

2011 MAR 18 PM 3:42

OFFICE OF THE CLERK
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
FIRST REGULAR SESSION, 2011

—●—
ENROLLED

**COMMITTEE SUBSTITUTE
FOR
House Bill No. 2955**

(By Delegates Caputo and Barker)

—●—
Passed March 12, 2011

In Effect Ninety Days From Passage

HB 2955 (veto)

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

H. B. 2955

(BY DELEGATES CAPUTO AND BARKER)

[Passed March 12, 2011; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-13BB-1, §11-13BB-2, §11-13BB-3, §11-13BB-4, §11-13BB-5, §11-13BB-6, §11-13BB-7, §11-13BB-8, §11-13BB-9, §11-13BB-10, §11-13BB-11, §11-13BB-12 and §11-13BB-13; to amend and reenact §22-3-7, §22-3-8 and §22-3-19 of said code; to amend and reenact §22A-1-4 of said code; and to amend and reenact §22A-11-3 of said code, all relating to environmental resources; to providing a tax credit for purchase of innovative mine safety technology; legislative findings and purpose; definitions; requirements for list of approved innovative mine safety technology; amount of tax credit allowed; criteria for qualified investment; forfeiture of unused tax credits; treatment for transfer of certified eligible safety property to successors; setting forth requirements for identification of investment credit

property; prescribing treatment for failure to keep records of certified eligible safety property; specifying tax credit review and accountability requirements; specifying requirement for disclosure of tax credits; authorizing rules; surface coal mining and reclamation act; and fees assessed to coal mining operators by the Division of Mining and Reclamation; amending the duties of the Director of the West Virginia Office of Miners' Health, Safety and Training; and amending the duties of the Mine Safety Technology Task Force.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §11-13BB-1, §11-13BB-2, §11-13BB-3, §11-13BB-4, §11-13BB-5, §11-13BB-6, §11-13BB-7, §11-13BB-8, §11-13BB-9, §11-13BB-10, §11-13BB-11, §11-13BB-12, §11-13BB-13 and §11-13BB-14; that §22-3-7, §22-3-8 and §22-3-19 of said code be amended and reenacted; that §22A-1-4 of said code be amended and reenacted; and that §22A-11-3 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 13BB. WEST VIRGINIA INNOVATIVE MINE SAFETY TECHNOLOGY TAX CREDIT ACT.

§11-13BB-1. Short title.

1 This article may be cited as the "West Virginia
2 Innovative Mine Safety Technology Tax Credit Act".

§11-13BB-2. Legislative findings and purpose.

1 The Legislature finds that the encouragement of new
2 investment in innovative coal mine safety technology in this

3 state is in the public interest and promotes the general welfare
4 of the people of this state.

§11-13BB-3. Definitions.

1 (a) Any term used in this article has the meaning ascribed
2 by this section, unless a different meaning is clearly required
3 by the context of its use or by definition in this article.

4 (b) For purposes of this article, the term:

5 (1) “Certified eligible safety property” means eligible
6 safety property in which an eligible taxpayer has made
7 qualified investment for which credit has been certified under
8 this article.

9 (2) “Coal mining company” means:

10 (A) Any person subject to tax imposed on the severance
11 of coal by section three, article thirteen-a of this chapter, or

12 (B) Any person working as a contract miner of coal,
13 which mines coal in this state, under contract with a person
14 subject to tax imposed on the severance of coal by section
15 three, article thirteen-a of this chapter.

16 (3) “Director” means the Director of the Office of
17 Miners’ Health, Safety and Training or West Virginia Office
18 of Miners’ Health, Safety and Training established under
19 article one, chapter twenty two-a of this code.

20 (4) “Eligible safety property” means safety technology
21 equipment, that at the time of acquisition, is on the list of
22 approved innovative mine safety technology.

23 (5) “Eligible taxpayer” means a coal mining company
24 which purchases eligible safety property.

25 (6) “List of approved innovative mine safety technology”
26 means the list required to be compiled and maintained by the
27 Mine Safety Technology Task Force and approved and
28 published by the director under this article.

29 (7) “Office of Miners’ Health, Safety and Training” or
30 “West Virginia Office of Miners’ Health, Safety and
31 Training” means the Office of Miners’ Health, Safety and
32 Training established under article one, chapter twenty two-a
33 of this code.

34 (8) “Person” includes any corporation, limited liability
35 company, or partnership.

36 (9) “Qualified investment” means the eligible taxpayer’s
37 investment in eligible safety property pursuant to a qualified
38 purchase as qualified and limited by section six of this article.

39 (10) “Qualified purchase” means and includes only
40 acquisitions of eligible safety property for use in this state.

41 (A) A lease of eligible safety property may constitute a
42 qualified purchase if the lease was entered into and became
43 effective at a time when the equipment is on the list of
44 approved innovative mine safety technology, and if the
45 primary term of the lease for the eligible safety property is
46 five years or more. Leases having a primary term of less than
47 five years do not qualify.

