

1 **H. B. 4589**

2
3 (By Delegates R. Smith, Overington,
4 Frich, Andes, Espinosa, Folk, Howell,
5 A. Evans, Azinger, Canterbury and Sobonya)
6

7 [Introduced February 17, 2014; referred to the
8 Committee on Government Organization then the Judiciary.]
9

10 A BILL to amend and reenact §22A-2A-307, §22A-2A-308, §22A-2A-309
11 and §22A-2A-402 of the Code of West Virginia, 1931, as
12 amended, all relating to the West Virginia Diesel Equipment
13 Commission; providing for participation at meetings via
14 teleconference; removing requirement that all members must be
15 present for votes on certain actions of the commission; and
16 providing for the approval of certain diesel equipment.

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

18 That §22A-2A-307, §22A-2A-308, §22A-2A-309 and §22A-2A-402 of
19 the Code of West Virginia, 1931, as amended, be amended and
20 reenacted, all to read as follows:

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

23 **§22A-2A-307. Quorum; majority vote required; attendance at**
24 **meetings via teleconference.**

25 A quorum of the commission consists of not less than two of

1 the members who represent the viewpoint or interests of coal
2 operators and two of the members who represent the viewpoint or
3 interests of working miners. A measure before the commission for
4 its consideration is adopted on the affirmative vote of any four of
5 the six members. A member who is not physically present at a
6 meeting may participate in the meeting by audio or video
7 teleconference.

8 **§22A-2A-308. Promulgation of initial rules by the commission.**

9 (a) The West Virginia diesel equipment commission shall
10 prepare and adopt the initial rules for the operation of diesel
11 equipment in underground coal mines in this state. In preparing
12 and adopting initial rules, the commission shall consider the
13 highest achievable measures of protection for miners' health and
14 safety through available technology, engineering controls and
15 performance requirements and shall further consider the cost,
16 availability, adaptability and suitability of any available
17 technology, engineering controls and performance requirements as
18 they relate to the use of diesel equipment in underground coal
19 mines.

20 (b) In promulgating the initial rules pursuant to subsection
21 (a) of this section, the commission shall follow the procedures set
22 forth in article three, chapter twenty-nine-a of this code that are
23 prescribed for an agency proposing a legislative rule, to the point
24 where an agency would approve a rule for submission to the

1 Legislature. At that point, the commission shall proceed to final
2 adoption of the initial rules and file a notice of the final
3 adoption in the State Register and with the Legislative Rule-making
4 Review Committee. Final adoption of the initial rules may be
5 approved only upon a majority vote of all six members of the
6 commission. ~~All six members must be present when a vote is taken.~~
7 Upon final adoption by the commission, the initial rules are
8 thereby promulgated and have the effect of law without further
9 action by the commission or the Legislature. The initial rules
10 shall be published in the code of state rules and continue in
11 effect until modified or superseded in accordance with the
12 provisions of this article.

13 **§22A-2A-309. Commission's authority to approve site-specific**
14 **experimental testing prior to initial rules.**

15 The commission ~~is hereby authorized to~~ may approve limited
16 site-specific requests for experimental and testing use of
17 diesel-powered equipment in underground coal mines prior to
18 promulgation of initial rules in accordance with subsections (b),
19 (c), (d), (e), (f) and (g), section three hundred ten of this
20 article. Final approval of a site-specific request may be approved
21 only upon a majority vote of all six members of the commission.
22 ~~All six members must be present when a vote is taken.~~

23 **§22A-2A-402. Approval of diesel power package or diesel engine.**

24 ~~Every~~ A diesel power package or diesel engine used in

1 underground coal mining shall be approved by the West Virginia
2 diesel equipment commission when it complies with applicable
3 requirements, standards, and procedures established by rules of the
4 commission, and be certified or approved, as applicable, by MSHA
5 and maintained in accordance with MSHA certification or approval.
6 A diesel power package or diesel engine that is the same make and
7 model, and meets the same specifications as a diesel power package
8 or diesel engine that is approved by the commission and, if it has
9 previously been placed in service, has been maintained in
10 accordance with MSHA certification or approval, is considered to be
11 approved by the commission.

NOTE: The purpose of this bill is to provide for participation of members of the West Virginia Diesel Equipment Commission at meetings via teleconference , removing requirement that all members must be present for votes on certain actions of the commission and providing for the approval of certain diesel equipment.

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