emergency Management, rather than the Secretary of DEP, to coordinate with state and local emergency response agencies to facilitate a coordinated emergency response and incident command. The requirement that the Secretary of DEP coordinate with the State Fire Marshal concerning National Incident Management System Training provisions is eliminated.

§22-30-22 expands the venue in which the Secretary of DEP may bring suit to either the circuit court of the county in which the "imminent and substantial danger exists" or the circuit court of Kanawha County. In the event of such a danger, the Secretary of DEP shall require the owner or operator of the AST to provide immediate notice to appropriate governmental authorities.

The bill amends §22-30-25 to permit the secretary of DEP to designate via legislative rules additional categories of ASTs for which one or more of the requirements of the Act may be waived. Waiver will be permitted only when those categories of ASTs "do not represent a substantial threat of contamination or they are currently regulated under standards that are consistent with the protective standards and requirements set forth in this article." A new section, §22-30-26, which was originally contained in Article 31, provides that any person who holds an NPDES general permit for a facility containing regulated ASTs may be required by the secretary to obtain an individual permit, a change from the current law that makes such individual permit mandatory.

Article 31 of Chapter 22 is substantially repealed. This includes the repeal of §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12. The Public Water System Supply Study Commission initially contained in §22-31-12 has been relocated to §22-31-2, replacing the Act's legislative findings. The composition of the Study Commission is modified, and will now contain three members appointed by the Governor, the designation of the Commissioner of the Bureau for Public Health as chair, the elimination of the nonvoting members appointed by the President of the Senate and the Speaker of the House, the inclusion of two representatives designated by the Business Industry Council, and one representative designated by the West Virginia Rivers Coalition. The Study Commission shall terminate on June 30, 2019.

CODE REFERENCE: West Virginia Code §16-1-9f and §22-30-26 – new; §22-30-2, §22-30-3, §22-30-4, §22-30-5, §22-30-6, §22-30-7, §22-30-8, §22-30-9, §22-30-10, §22-30-11,§22-30-12, §22-30-13, §22-30-14, §22-30-15, §22-30-16,§22-30-17,§22-30-18, §22-30-19, §22-30-21, §22-30-22, §22-30-24,§22-30-25

and §22-31-2 – amended; §22-31-3, §22-31-4, §22-31-5, §22-31-6, §22-31-7, §22-31-8, §22-31-9, §22-31-10, §22-31-11 and §22-31-12 – repealed

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 27, 2015

Senate Bill 489

Imposing statute of limitations on civil actions derived from surveying of real property

The bill adds actions relating to the actual surveying of real property to the 10-year statute of repose on actions for damages arising from activities related to improvements to real property.

CODE REFERENCE: West Virginia Code §55-2-6a – amended

DATE OF PASSAGE: March 10, 2015

EFFECTIVE DATE: June 8, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

Senate Bill 578

Relating to occupational disease claims

Under current law, the claimant, the employer and the Workers' Compensation Commission, other private insurance carriers and self-insured employers, whichever is applicable, may negotiate a final settlement of any and all issues in a claim, wherever the worker's compensation claim is in the administrative or appellate processes, except for medical benefits for nonorthopedic occupational disease claims. This bill removes the exception for settlements of medical benefits for nonorthopedic occupational disease claims, which would permit the negotiation of final settlements of all components of worker's compensation claims, permitting settlements of medical benefits for nonorthopedic occupational disease claims, including settlements of occupational pneumoconiosis claims. The bill requires that a claimant in a settlement of medical benefits for a nonorthopedic occupational disease claims be represented by legal counsel.

The bill specifies that the amendments enacted during the current 2015 regular session of the Legislature apply to all settlement agreements executed after the effective date of the legislation.

CODE REFERENCE: West Virginia Code §23-4-8d – amended

DATE OF PASSAGE: March 10, 2015

EFFECTIVE DATE: June 8, 2015

ACTION BY GOVERNOR: Signed March 24, 2015

House Bill 2002

Predicating actions for damages upon principles of comparative fault

This bill changes the law in West Virginia concerning the apportionment of fault in tort actions. It repeals two sections of code. The first, §55-7-13, established a statutory claim for contribution by joint judgment debtors, while §55-7-24 set out the manner in which Courts are to apply joint and several liability to judgment debtors in West Virginia.