48 (B) “Qualified purchase” does not include:

49 (i) Purchases or leases of realty or any cost for, or related
50 to, the construction of any building, facility or structure
51 attached to realty;

52 (ii) Purchases or leases of any property not exclusively
53 used in West Virginia;

54 (iii) Repair costs including materials used in the repair,
55 unless for federal income tax purposes, the cost of the repair
56 must be capitalized and not expensed;

57 (iv) Motor vehicles licensed by the Department of Motor
58 Vehicles;

59 (v) Clothing;

60 (vi) Airplanes;

61 (vii) Off-premises transportation equipment;

62 (viii) Leases of tangible personal property having a
63 primary term of less than five years shall not qualify;

64 (ix) Property that is used outside this state; and

65 (x) Property that is acquired incident to the purchase of
66 the stock or assets of an industrial taxpayer, which property
67 was or had been used by the seller in his or her industrial
68 business in this state, or in which investment was previously
69 the basis of a credit against tax taken under any other article
70 of this chapter.

71 (C) Acquisitions, including leases, of eligible safety
72 property may constitute qualified purchases for purposes of
73 this article only if:

74 (i) The property is not acquired from a person whose
75 relationship to the person acquiring it would result in the
76 disallowance of deductions under Section 267 or 707(b) of
77 the United States Internal Revenue Code of 1986, as
78 amended;

79 (ii) The property is not acquired from a related person or
80 by one component member of a controlled group from

81 another component member of the same controlled group.
82 The Tax Commissioner may waive this requirement if the
83 property was acquired from a related party for its then fair
84 market value; and

85 (iii) The basis of the property for federal income tax
86 purposes, in the hands of the person acquiring it, is not
87 determined, in whole or in part, by reference to the federal
88 adjusted basis of the property in the hands of the person from
89 whom it was acquired; or under Section 1014(e) of the
90 United States Internal Revenue Code of 1986, as amended.

91 (11) "Safety technology" means depreciable tangible
92 personal property and equipment, other than clothing,
93 principally designed to directly minimize workplace injuries
94 and fatalities in coal mines.

95 (12) "Taxpayer" means any person subject to any of the
96 taxes imposed by article thirteen-a, twenty-three or twenty-
97 four of this chapter.

§11-13BB-4. List of approved innovative mine safety technology.

1 (a) *List of approved innovative mine safety technology.* --
2 The Mine Safety Technology Task Force, established in
3 section two, article eleven, chapter twenty-two-a of this code,
4 shall annually compile a proposed list of approved innovative
5 mine safety technologies as required by subsection (f),
6 section three, article eleven, chapter twenty-two-a of this
7 code. The list shall be transmitted to the director for
8 approval. The director has thirty days to approve or amend
9 the list. At the expiration of thirty days, the director shall
10 publish the list of approved innovative mine safety
11 technologies. The list shall describe and specifically identify
12 safety equipment for use in West Virginia coal mines which,

13 in the fiscal year when the equipment is added to the list, is
14 not required by the Mine Safety and Health Administration
15 of the United States Department of Labor or the West
16 Virginia Office Of Miners' Health, Safety And Training or
17 any other state or federal agency, to be used in a coal mine or
18 on a mine site or on any other industrial site. Safety
19 equipment shall remain on the list from year to year until the
20 director removes it from the list. The Office of Miners'
21 Health, Safety and Training may establish by legislative rule
22 or interpretive rule a shorter time period for issuance of and
23 updating of the list of approved innovative mine safety
24 technologies.

25 (b) It is the intent of the Legislature that the list of
26 approved innovative mine safety technologies include only
27 safety equipment that is depreciable tangible personal
28 property for federal income tax purposes, which is so new to
29 the industry and so innovative in concept, design, operation
30 or performance that, in the fiscal year when it is added to the
31 list of approved innovative mine safety technologies, the
32 equipment has not yet been adopted by the Federal Mine
33 Safety and Health Administration or the West Virginia Office
34 of Miners Health, Safety and Training or any other state or
35 federal agency as required equipment to be used in a coal
36 mine or on a mine site or on any other industrial site.

37 (c) *Delisting.* -- (1) If any item of equipment or any line
38 of equipment or class of equipment is listed on the list of
39 approved innovative mine safety technologies in any fiscal
40 year, but then is subsequently adopted by the Federal Mine
41 Safety and Health Administration or the West Virginia Office
42 of Mine Safety or any other state or federal agency as
43 required equipment to be used in a coal mine or on a mine
44 site or on any other industrial site, the equipment shall be
45 removed from the list of approved innovative mine safety
46 technologies compiled and issued for the next succeeding

47 periodic issuance thereafter of the list of approved innovative
48 mine safety technologies.

49 (2) If it is determined by the director that any item of
50 equipment or any line of equipment or class of equipment
51 that is listed on the list of approved innovative mine safety
52 technology has ceased to be innovative in concept, design,
53 operation or performance, or is ineffective, or has failed to
54 meet the expectations of the Mine Safety Technology Task
55 Force, or has failed to prove its value in directly minimizing
56 workplace injuries and fatalities in coal mines, the equipment
57 shall be removed from the list of approved innovative mine
58 safety technologies that is compiled and issued for the next
59 succeeding periodic issuance of the list of approved
60 innovative mine safety technologies after the determination
61 has been reached.

