

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 689

BY SENATORS SMITH AND PHILLIPS

[Introduced February 21, 2022; referred
to the Committee on Energy, Industry, and Mining]

1 A BILL to amend and reenact §22A-6-3 of the Code of West Virginia, 1931, as amended, relating
2 to tie votes by the Board of Coal Mine Health and Safety; and providing that the Director
3 of the Office of Miners' Health, Safety and Training or his or her designee may vote to
4 break the tie.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

§22A-6-3. Board continued; membership; method of nomination and appointment; meetings; vacancies; quorum.

1 (a) The Board of Coal Mine Health and Safety is continued, and commencing July 1, 2010,
2 is a separate independent board within the Department of Commerce. The board consists of six
3 voting members and one ex officio, nonvoting member who are residents of this state, and who
4 are appointed as follows:

5 (1) The Governor shall appoint, by and with the advice and consent of the Senate, three
6 members to represent the viewpoint of those operators in this state. When ~~such~~ the members are
7 to be appointed, the Governor shall request from the major trade association representing
8 operators in this state a list of three nominees for each such position on the board. All such
9 nominees shall be persons with special experience and competence in health and safety. There
10 shall be submitted with ~~such~~ the list a summary of the qualifications of each nominee. If the full
11 lists of nominees are submitted in accordance with the provisions of this subdivision, the Governor
12 shall make the appointments from the persons so nominated. For purposes of this subdivision,
13 the major trade association representing operators in this state is that association which
14 represents operators accounting for over one half of the coal produced in mines in this state in
15 the year prior to the year in which the appointment is to be made.

16 (2) The Governor shall appoint, by and with the advice and consent of the Senate, three
17 members who can reasonably be expected to represent the viewpoint of the working miners of
18 this state. When members are to be appointed, the Governor shall request from the major

19 employee organization representing coal miners within this state a list of three nominees for each
20 position on the board. The highest ranking official within the major employee organization
21 representing coal miners within this state shall submit a list of three nominees for each such
22 position on the board. The nominees shall have a background in health and safety. The Governor
23 shall make the appointments from the requested list of nominees.

24 (3) All appointments made by the Governor under the provisions of subdivisions (1) and
25 (2) of this subsection shall be with the advice and consent of the Senate; and

26 (4) The Director of the Office of Miners' Health, Safety and Training or his or her designee
27 shall serve as an *ex officio*, nonvoting member.

28 (b) Members serving on the board on January 1, 2017, shall continue to serve for a
29 minimum of three years until June 30, 2020. The term is three years. Members are eligible for
30 reappointment.

31 (c) Commencing on July 1, 2017, the board shall assume all powers and responsibilities
32 of the Board of Miners' Training, Education and Certification established pursuant to article seven
33 of this chapter, the mine inspectors' examining board established pursuant to §22A-9-1 *et seq.* of
34 this code, and the Mine Safety Technology Task Force established pursuant to §22A-1-1 *et seq.*
35 of this code.

36 (d) The Governor shall appoint, subject to the approval of a majority of the members of
37 the board appointed under subdivisions (1) and (2), subsection (a) of this section, a Health and
38 Safety Administrator in accordance with ~~the provisions of~~ §22A-6-6 of this code, who shall certify
39 all official records of the board. The Health and Safety Administrator shall be a full-time officer of
40 the Board of Coal Mine Health and Safety with the duties provided for in §22A-6-6 of this code.
41 The Health and Safety Administrator shall have such education and experience as the Governor
42 deems necessary to properly investigate areas of concern to the board in the development of
43 rules governing mine health and safety. The Governor shall appoint as Health and Safety
44 Administrator a person who has an independent and impartial viewpoint on issues involving mine

45 safety. The Health and Safety Administrator shall be a person who has not been during the two
46 years immediately preceding appointment, and is not during his or her term, an officer, trustee,
47 director, substantial shareholder, contractor, consultant or employee of any coal operator, or an
48 employee or officer of an employee organization or a spouse of any such person. The Health and
49 Safety Administrator shall have the expertise to draft proposed rules and shall prepare such rules
50 as are required by this code and on such other areas as will improve coal mine health and safety.

51 (e) The board shall meet at least once during each calendar month, or more often as may
52 be necessary, and at other times upon the call of the chair, or upon the request of any three
53 members of the board. Under the direction of the board, the Health and Safety Administrator shall
54 prepare an agenda for each board meeting giving priority to the promulgation of rules as may be
55 required from time to time by this code, and as may be required to improve coal mine health and
56 safety. The Health and Safety Administrator shall provide each member of the board with notice
57 of the meeting and the agenda as far in advance of the meeting as practical, but in any event, at
58 least five days prior thereto. No meeting of the board ~~shall~~ may be conducted unless said notice
59 and agenda are given to the board members at least five days in advance, as provided herein,
60 except in cases of emergency, as declared by the director, in which event members shall be
61 notified of the board meeting and the agenda: *Provided*, That upon agreement of a majority of the
62 quorum present, any scheduled meeting may be ordered recessed to another day certain without
63 further notice of additional agenda.

64 When proposed rules are to be finally adopted by the board, copies of ~~such~~ the proposed
65 rules shall be delivered to members not less than five days before the meeting at which such
66 action is to be taken. If not so delivered, any final adoption or rejection of rules shall be considered
67 on the second day of a meeting of the board held on two consecutive days, except that by the
68 concurrence of at least four members of the board, the board may suspend this rule of procedure
69 and proceed immediately to the consideration of final adoption or rejection of rules. When a
70 member fails to appear at three consecutive meetings of the board or at one half of the meetings

71 held during a one-year period, the Health and Safety Administrator shall notify the member and
72 the Governor of such fact. Such member shall be removed by the Governor unless good cause
73 for absences is shown.

74 (f) Whenever a vacancy on the board occurs, nominations and appointments shall be
75 made in the manner prescribed in this section: *Provided*, That in the case of an appointment to fill
76 a vacancy, nominations of three persons for each such vacancy shall be requested by and
77 submitted to the Governor within 30 days after the vacancy occurs by the major trade association
78 or major employee organization, if any, which nominated the person whose seat on the board is
79 vacant. The vacancy shall be filled by the Governor within 30 days of his or her receipt of the list
80 of nominations.

81 (g) A quorum of the board is four members which shall include at least two members
82 representing the viewpoint of operators and at least two members representing the viewpoint of
83 the working miners, and the board may act officially by a majority of those members who are
84 present, except that no vote of the board may be taken unless all six voting members are present.

85 (h) Notwithstanding any provision of this section or code to the contrary, if an issue to be
86 decided by the board ends in a tie vote of the board members, the Director of the Office of Miners'
87 Health, Safety and Training or his or her designee, may vote to break the tie.

NOTE: The purpose of this bill is to provide that the Director of the Office of Miners' Health, Safety and Training or his or her designee may vote to break tie votes by the Board of Coal Mine Health and Safety.

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