Four new sections of code are added by the bill. First, §55-7-13a establishes the modified comparative fault standard by defining the term "comparative fault" as "the degree to which the fault of a person was a proximate cause of an alleged personal injury or death or damage to property, expressed as a percentage" and directs recovery in tort actions to be based on principles of comparative fault whereby the fault and damages should be apportioned "in direct proportion to that person's percentage of fault." In §55-7-13b, a number of terms are defined, including "compensatory damages," "defendant," "fault" and "plaintiff."

§55-7-13c requires in subsection (a) that in any action for damages, liability shall be several, rather than joint, and that each defendant is only liable for the amount of damages in direct proportion to that defendant's percentage of fault. The bill allows joint liability to be imposed when two or more defendants "consciously conspire and deliberately purpose a common plan or design to commit a tortious act or omission."

The procedure for the sitting judge to use in apportioning damages is spelled out in subsection (b), requiring the percentage of fault to be multiplied by the total damages to determine a defendant's maximum liability.

Subsection (c) allows a plaintiff to recover, even if partially at fault, so long as the plaintiff's fault is less than the combined fault of all other persons. An exception to a defendant's maximum liability is provided in subsection (d), which allows a plaintiff who is unable to collect from one of the defendants to file a motion to collect the uncollectible amount from the other defendants, but the defendant's apportionment is limited to his own percentage of fault multiplied by the uncollectible amount. This section also identifies a number of situations in which defendants shall continue to be jointly and severally liable, and a number of sections of Code to which this provision does not apply.

Finally, in §55-7-13d, the bill spells out, in subsection (a), how fault is to be determined. In particular, the bill requires that the fault of all persons who contributed be considered, regardless of whether the person was or could have been named as a party to the litigation. Under certain circumstances the fault of a nonparty can be considered, such as if the plaintiff entered into a settlement agreement with the nonparty or if a defendant gives notice identifying that nonparty. If a nonparty is assessed fault, or if a plaintiff has settled with a nonparty, then the plaintiff's possible recovery is reduced by that percentage. The subsection clarifies that assignments of fault for nonparties are not binding in subsequent actions. Special interrogatories are to be used by the triers of fact to determine fault.

In subsection (b), the bill clarifies that a party may still be held liable for another person's fault if that person was acting as an agent of the party or by any other applicable provision of statutory or common law. Subsection (c) provides that a defendant is not liable for damage suffered by a plaintiff in the commission of, or while attempting to flee from the commission of, a felony criminal act, so long as the plaintiff has been convicted or the jury makes a finding that the plaintiff committed the felony. The burden

of proof established in subsection (d) rests with the person seeking to establish fault. Subsection (e) clarifies that no independent cause of action is created by this section.

CODE REFERENCE: West Virginia Code §55-7-13 and §55-7-24 – repealed; §55-7-13a, §55-7-13b, §55-7-13c and §55-7-13d – new

DATE OF PASSAGE: February 24, 2015

EFFECTIVE DATE: May 25, 2015

ACTION BY GOVERNOR: Signed March 5, 2015

House Bill 2011

Relating to disbursements from the Workers' Compensation Fund where an injury is self inflicted or intentionally caused by the employer

This bill amends West Virginia's deliberate intent statute in an effort to clarify and clearly articulate the liability standards applicable to such a claim.

Subsection (a) adds additional specificity to the provisions permitting an employer to require an employee to undergo a blood test to determine if he or she is intoxicated by establishing a drug and alcohol testing procedure. The test must be a blood test and, if an employee tests positive as defined, then the intoxication is deemed the proximate cause of any injury.

The bill modifies subsection (c) by bifurcating the provisions related to employee injury from those related to employee death and lays out the specific rights to recovery in each case. A new provision is added to require that, unless good cause is shown, the employee or his or her representative file a claim for workers' compensation benefits.