62 (3) However, any eligible taxpayer who invested in the
63 equipment as certified eligible safety property during the time
64 the equipment was lawfully listed on the list of approved
65 innovative mine safety technologies, shall not forfeit the
66 credit authorized by this article as a result of the delisting of
67 the equipment under either subdivision (1) or subdivision (2)
68 of this subsection, so long as the requirements of this article
69 are otherwise fulfilled by the taxpayer for entitlement to the
70 credit.

§11-13BB-5. Amount of credit allowed.

1 (a) *Credit allowed* -- For tax years beginning after
2 December 31, 2011, there is allowed to eligible taxpayers a
3 credit against the taxes imposed by articles twenty-three and
4 twenty-four of this chapter. The amount of credit shall be
5 determined as provided in this section.

6 (b) *Amount of credit allowable.* -- The amount of
7 allowable credit under this article is equal to fifty percent of

8 the qualified investment as determined in section six of this
9 article, and shall reduce the business franchise tax imposed
10 under article twenty-three of this chapter and the corporation
11 net income tax imposed under article twenty-four of this
12 chapter, in that order, subject to the following conditions and
13 limitations:

14 (1) The amount of credit allowable is applied over a five-
15 year period, at the rate of one-fifth thereof per taxable year,
16 beginning with the taxable year in which the eligible safety
17 property is first placed in service or use in this state.

18 (2) *Business franchise tax.* -- The credit is applied to
19 reduce the business franchise tax imposed under article
20 twenty-three of this chapter determined after application of
21 the credits against tax provided in section seventeen, article
22 twenty-three of this chapter, but before application of any
23 other allowable credits against tax. The amount of annual
24 credit allowed will not reduce the business franchise tax,
25 imposed under article twenty-three of this chapter, below
26 fifty percent of the amount which would be imposed for the
27 taxable year in the absence of this credit against tax.

28 (3) *Corporation net income tax.* -- After application of
29 subdivision (2) of this subsection, any unused credit is next
30 applied to reduce the corporation net income tax imposed
31 under article twenty-four of this chapter determined before
32 application of any other allowable credits against tax. The
33 amount of annual credit allowed will not reduce corporation
34 net income tax, imposed under article twenty-four of this
35 chapter, below fifty percent of the amount which would be
36 imposed for the taxable year in the absence of this credit
37 against tax.

38 (4) *Pass-through entities.* -- (A) If the eligible taxpayer
39 is a limited liability company, small business corporation or

40 a partnership, then any unused credit after application of
41 subdivisions (2) and (3) of this subsection is allowed as a
42 credit against the taxes imposed by article twenty-four of this
43 chapter on owners of the eligible taxpayer on the conduit
44 income directly derived from the eligible taxpayer by its
45 owners. Only those portions of the tax imposed by article
46 twenty-four of this chapter that are imposed on income
47 directly derived by the owner from the eligible taxpayer are
48 subject to offset by this credit.

49 (B) The amount of annual credit allowed will not reduce
50 corporation net income tax, imposed under article twenty-
51 four of this chapter, below fifty percent of the amount which
52 would be imposed on the conduit income directly derived
53 from the eligible taxpayer by each owner for such taxable
54 year in the absence of this credit against the taxes.

55 (5) Small business corporations, limited liability
56 companies, partnerships and other unincorporated
57 organizations shall allocate any unused credit (after
58 application of subdivisions (2) and (3) of this subsection)
59 among their members in the same manner as profits and
60 losses are allocated for the taxable year; and

61 (6) No credit is allowed under this article against any tax
62 imposed by article twenty-one of this chapter.

63 (c) No carryover to a subsequent taxable year or
64 carryback to a prior taxable year is allowed for the amount of
65 any unused portion of any annual credit allowance. Any
66 unused credit is forfeited.

67 (d) No tax credit is allowed or may be applied under this
68 article until the taxpayer seeking to claim the tax credit has:

69 (1) Filed, with the Office of Miners' Health, Safety and
70 Training, a written application for certification of the
71 proposed tax credit; and

72 (2) Received, from the Office of Miners' Health, Safety
73 and Training, certification of the amount of tax credit to be
74 allocated to the eligible taxpayer.

75 (e) No more than \$2 million of the tax credits allowed
76 under this article shall be allocated by the Office of Miners'
77 Health, Safety and Training during any fiscal year. The
78 Office of Miners' Health, Safety and Training shall allocate
79 the tax credits in the order the applications therefor are
80 received.

81 (f) The total amount of tax credit that may be used in any
82 taxable year by any eligible taxpayer in combination with the
83 owners of the eligible taxpayer under this article may not
84 exceed \$100,000.

85 (g) Applications for certification of the proposed tax
86 credit shall contain such information and be in such detail
87 and in such form as required by the Office of Miners' Health,
88 Safety and Training.

89 (h) The Tax Commissioner may prescribe the forms and
90 schedules as necessary or appropriate for effective, efficient
91 and lawful administration of this article.

92 (i) Notwithstanding the provisions of section five-d,
93 article ten of this chapter, and notwithstanding any other
94 provision of this code, the Tax Commissioner and Office of
95 Miners' Health, Safety and Training may exchange tax
96 information and other information as determined by the Tax
97 Commissioner to be useful and necessary for the effective
98 oversight and administration of the credit authorized pursuant
99 to this article.

