

FILED

2004 MAR 25 P 4: 11

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 2004



ENROLLED

COMMITTEE SUBSTITUTE
FOR
House Bill No. 4491

(By Delegates Frederick, Caputo, Kuhn,
Varner, Pethtel, Stemple and Kominar)



Passed March 10, 2004

In Effect Ninety Days from Passage

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H. B. 4491

(BY DELEGATES FREDERICK, CAPUTO, KUHN,
VARNER, PETHTEL, STEMPLER AND KOMINAR)

[Passed March 10, 2004; in effect ninety days from passage.]

AN ACT to amend and reenact §22A-1-8, §22A-1-9, §22A-1-11, §22A-1-12 and §22A-1-13 of the code of West Virginia, 1931, as amended, all relating to mine inspectors and instructors employed by the office of miners' health, safety and training; regions and districts; and qualifications, examinations, appointments, salaries, expense reimbursements, tenure and removal of mine safety instructors, electrical inspectors and mine inspectors.

Be it enacted by the Legislature of West Virginia:

That §22A-1-8, §22A-1-9, §22A-1-11, §22A-1-12 and §22A-1-13 of the code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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

§22A-1-8. Mine inspectors; regions and districts; employment; tenure; oath.

1 Notwithstanding any other provisions of this code to the
2 contrary, mine inspectors shall be selected, serve and be
3 removed as provided in this article.

4 The director shall divide the state into a sufficient number
5 of regions, so as to equalize, as far as practical, the work of
6 each inspector. The director may assign inspectors to districts
7 and may designate and assign not more than one inspec-
8 tor-at-large and one assistant inspector-at-large to each region.
9 The director may designate the places of abode of inspectors at
10 points convenient to the mines of their respective districts, and,
11 in the case of inspectors-at-large and assistant inspec-
12 tors-at-large, their respective regions.

13 All mine inspectors appointed after the mine inspectors'
14 examining board has certified to the director an adequate
15 register of qualified eligible candidates, so long as the register
16 contains the names of at least three qualified eligible candi-
17 dates, shall be appointed from the names on such register. Each
18 original appointment shall be made by the director for a
19 probationary period of not more than one year.

20 The director shall make each appointment from among the
21 three qualified eligible candidates on the register having the
22 highest grades: *Provided*, That the director may, for good cause,
23 at least thirty days prior to making an appointment, strike any
24 name from the register. Upon striking any name from the
25 register, the director shall immediately notify in writing each
26 member of the mine inspectors' examining board of the action,
27 together with a detailed statement of the reasons therefor.
28 Thereafter, if the mine inspectors' examining board finds, after
29 hearing, that the action of the director was arbitrary or unrea-
30 sonable, it may then order the name of any candidate so stricken

31 from the register to be reinstated thereon. The reinstatement is
32 effective from the date of removal from the register.

33 The name of any candidate passed over for appointment for
34 three years shall be deleted from the register.

35 After having served for a probationary period of one year
36 to the satisfaction of the director, a mine inspector has perma-
37 nent tenure, subject to dismissal only for cause in accordance
38 with the applicable provisions of section twelve of this article.
39 No mine inspector, while in office, may be directly or indirectly
40 interested as an employee, owner, lessor, operator, stockholder,
41 superintendent or engineer of any coal mine. Before entering
42 upon the discharge of the duties as a mine inspector, he or she
43 shall take the oath of office prescribed by section 5, article IV
44 of the constitution of West Virginia, a certificate of which oath
45 shall be filed in the office of the secretary of state.

46 The inspectors, inspectors-at-large and assistant inspec-
47 tors-at-large, together with the director, shall make all inspec-
48 tions authorized by this article and article two of this chapter
49 and shall perform such other duties as are imposed upon mine
50 inspectors by this chapter and by any applicable legislative
51 rules.

**§22A-1-9. Mine safety instructors; eligibility; qualifications;
examinations; salary; provisions relating to
underground mine inspectors applicable to mine
safety instructors.**

1 (a) The office shall employ a sufficient number of mine
2 safety instructors as the director determines to be reasonably
3 necessary in fully and effectively carrying out the applicable
4 provisions of this chapter.