In subsection (d), which spells out the specific factual findings that must be shown for an employer to lose the immunity provided under the workers' compensation code, the bill clarifies and adds to these findings. With respect to the second of the five findings, that the employer had actual knowledge of the specific unsafe working condition, the bill adds the requirement that actual knowledge be specifically proven by the employee or individual seeking to recover and sets forth the manner in which such actual knowledge can and cannot be proven. To satisfy the third element, the bill lays out the evidentiary standards for showing that the specific unsafe working condition was a violation of a safety statute, rule or regulation, or of a commonly accepted and well-known safety standard within the industry or business. Clarifying language is added to the fourth finding to ensure that the employer being sued under the deliberate intent exemption must be a person who has "actual knowledge" as required by the second of the five findings.

The bill also modifies the fifth of the findings in subsection (d), which requires a showing that the employee suffered "serious compensable injury or compensable death . . . as a direct and proximate result of the specific unsafe working condition." New language limits the factual circumstances supporting this finding to four:

- The injury results in a permanent physical and/or psychological impairment of at least thirteen percent, or that otherwise causes permanent serious disfigurement, permanent loss or significant impairment of a bodily function, or objectively verifiable dermatomal radiculopathy;
- The injury, as verified by a written certification by a licensed physician, is likely to result in death within eighteen months or less from the date of the filing of the complaint;
- The injury causes permanent serious disfigurement, permanent loss or significant impairment of a bodily function, or objectively verifiable dermatomal radiculopathy; or
- In the case of occupational pneumoconiosis claims, a verification from a board certified pulmonologist must be submitted showing that the employee is suffering from complicated pneumoconiosis or pulmonary massive fibrosis that has caused pulmonary impairment of at least fifteen percent, as confirmed by valid and reproducible ventilatory testing.

Certain procedural requirements for making a deliberate intent claim are also provided, including filing a verified statement from a person with "knowledge and expertise of the workplace safety statutes, rules, regulations and consensus industry safety standards" applicable to the particular injury. The employer may request, and the court must duly consider, a request to bifurcate discovery related to liability from that related to damages.

Finally, in subsection (e), the bill provides that venue is appropriate in the circuit court of the county where the alleged injury occurred, or in the circuit court of the county where the employer has its principal place of business.

CODE REFERENCE: West Virginia Code §23-4-2 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

House Bill 2201

Requiring the Public Service Commission to adopt certain net metering and interconnection rules and standards

This bill amends the net metering provisions remaining in Chapter 24, Article 2F the code following the enactment of H.B. 2001, which repealed all of Article 2F except for section eight. The bill defines three new terms: "net metering," "customer-generator" and "cross- subsidization." Subsection (d) requires that the Public Service Commission (PSC), in adopting rules concerning electric utilities providing rebates or discounts for customer-generated electricity, ensure that any net metering tariff does not create a cross-subsidization between customers within one class of service.

Subsection (g) requires electric utilities to offer net metering to customer-generators that generate electricity on the customer-generator side of the meter. This net metering is to be offered on a first-come, first-served basis, and the total generation capacity is capped at three percent of the electric utility aggregate customer peak demand in the state during the previous year of which one-half percent is reserved for residential customer-generators.

Subsection (h) directs the PSC to adopt a rule requiring compliance with the National Electrical Code and the Institute of the Electrical and Electronics Engineers (IEEE), including having a disconnect readily available to utility lineworkers.

CODE REFERENCE: West Virginia Code §24-2F-8 – amended

DATE OF PASSAGE: February 28, 2015

EFFECTIVE DATE: February 28, 2015

ACTION BY GOVERNOR: Signed March 12, 2015

House Bill 2233

Requiring that legislative rules be reviewed five years after initial approval by the Legislative Rule-Making Review Committee and the Legislative Auditor's Office

This bill requires the Legislative Rule-Making Review Committee, with the assistance of the Legislative Auditor, to review any rule promulgated after January 1, 2015, within five years of its effective date. The LRMRC is to make recommendations to the Legislature for amendment or repeal of any rule. The LRMRC is to determine whether or not a rule is achieving its purpose and whether it should be eliminated, continued or amended. The LRMRC and the Legislative Auditor's Office are to submit their findings and recommendations to the Joint Committee on Government and Finance.

CODE REFERENCE: West Virginia Code §29A-3-16 – amended

DATE OF PASSAGE: March 14, 2015

EFFECTIVE DATE: June 12, 2015

ACTION BY GOVERNOR: Signed March 31, 2015

Prepared by the West Virginia Senate – Charleston, West Virginia