§11-13BB-6. Qualified investment.

1 (a) *General.* -- The qualified investment is one hundred
2 percent of the cost for eligible safety property pursuant to a
3 qualified purchase, which is placed in service or use in this
4 state by the eligible taxpayer during the tax year.

5 (b) *Placed in service or use.*-- For purposes of the credit
6 allowed by this article, property is considered placed in
7 service or use in the earlier of the following taxable years:

8 (1) The taxable year in which, under the taxpayer's
9 depreciation practice, the period for federal income tax
10 depreciation with respect to the property begins; or

11 (2) The taxable year in which the property is placed in a
12 condition or state of readiness and availability for a
13 specifically assigned function.

14 (c) *Cost.* -- For purposes of this article, the cost for
15 eligible safety property pursuant to a qualified purchase is
16 determined under the following rules:

17 (1) *Trade-ins.* -- Cost for eligible safety property will not
18 include the value of property given in trade or exchange for
19 eligible safety property pursuant to a qualified purchase;

20 (2) *Damaged, destroyed or stolen property.* -- If eligible
21 safety property is damaged or destroyed by fire, flood, storm
22 or other casualty, or is stolen, then the cost for replacement
23 of the eligible safety property, will not include any insurance
24 proceeds received in compensation for the loss;

25 (3) *Rental property.* -- The cost for eligible safety
26 property acquired by lease for a term of at least five years or

27 longer is one hundred percent of the rent reserved for the
28 primary term of the lease, not to exceed ten years; and

29 (4) *Property purchased for multiple use.* -- Any cost of
30 acquisition of property that is not principally and directly
31 used to minimize workplace injuries and fatalities in a coal
32 mine does not qualify as qualified investment for purposes of
33 this article.

§11-13BB-7. Forfeiture of unused tax credits.

1 *Disposition of property or cessation of use.* -- If during
2 any taxable year, property with respect to which a tax credit
3 has been allowed under this article:

4 (1) Is disposed of prior to the end of the fourth tax year
5 subsequent to the end of the tax year in which the property
6 was placed in service or use; or

7 (2) Ceases to be used in a coal mine of the eligible
8 taxpayer in this state prior to the end of the fourth tax year
9 subsequent to the end of the tax year in which the property
10 was placed in service or use, then the unused portion of the
11 credit allowed for such property is forfeited for the tax year
12 in which the disposition or cessation of use occurred and all
13 ensuing years.

§11-13BB-8. Transfer of certified eligible safety property to successors.

1 (a) *Mere change in form of business.* -- Certified eligible
2 safety property may not be treated as disposed of under
3 section seven of this article, by reason of a mere change in
4 the form of conducting the business as long as the certified
5 eligible safety property is retained in a business in this state
6 for use in a coal mine in West Virginia, and the taxpayer

7 retains a controlling interest in the successor business. In this
8 event, the successor business is allowed to claim the amount
9 of credit still available with respect to the certified eligible
10 safety property transferred, and the taxpayer (transferor) may
11 not be required to forfeit the credit for the years remaining at
12 the time of transfer in the original five year credit period.

13 (b) *Transfer or sale to successor.* -- Certified eligible
14 safety property will not be treated as disposed of under
15 section seven of this article by reason of any transfer or sale
16 to a successor business which continues to use the certified
17 eligible safety property in a coal mine in West Virginia.
18 Upon transfer or sale, the successor shall acquire the amount
19 of credit that remains available under this article in the
20 original five year credit period for each subsequent taxable
21 year, and the transferor shall not be required to forfeit the
22 credit for subsequent years. Upon transfer or sale, the
23 successor shall acquire the amount of credit that remains
24 available under this article for each taxable year subsequent
25 to the taxable year of the transferor during which the transfer
26 occurred and, for the year of transfer, an amount of annual
27 credit for the year in the same proportion as the number of
28 days remaining in the transferor's taxable year bears to the
29 total number of days in the taxable year and the transferor
30 shall not be required to redetermine the amount of credit
31 allowed in earlier years.

§11-13BB-9. Identification of investment credit property.

1 Every taxpayer who claims credit under this article shall
2 maintain sufficient records to establish the following facts for
3 each item of certified eligible safety property:

4 (1) Its identity;

5 (2) Its actual or reasonably determined cost;

6 (3) Its straight-line depreciation life;

7 (4) The month and taxable year in which it was placed in
8 service;

9 (5) The amount of credit taken; and

10 (6) The date it was disposed of or otherwise ceased to be
11 actively and directly used in a coal mine in this state.

§11-13BB-10. Failure to keep records of certified eligible safety property.

1 A taxpayer who does not keep the records required for
2 certified eligible safety property and the credit authorized
3 under this article, is subject to the following rules:

4 (1) A taxpayer is treated as having disposed of, during the
5 taxable year, any certified eligible safety property which the
6 taxpayer cannot establish was still on hand and used in a coal
7 mine in this state at the end of that year; and

8 (2) If a taxpayer cannot establish when certified eligible
9 safety property reported for purposes of claiming this credit
10 returned during the taxable year was placed in service, the
11 taxpayer is treated as having placed it in service in the most
12 recent prior year in which similar property was placed in
13 service, unless the taxpayer can establish that the property
14 placed in service in the most recent year is still on hand and
15 used in a coal mine in this state at the end of that year. In
16 that event, the taxpayer will be treated as having placed the
17 returned property in service in the next most recent year.