5 (b) To be eligible for employment as a mine safety instruc-
6 tor, the applicant shall be: (1) A citizen of West Virginia, in

7 good health, not less than twenty-four years of age, of good
8 character and reputation, and of temperate habits; (2) a person
9 who has had at least five years of practical experience in coal
10 mines, at least two years of which has been in mines in this
11 state: *Provided*, That graduation from any accredited college of
12 mining engineering may be considered equivalent to two years
13 of practical experience; (3) a person who has had practical
14 experience with dangerous gases found in coal mines, and who
15 has a good theoretical and practical knowledge of mines,
16 mining methods, mine ventilation, sound safety practices and
17 applicable mining laws and rules; and (4) a person who
18 possesses a West Virginia foreman-fireboss certification; or a
19 person who has had at least three years of experience as an
20 actual working team member of a mine rescue team, or at least
21 three years of experience as a member of a first aid team or
22 emergency medical technician team; or a person who has had
23 at least three years of experience as the safety director, or the
24 equivalent as approved by the mine inspectors' examining
25 board, of a mine; or a person who has had at least three years of
26 experience as an active member of a mine safety committee.
27 For the purpose of this section, practical experience means the
28 performance of normal mining duties requiring a person to hold
29 a certificate of competency and qualification as an experienced
30 miner prior to actually performing such duties.

31 (c)(1) In order to qualify for appointment as a mine safety
32 instructor, an eligible applicant shall submit to written, oral and
33 practical examinations administered by the mine inspectors'
34 examining board and furnish evidence of good health, character
35 and other facts establishing eligibility as the board may require.
36 The examinations shall relate to the duties to be performed by
37 a mine safety instructor and, subject to the approval of the mine
38 inspectors' examining board, may be prepared by the director.

39 (2) If the board finds after investigation and examination
40 that an applicant: (A) Is eligible for appointment; and (B) has

41 passed each required examination with a grade of at least
42 seventy-five percent or an overall combined average score of
43 eighty percent, the board shall add the applicant's name and
44 grades to the register of qualified eligible candidates and
45 promptly certify its action in writing to the director. The
46 director shall then appoint one of the candidates from the three
47 having the highest grades.

48 (d) Mine safety instructors shall be paid an annual salary of
49 not less than thirty-seven thousand four hundred dollars, which
50 shall be fixed by the director, who shall take into consideration
51 ability, performance of duty and experience. Mine safety
52 instructors shall devote all of their time to the duties of the
53 office.

54 (e) Except as expressly provided in this section to the
55 contrary, all provisions of this article relating to the eligibility,
56 qualification, appointment, tenure and removal of underground
57 mine inspectors, as well as those provisions relating to compen-
58 satory time and reimbursement for necessary expenses, are
59 applicable to mine safety instructors.

**§22A-1-11. Employment of electrical inspectors; eligibility;
qualifications; examinations; salary; provisions
relating to underground mine inspectors applica-
ble to electrical inspectors.**

1 (a) The office shall employ a sufficient number of electrical
2 inspectors as the director determines to be reasonably necessary
3 in fully and effectively carrying out the applicable provisions of
4 this chapter.

5 (b) To be eligible for employment as an electrical inspector,
6 the applicant shall be: (1) A citizen of West Virginia, in good
7 health, not less than twenty-four years of age, of good character
8 and reputation, and of temperate habits; and (2) a person who
9 has had five years of practical electrical experience in coal

10 mines, at least two of which were in mines in this state, or a
11 degree in electrical engineering from an accredited electrical
12 engineering school and three years of practical electrical
13 experience in underground coal mining. For the purposes of this
14 section, practical electrical experience means the performance
15 of duties requiring a person to be a certified electrician, as that
16 term is defined in subdivision (2), subsection (d), section two
17 of this article, prior to actually performing such duties.

18 (c)(1) In order to qualify for appointment as an electrical
19 inspector, an eligible applicant shall submit to written, oral and
20 practical examinations administered by the mine inspectors'
21 examining board and furnish evidence of good health, character
22 and other facts establishing eligibility as the board may require.
23 The examinations shall relate to the duties to be performed by
24 an electrical inspector and, subject to approval of the mine
25 inspectors' examining board, may be prepared by the director.

26 (2) If the board finds after investigation and examination
27 that an applicant: (A) Is eligible for appointment; and (B) has
28 passed the required examinations with an average grade of at
29 least ninety percent, the board shall add the applicant's name
30 and grades to the register of qualified eligible candidates and
31 promptly certify its action in writing to the director. The
32 director shall then appoint one of the candidates from the three
33 having the highest grades.

34 (d) Electrical inspectors shall be paid an annual salary of
35 not less than forty-two thousand eight hundred twenty-eight
36 dollars, which shall be fixed by the director, who shall take into
37 consideration ability, performance of duty and experience.
38 Electrical inspectors shall devote all of their time to the duties
39 of the office.

40 (e) Except as expressly provided in this section to the
41 contrary, all provisions of this article relating to the eligibility,

42 qualifications, appointment, tenure and removal of underground
43 mine inspectors, as well as those provisions relating to compen-
44 satory time and reimbursement for necessary expenses, are
45 applicable to mine electrical inspectors.