§11-13BB-11. Tax credit review and accountability.

1 (a) Beginning on August 1, 2012, and August 1 of every
2 year thereafter, the Tax Commissioner shall submit to the

3 Governor, the President of the Senate and the Speaker of the
4 House of Delegates a tax credit review and accountability
5 report evaluating the cost of the credit allowed under this
6 article during the most recent period for which information is
7 available. The criteria to be evaluated includes, but is not
8 limited to, for each year:

9 (1) The numbers of taxpayers claiming the credit; and

10 (2) The cost of the credit.

11 (b) Taxpayers claiming the credit shall provide whatever
12 information the Tax Commissioner requires to prepare the
13 report: *Provided*, That the information is subject to the
14 confidentiality and disclosure provisions of sections five-d
15 and five-s, article ten of this chapter. If, in any reporting
16 period under this section, fewer than ten eligible taxpayers
17 have taken or applied for the credit authorized under this
18 article, then no report shall be filed for that reporting period
19 under this section.

§11-13BB-12. Disclosure of tax credits.

1 Notwithstanding section five-d, article ten of this chapter
2 or any other provision in this code to the contrary, the Tax
3 Commissioner shall annually publish in the State Register the
4 name and address of every eligible taxpayer and the amount
5 of any tax credit asserted under this article.

§11-13BB-13. Rules.

1 The Tax Commissioner and the Office of Miners' Health,
2 Safety and Training may each promulgate rules in accordance
3 with article three, chapter twenty-nine-a of this code to carry
4 out the policy and purposes of this article, to provide any
5 necessary clarification of the provisions of this article and to

6 efficiently provide for the general administration of this
7 article.

§11-13BB-14. Termination.

1 The tax credit authorized in this article shall terminate
2 December 31, 2014.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

**ARTICLE 3. SURFACE COAL MINING AND
RECLAMATION ACT.**

**§22-3-7. Notice of intention to prospect, requirements therefor;
bonding; secretary's authority to deny or limit;
postponement of reclamation; prohibited acts;
exceptions.**

1 (a) Any person intending to prospect for coal in an area
2 not covered by a surface-mining permit, in order to determine
3 the location, quantity or quality of a natural coal deposit,
4 making feasibility studies or for any other purpose, shall file
5 with the secretary, at least fifteen days prior to
6 commencement of any disturbance associated with
7 prospecting, a notice of intention to prospect, which notice
8 shall include a description of the prospecting area, the period
9 of supposed prospecting and any other information as
10 required by rules promulgated pursuant to this section:
11 *Provided*, That prior to the commencement of prospecting,
12 the secretary may issue an order denying or limiting
13 permission to prospect where the secretary finds that
14 prospecting operations will damage or destroy a unique
15 natural area, or will cause serious harm to water quality, or
16 that the operator has failed to satisfactorily reclaim other
17 prospecting sites, or that there has been an abuse of
18 prospecting by previous prospecting operations in the area.

19 (b) Notice of intention to prospect shall be made in
20 writing on forms prescribed by the secretary and shall be
21 signed and verified by the applicant. The notice shall be
22 accompanied by: (1) A United States Geological Survey
23 topographic map showing by proper marking the crop line
24 and the name, where known, of the seam or seams to be
25 prospected; (2) a filing fee of \$2000; and (3) a bond, or cash,
26 or collateral securities or certificates of the same type and
27 form and in the same manner as provided in section eleven of
28 this article, in the amount of five hundred dollars per acre or
29 fraction thereof for the total estimated disturbed area. If a
30 bond is used, it shall be payable to the State of West Virginia
31 and conditioned that the operator faithfully perform the
32 requirements of this article as they relate to backfilling and
33 revegetation of the disturbed area.

34 (c) Any person prospecting under the provisions of this
35 section shall ensure that the prospecting operation is
36 conducted in accordance with the performance standards in
37 section thirteen of this article for all lands disturbed in
38 explorations, including excavations, roads, drill holes, and
39 the removal of necessary facilities and equipment.

40 (d) Information submitted to the secretary pursuant to this
41 section as confidential, concerning trade secrets or privileged
42 commercial or financial information, which relates to the
43 competitive rights of the person or entity intended to prospect
44 the described area, is not available for public examination.

45 (e) Any person who conducts any prospecting activities
46 which substantially disturb the natural land surface in
47 violation of this section or rules issued pursuant thereto is
48 subject to the provisions of sections sixteen and seventeen of
49 this article.

50 (f) An operator may not remove more than two hundred
51 fifty tons of coal without the specific written approval of the

52 secretary. Such approval shall be requested by the operator
53 on forms prescribed by the secretary. The secretary shall
54 promulgate rules governing such operations and setting forth
55 information required in the application for approval. Each
56 such application shall be accompanied by a \$2000 filing fee.

57 (g) The bond accompanying said notice of intention to
58 prospect shall be released by the secretary when the operator
59 demonstrates that a permanent species of vegetative cover is
60 established.

61 (h) If an operator desires to mine the area currently being
62 prospected, and has requested and received an appropriate
63 surface mine application (S.M.A.) number, the secretary may
64 permit the postponement of the reclamation of the area
65 prospected. Any part of a prospecting operation, where
66 reclamation has not been postponed as provided above, shall
67 be reclaimed within a period of three months from
68 disturbance.

69 (i) For the purpose of this section, the word "prospect" or
70 "prospecting" does not include core drilling related solely to
71 taxation or highway construction.

§22-3-8. Prohibition of surface mining without a permit; permit requirements; successor in interest; duration of permits; proof of insurance; termination of permits; permit fees.

1 (a) No person may engage in surface mining operations
2 unless he or she has first obtained a permit from the secretary
3 in accordance with the following:

4 (1) All permits issued pursuant to the requirements of this
5 article shall be issued for a term not to exceed five years:
6 *Provided*, That if the applicant demonstrates that a specified

7 longer term is reasonably needed to allow the applicant to
8 obtain necessary financing for equipment and the opening of
9 the operation, and if the application is full and complete for
10 the specified longer term, the secretary may extend a permit
11 for a longer term: *Provided, however,* That subject to the
12 prior approval of the secretary, with the approval being
13 subject to the provisions of subsection (c), section eighteen
14 of this article, a successor in interest to a permittee who
15 applies for a new permit, or transfer of a permit, within thirty
16 days of succeeding to the interest and who is able to obtain
17 the bond coverage of the original permittee, may continue
18 surface mining and reclamation operations according to the
19 approved mining and reclamation plan of the original
20 permittee until the successor's permit application or
21 application for transfer is granted or denied.

22 (2) Proof of insurance is required on an annual basis.

23 (3) A permit terminates if the permittee has not
24 commenced the surface mining operations covered by the
25 permit within three years of the date the permit was issued:
26 *Provided,* That the secretary may grant reasonable extensions
27 of time upon a timely showing that the extensions are
28 necessary by reason of litigation precluding commencement,
29 or threatening substantial economic loss to the permittee, or
30 by reason of conditions beyond the control and without the
31 fault or negligence of the permittee: *Provided, however,* That
32 with respect to coal to be mined for use in a synthetic fuel
33 facility or specific major electric-generating facility, the
34 permittee shall be considered to have commenced surface
35 mining operations at the time the construction of the
36 synthetic fuel or generating facility is initiated.

37 (4) Each application for a new surface mining permit
38 filed pursuant to this article shall be accompanied by a fee of
39 \$3,500. All permit fees and renewal fees provided in this

40 section or elsewhere in this article shall be collected by the
41 secretary and deposited with the Treasurer of the State of
42 West Virginia to the credit of the Operating Permit Fees Fund
43 and shall be used, upon requisition of the secretary, for the
44 administration of this article.

45 (5) Prior to the issuance of any permit, the secretary shall
46 ascertain from the Commissioner of the Division of Labor
47 whether the applicant is in compliance with section fourteen,
48 article five, chapter twenty-one of this code. Upon issuance
49 of the permit, the secretary shall forward a copy to the
50 Commissioner of the Division of Labor, who shall assure
51 continued compliance under the permit.

52 (6) (A) Prior to the issuance of any permit the secretary
53 shall ascertain from the Executive Director of Workforce
54 West Virginia and the Insurance Commissioner whether the
55 applicant is in compliance with the provisions of section six-
56 c, article two, chapter twenty-one-a of this code and section
57 five, article two, chapter twenty-three of this code with regard
58 to any required subscription to the Unemployment
59 Compensation Fund or to the Workers' Compensation Fund,
60 the payment of premiums and other charges to the fund, the
61 timely filing of payroll reports and the maintenance of
62 adequate deposits. If the applicant is delinquent or defaulted,
63 or has been terminated by the executive director or the
64 Insurance Commissioner, the permit may not be issued until
65 the applicant returns to compliance or is restored by the
66 executive director or the Insurance Commissioner under a
67 reinstatement agreement: *Provided*, That in all inquiries the
68 Executive Director of Workforce West Virginia and the
69 Insurance Commissioner shall make response to the
70 Department of Environmental Protection within fifteen
71 calendar days; otherwise, failure to respond timely is
72 considered to indicate the applicant is in compliance and the
73 failure will not be used to preclude issuance of the permit.

74 (B) It is a requirement of this article that each operator
75 maintain continued compliance with the provisions of section
76 five, article two, chapter twenty-three of this code and section
77 six-c, article two, chapter twenty-one-a of this code and
78 provide proof of compliance to the secretary on a quarterly
79 basis.