**§22A-1-12. Employment of underground mine inspectors; eligi-
bility; qualifications; examinations; salary and
expenses; reinstatement; removal.**

1 (a) The office shall employ as many underground mine
2 inspectors as the director determines to be reasonably necessary
3 in fully and effectively carrying out the applicable provisions of
4 this chapter.

5 (b) To be eligible for employment as a mine inspector the
6 applicant shall be: (1) A citizen of West Virginia, in good
7 health, not less than twenty-four years of age, of good character
8 and reputation and of temperate habits; (2) a person who has
9 had at least five years of practical experience in coal mines, at
10 least two years of which have been in mines of this state:
11 *Provided*, That graduation from any accredited college of
12 mining engineering may be considered the equivalent of two
13 years of practical experience; (3) a person who has had practical
14 experience with dangerous gases found in coal mines; and (4)
15 a person who has a good theoretical and practical knowledge of
16 mines, mining methods, mine ventilation, sound safety prac-
17 tices and applicable mining laws and rules. For the purpose of
18 this section, practical experience means the performance of
19 normal mining duties requiring a person to hold a certificate of
20 competency and qualification as an experienced underground
21 miner prior to actually performing such duties.

22 (c) In order to qualify for appointment as an underground
23 mine inspector, an eligible applicant shall submit to written,
24 oral and practical examinations administered by the mine
25 inspectors' examining board and furnish evidence of good

26 health, character and other facts establishing eligibility as the
27 board may require. The examinations shall relate to the duties
28 to be performed by an underground mine inspector and, subject
29 to the approval of the mine inspectors' examining board, may
30 be prepared by the director. If the board finds after investigation
31 and examination that an applicant: (1) Is eligible for appoint-
32 ment; and (2) has passed each required examination, with a
33 grade of at least seventy-five percent or an overall combined
34 average score of eighty percent, the board shall add
35 the applicant's name and grades to the register of qualified
36 eligible candidates and promptly certify its action in writing to
37 the director. The director shall then appoint one of the candi-
38 dates from the three having the highest grades.

39 (d) Underground mine inspectors shall be paid an annual
40 salary of not less than thirty-eight thousand one hundred sixty
41 dollars; assistant inspectors-at-large, not less than forty-four
42 thousand four hundred forty-eight dollars; inspectors-at-large,
43 not less than forty-six thousand one hundred four dollars, each
44 of which shall be fixed by the director, who shall take into
45 consideration ability, performance of duty, and experience. In
46 accordance with established rules of the state's travel manage-
47 ment office, underground mine inspectors shall also be allowed
48 and paid expenses necessarily incident to the performance of
49 their official duties: *Provided*, That no reimbursement for
50 expenses may be made other than upon the timely submittal of
51 a properly itemized expense account settlement completed by
52 the underground mine inspector, approved and countersigned
53 by the director, or his or her designated representative, verify-
54 ing that the expenses were actually incurred in the performance
55 of official duties. Underground mine inspectors shall devote all
56 of their time to the duties of the office and shall be afforded
57 compensatory time or compensation of at least the regular rate
58 for all time in excess of forty hours per week.

59 (e)(1) An underground mine inspector, after having
60 received a permanent appointment, may be removed from
61 office only for physical or mental impairment, incompetency,
62 neglect of duty, public intoxication, malfeasance in office or
63 other similarly good cause.

64 (2) Proceedings for the removal of an underground mine
65 inspector may be initiated by the director whenever there is
66 reasonable cause to believe that adequate cause exists, warrant-
67 ing removal. The proceeding may be initiated by a verified
68 petition, filed with the mine inspectors' examining board by the
69 director, setting forth with particularity the facts alleged. Not
70 less than twenty reputable citizens, who are operators or
71 employees in mines in this state, may petition the director for
72 the removal of an underground mine inspector. If the petition is
73 verified by at least one of the petitioners, based on actual
74 knowledge of the affiant of the alleged facts, which, if true,
75 warrant the removal of the inspector, the director shall cause an
76 investigation of the alleged facts to be made. If, after the
77 investigation, the director finds that there is substantial evi-
78 dence, which, if true, warrants removal of the inspector, the
79 director shall file a petition with the board requesting removal
80 of the inspector.

81 (3) On receipt of a petition by the director seeking removal
82 of an underground mine inspector, the board shall promptly
83 notify the inspector to appear before it at a time and place
84 designated in the notice, which time shall be not less than
85 fifteen days thereafter. There shall be attached to the copy of
86 the notice served upon the inspector a copy of the petition filed
87 with the board.

88 (4) At the time and place designated in the notice, the board
89 shall hear all evidence offered in support of the petition and on
90 behalf of the inspector. Each witness shall be sworn, and a
91 transcript shall be made of all evidence taken and proceedings

92 had at the hearing. No continuance may be granted except for
93 good cause shown. The chair of the board and the director have
94 power to administer oaths and subpoena witnesses.