**§22-3-19. Permit revision and renewal requirements; incidental
boundary revisions; requirements for transfer;
assignment and sale of permit rights; operator
reassignment; and procedures to obtain inactive
status.**

1 (a) (1) Any valid permit issued pursuant to this article
2 carries with it the right of successive renewal upon expiration
3 with respect to areas within the boundaries of the existing
4 permit. The holders of the permit may apply for renewal and
5 the renewal shall be issued: *Provided*, That on application
6 for renewal, the burden is on the opponents of renewal,
7 unless it is established that and written findings by the
8 secretary are made that: (A) The terms and conditions of the
9 existing permit are not being satisfactorily met: *Provided*,
10 *however*, That if the permittee is required to modify
11 operations pursuant to mining or reclamation requirements
12 which become applicable after the original date of permit
13 issuance, the permittee shall be provided an opportunity to
14 submit a schedule allowing a reasonable period to comply
15 with such revised requirements; (B) the present surface-
16 mining operation is not in compliance with the applicable
17 environmental protection standards of this article; (C) the
18 renewal requested substantially jeopardizes the operator's
19 continuing responsibility on existing permit areas; (D) the
20 operator has not provided evidence that the bond in effect for
21 said operation will continue in effect for any renewal
22 requested as required pursuant to sections eleven or twelve of
23 this article; or (E) any additional revised or updated

1 information as required pursuant to rules promulgated by the
2 secretary has not been provided.

3 (2) If an application for renewal of a valid permit
4 includes a proposal to extend the surface-mining operation
5 beyond the boundaries authorized in the existing permit, that
6 portion of the application for renewal which addresses any
7 new land area is subject to the full standards of this article,
8 which includes, but is not limited to: (A) adequate bond; (B)
9 a map showing the disturbed area and facilities; and (C) a
10 reclamation plan.

11 (3) Any permit renewal shall be for a term not to exceed
12 the period of time for which the original permit was issued.
13 Application for permit renewal shall be made at least one
14 hundred twenty days prior to the expiration of the valid
15 permit.

16 (4) Any renewal application for an active permit shall be
17 on forms prescribed by the secretary and shall be
18 accompanied by a filing fee of \$3,000. The application shall
19 contain such information as the secretary requires pursuant to
20 rule.

21 (b)(1) During the term of the permit, the permittee may
22 submit to the secretary an application for a revision of the
23 permit, together with a revised reclamation plan.

24 (2) An application for a significant revision of a permit is
25 subject to all requirements of this article and rules
26 promulgated pursuant thereto and shall be accompanied by a
27 filing fee of \$2000.

28 (3) Any extension to an area already covered by the
29 permit, except incidental boundary revisions, shall be made
30 by application for another permit. If the permittee desires to

1 add the new area to his or her existing permit in order to have
2 existing areas and new areas under one permit, the secretary
3 may so amend the original permit: *Provided*, That the
4 application for the new area is subject to all procedures and
5 requirements applicable to applications for original permits
6 under this article and a filing fee of \$550.

7 (c) The secretary shall review outstanding permits of a
8 five-year term before the end of the third year of the permit.
9 Other permits shall be reviewed within the time established
10 by rules. The secretary may require reasonable revision or
11 modification of the permit following review: *Provided*, That
12 such revision or modification shall be based upon written
13 findings and shall be preceded by notice to the permittee of
14 an opportunity for hearing.

15 (d) No transfer, assignment or sale of the rights granted
16 under any permit issued pursuant to this article may be made
17 without the prior written approval of the secretary,
18 application for which shall be accompanied by a filing fee of
19 \$1,500 for transfer or \$1,500 for assignment.

20 (e) Each request for inactive status shall be submitted on
21 forms prescribed by the secretary, shall be accompanied by
22 a filing fee of \$2000, and shall be granted in accordance with
23 the procedure established in the *Surface Mining and*
24 *Reclamation Rule*.

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

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

§22A-1-4. Powers and duties of the Director of the Office of Miners' Health, Safety and Training.

1 (a) The Director of the Office of Miners' Health, Safety
2 and Training is hereby empowered and it is his or her duty to
3 administer and enforce such provisions of this chapter
4 relating to health and safety inspections and enforcement and
5 training in surface and underground coal mines, underground
6 clay mines, open pit mines, cement manufacturing plants and
7 underground limestone and sandstone mines.

8 (b) The Director of the Office of Miners' Health, Safety
9 and Training has full charge of the division. The director has
10 the power and duty to:

11 (1) Supervise and direct the execution and enforcement
12 of the provisions of this article.

13 (2) Employ such assistants, clerks, stenographers and
14 other employees as may be necessary to fully and effectively
15 carry out his or her responsibilities and fix their
16 compensation, except as otherwise provided in this article.

17 (3) Assign mine inspectors to divisions or districts in
18 accordance with the provisions of section eight of this article
19 as may be necessary to fully and effectively carry out the
20 provisions of this law, including the training of inspectors for
21 the specialized requirements of surface mining, shaft and
22 slope sinking and surface installations and to supervise and
23 direct such mine inspectors in the performance of their duties.

24 (4) Suspend, for good cause, any such mine inspector
25 without compensation for a period not exceeding thirty days
26 in any calendar year.

27 (5) Prepare report forms to be used by mine inspectors in
28 making their findings, orders and notices, upon inspections
29 made in accordance with this article.

30 (6) Hear and determine applications made by mine
31 operators for the annulment or revision of orders made by
32 mine inspectors, and to make inspections of mines, in
33 accordance with the provisions of this article.

34 (7) Cause a properly indexed permanent and public
35 record to be kept of all inspections made by himself or by
36 mine inspectors.

37 (8) Make annually a full and complete written report of
38 the administration of the office to the Governor and the
39 Legislature of the state for the year ending June 30. The
40 report shall include the number of visits and inspections of
41 mines in the state by mine inspectors, the quantity of coal,
42 coke and other minerals (excluding oil and gas) produced in
43 the state, the number of individuals employed, number of
44 mines in operation, statistics with regard to health and safety
45 of persons working in the mines including the causes of
46 injuries and deaths, improvements made, prosecutions, the
47 total funds of the office from all sources identifying each
48 source of such funds, the expenditures of the office, the
49 surplus or deficit of the office at the beginning and end of the
50 year, the amount of fines collected, the amount of fines
51 imposed, the value of fines pending, the number and type of
52 violations found, the amount of fines imposed, levied and
53 turned over for collection, the total amount of fines levied but
54 not paid during the prior year, the titles and salaries of all
55 inspectors and other officials of the office, the number of
56 inspections made by each inspector, the number and type of
57 violations found by each inspector. However, no inspector
58 may be identified by name in this report. Such reports shall
59 be filed with the Governor and the Legislature on or before
60 December 31 of the same year for which it was made, and
61 shall upon proper authority be printed and distributed to
62 interested persons.

63 (9) Call or subpoena witnesses, for the purpose of
64 conducting hearings into mine fires, mine explosions or any
65 mine accident; to administer oaths and to require production
66 of any books, papers, records or other documents relevant or
67 material to any hearing, investigation or examination of any
68 mine permitted by this chapter. Any witness so called or
69 subpoenaed shall receive \$40 per diem and shall receive
70 mileage at the rate of \$0.15 for each mile actually traveled,
71 which shall be paid out of the State Treasury upon a
72 requisition upon the State Auditor, properly certified by such
73 witness.

74 (10) Institute civil actions for relief, including permanent
75 or temporary injunctions, restraining orders, or any other
76 appropriate action in the appropriate federal or state court
77 whenever any operator or the operator's agent violates or
78 fails or refuses to comply with any lawful order, notice or
79 decision issued by the director or his or her representative.

80 (11) Perform all other duties which are expressly imposed
81 upon him or her by the provisions of this chapter.

82 (12) Impose reasonable fees upon applicants taking tests
83 administered pursuant to the requirements of this chapter.

84 (13) Impose reasonable fees for the issuance of
85 certifications required under this chapter.

86 (14) Prepare study guides and other forms of publications
87 relating to mine safety and charge a reasonable fee for the
88 sale of the publications.

89 (15) Make all records of the office open for inspection of
90 interested persons and the public.

91 (c) The Director of the Office of Miners' Health, Safety
92 and Training, or his or her designee, upon receipt of the list

93 of approved innovative mine safety technologies from the
94 Mine Safety Technology Task Force, has thirty days to
95 approve or amend the list as provided in section four, article
96 thirteen-bb, chapter eleven of this code. At the expiration of
97 the time period, the director shall publish the list of approved
98 innovative mine safety technologies as provided in section
99 four, article thirteen-bb, chapter eleven of this code.

ARTICLE 11. MINE SAFETY TECHNOLOGY.

§22A-11-3. Task force powers and duties.

1 (a) The task force shall provide technical and other
2 assistance to the office related to the implementation of the
3 new technological requirements set forth in the provisions of
4 section fifty-five, article two of this chapter, as amended and
5 reenacted during the regular session of the Legislature in
6 2006 and requirements for other mine safety technologies.

7 (b) The task force, working in conjunction with the
8 director, shall continue to study issues regarding the
9 commercial availability, the functional and operational
10 capability and the implementation, compliance and
11 enforcement of the following protective equipment:

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

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

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

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

24 (c) The task force shall on a continuous basis study,
25 monitor and evaluate:

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

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

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

34 (4) Market forces impacting the development of new
35 technologies, including issues regarding the costs of research
36 and development, regulatory certification and incentives
37 designed to stimulate the marketplace.

38 (d) On or before July 1 of each year, the task force shall
39 submit a report to the Governor and the Board of Coal Mine
40 Health and Safety that shall include, but not be limited to:

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

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

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

51 (4) Any other information the task force considers
52 appropriate.

53 (e) In performing its duties, the task force shall, where
54 possible, consult with, among others, mine engineering and
55 mine safety experts, radiocommunication and telemetry
56 experts and relevant state and federal regulatory personnel.

57 (f) Appropriations to the task force commission and to
58 effectuate the purposes of this article shall be made to one or
59 more budget accounts established for that purpose.

60 (g) The task force shall annually compile a proposed list
61 of approved innovative mine safety technologies and transmit
62 the list to the Director of the Office of Miners' Health, Safety
63 and Training as provided in section four, article thirteen-BB,
64 chapter eleven of this code. The list shall be approved by
65 unanimous vote of the task force.

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

Michael T. Ford
VCE Chairman, House Committee

[Signature]
Chairman, Senate Committee

Originating in the House.

To take effect ninety days from passage.

[Signature]
Clerk of the House of Delegates

[Signature]
Clerk of the Senate

[Signature]
Speaker of the House of Delegates

[Signature]
Acting President of the Senate

The within is disapproved this the 18th day of March, 2011.

[Signature]
Governor

PRESENTED TO THE GOVERNOR

MAR 18 2011

Time 11:10 AM