95 (5) If any mine inspector against whom a petition has been
96 filed willfully refuses or fails to appear before the board, or
97 having appeared, refuses to answer under oath any relevant
98 question on the basis that the testimony or answer might
99 incriminate him or her or refuses to waive immunity from
100 prosecution because of any relevant matter about which the
101 inspector may be asked to testify, then the inspector shall forfeit
102 his or her position.

103 (6) If, after hearing, the board finds that the inspector
104 should be removed, it shall enter an order to that effect. The
105 decision of the board is final and is not subject to judicial
106 review.

**§22A-1-13. Employment of surface mine inspectors; eligibility;
qualifications; examinations; salary; provisions
relating to underground mine inspectors applica-
ble to surface mine inspectors.**

1 (a) The office shall employ as many surface mine inspec-
2 tors as the director determines to be reasonably necessary in
3 fully and effectively carrying out the applicable provisions of
4 this chapter.

5 (b) To be eligible for employment as a surface mine
6 inspector the applicant shall be: (1) A citizen of West Virginia,
7 in good health, not less than twenty-four years of age, of good
8 character and reputation and of temperate habits; (2) a person
9 who has had at least five years of practical experience in coal
10 mines, at least two years of which have been in surface mines
11 in this state: *Provided*, That graduation from any accredited
12 college of mining engineering may be considered the equivalent
13 of two years of practical experience; and (3) a person who has

14 a good theoretical and practical knowledge of surface mines,
15 surface mining methods, sound safety practices and applicable
16 mining laws and rules. For the purpose of this section, practical
17 experience means the performance of normal mining duties
18 requiring a person to hold a certificate of competency and
19 qualification as an experienced surface miner prior to actually
20 performing such duties.

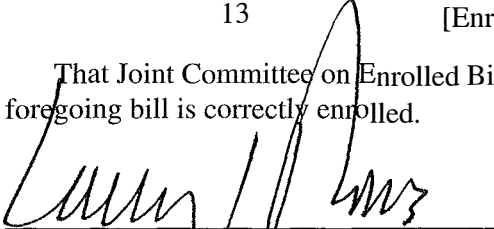
21 (c)(1) In order to qualify for appointment as a surface mine
22 inspector, an eligible applicant shall submit to written, oral and
23 practical examinations administered by the mine inspectors'
24 examining board and furnish evidence of good health, character
25 and other facts establishing eligibility as the board may require.
26 The examinations shall relate to the duties to be performed by
27 a surface mine inspector and, subject to the approval of the
28 mine inspectors' examining board, may be prepared by the
29 director.

30 (2) If the board finds after investigation and examination
31 that an applicant is: (A) Eligible for appointment; and (B) has
32 passed each required examination with a grade of at least
33 seventy-five percent, or an overall combined average score of
34 eighty percent, the board shall add the applicant's name and
35 grades to the register of qualified eligible candidates and
36 promptly certify its action in writing to the director. The
37 director shall then appoint one of the candidates from the three
38 having the highest grades.

39 (d) Surface mine inspectors shall be paid an annual salary
40 of not less than thirty-seven thousand three hundred thirty-two
41 dollars, which shall be fixed by the director, who shall take into
42 consideration ability, performance of duty, and experience.
43 Surface mine inspectors shall devote all of their time to the
44 duties of the office.

45 (e) Except as expressly provided in this section to the
46 contrary, all provisions of this article relating to the eligibility,
47 qualification, appointment, tenure, and removal of underground
48 mine inspectors, as well as those provisions relating to compen-
49 satory time and reimbursement for necessary expenses, are
50 applicable to surface mine inspectors.

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



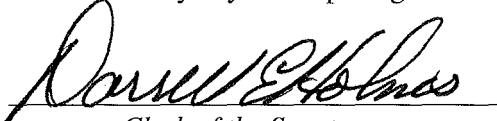
Chairman Senate Committee



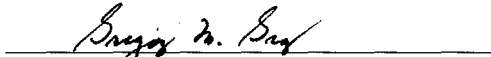
Chairman House Committee

Originating in the House.

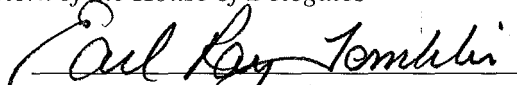
In effect ninety days from passage.



Clerk of the Senate



Clerk of the House of Delegates



President of the Senate



Speaker of the House of Delegates

The within is approved this the 25th
day of March, 2004.



Governor

PRESENTED TO THE

GOVERNOR

DATE

3/19/04

TIME

3:00 pm

