

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 3029

BY DELEGATES PHILLIPS, ZATEZALO AND FOSTER, G.

[Introduced March 14, 2017; Referred
to the Committee on Energy then the Judiciary.]

1 A BILL to repeal §22-3-30a of the Code of West Virginia, 1931, as amended; to repeal §22A-2-
2 14, §22A-2-28, §22A-2-30, §22A-2-31, §22A-2-32, §22A-2-33, §22A-2-34, §22A-2-35,
3 §22A-2-41, §22A-2-50, §22A-2-51, §22A-2-52, §22A-2-69 and §22A-2-73 of said code; to
4 repeal §22A-2A-102, §22A-2A-201, §22A-2A-202, §22A-2A-203, §22A-2A-204, §22A-2A-
5 204a, §22A-2A-205, §22A-2A-206, §22A-2A-207, §22A-2A-208, §22A-2A-209, §22A-2A-
6 210, §22A-2A-211, §22A-2A-212, §22A-2A-213, §22A-2A-214, §22A-2A-301, §22A-2A-
7 302, §22A-2A-303, §22A-2A-304, §22A-2A-305, §22A-2A-306, §22A-2A-307, §22A-2A-
8 308, §22A-2A-309, §22A-2A-310, §22A-2A-401, §22A-2A-402, §22A-2A-403, §22A-2A-
9 404, §22A-2A-405, §22A-2A-501, §22A-2A-601, §22A-2A-602, §22A-2A-603, §22A-2A-
10 604, §22A-2A-701, §22A-2A-702, §22A-2A-703, §22A-2A-704, §22A-2A-801, §22A-2A-
11 802, §22A-2A-803, §22A-2A-804, §22A-2A-805, §22A-2A-806, §22A-2A-807 and §22A-
12 2A-901 of said code; to repeal §22A-6-7, §22A-6-8, §22A-6-9, §22A-6-10, §22A-6-11,
13 §22A-6-12 and §22A-6-13 of said code; to amend and reenact §22-1-17 of said code; to
14 amend and reenact §22-3-11, §22-3-13a, §22-3-23 and §22-3-35 of said code; to amend
15 and reenact §22-6-24 of said code; to amend and reenact §22-11-1 of said code; to amend
16 and reenact §22A-1-1, §22A-1-2, §22A-1-3, §22A-1-4, §22A-1-5, §22A-1-6, §22A-1-14,
17 and §22A-1-15 of said code; to amend and reenact §22A-2-2, §22A-2-3, §22A-2-4, §22A-
18 2-4a, §22A-2-5, §22A-2-6, §22A-2-11, §22A-2-13, §22A-2-20, §22A-2-24, §22A-2-25,
19 §22A-2-26, §22A-2-27, §22A-2-29, §22A-2-36, §22A-2-37, §22A-2-38, §22A-2-39, §22A-
20 2-40, §22A-2-42, §22A-2-43, §22A-2-43a, §22A-2-44, §22A-2-45, §22A-2-46, §22A-2-47,
21 §22A-2-48, §22A-2-49, §22A-2-53, §22A-2-53a, §22A-2-53b, §22A-2-53c, §22A-2-55,
22 §22A-2-55a, §22A-2-56, §22A-2-57, §22A-2-58, §22A-2-59, §22A-2-60, §22A-2-61,
23 §22A-2-62, §22A-2-63, §22A-2-64, §22A-2-66, §22A-2-70, §22A-2-72, §22A-2-74, §22A-
24 2-75 and §22A-2-78 of said code; to amend and reenact §22A-2A-101 of said code; to
25 amend said code by adding thereto a new section, designated §22A-2-1001; to amend
26 and reenact §22A-6-1, §22A-6-3, §22A-6-4, §22A-6-5 and §22A-6-6 of said code; to

27 amend and reenact §22A-7-2, §22A-7-3, §22A-7-4, §22A-7-5, §22A-7-5a and §22A-7-7
28 of said code; to amend and reenact §22A-9-1 of said code; to amend and reenact §22A-
29 11-2, §22A-11-3 and §22A-11-4 of said code; and to amend said code by adding thereto
30 two new sections, designated §22A-11-5 and §22A-11-6, all relating generally to coal
31 mining, coal mining safety and environmental protection; creating a special reclamation
32 water trust fund; establishing additional duties for the Secretary of the Department of
33 Environmental Protection; permitting coal operators to request that preblast surveys be
34 limited to owners and occupants of man-made structures; eliminating certain bond
35 requirements; providing that bonds may not be released until certain conditions are met;
36 providing for plugging and cleaning out of certain gas wells; adding legislative findings to
37 the Water Pollution Control Act as it pertains to trout waters; providing that the Office of
38 Miners' Health, Safety and Training to be within the Department of Commerce; replacing
39 the Director of the Office of Miners' Health, Safety and Training responsibility for safety
40 inspections with being responsible for compliance visits and education; eliminating some
41 duties of the Director of the Office of Miners' Health, Safety and Training's; eliminating the
42 board of Coal Mine Health and Safety, the Coal Mine Safety and Technical Review
43 Committee, the board of Miner Training, Education and Certification, and the Mine
44 Inspectors' Examining Board; making the Director of the Office of Miners' Health, Safety
45 and Training be responsible for compliance visits and enforcement of state mine
46 certifications and Individual Penalty Assessments; requiring mine inspectors to provide
47 safety compliance assistance in improving the miner's health and safety and to improve
48 existing safety plans and programs; adopting the federal standards in lieu of existing state
49 standards in the following areas of coal mining: replacing existing state standards relating
50 to underground coal mines of ventilation, ventilation plans, fans, belt air, unused and
51 abandoned parts of mines, movement of off-track mining equipment, boreholes, daily
52 inspections, preparation of a danger signal, control of coal dust and rock dusting, roof

53 control programs and plans, roof support, use of authorized explosives, storage or use of
54 unauthorized explosives; use of cabs and canopies, use of hoisting machinery, use of
55 haulage roads and certain equipment, the transportation of miners, use of conveyor belts,
56 use of electricity, telephone poles and communication facilities, actions required to detect
57 and respond to excess methane, the operation of cutting and mining machines, hand held
58 electric drills, trailing cables, installation of lighting, welding and cutting, responsibility for
59 care and maintenance of face equipment, when respiratory equipment is to be worn,
60 safeguards for mechanical equipment, smoking in and about surface structures, railroad
61 cars, haulage and surface areas, ramps, tipples, cleaning plants, protective equipment
62 and clothing safety helmets, checking systems, fire protection, miner security, first-aid
63 equipment, accessible outlets and safe roadways for emergencies, coal storage bins,
64 recovery tunnels, coal storage piles, thermal coal dryers, sealing of mines, accident
65 notices and investigations, shafts and slopes. longwall and short wall mining; control of
66 respirable dust, operator procures around gas and oil wells, and use of diesel-powered
67 equipment; making changes to who may serve on the board of Coal Mine Health and
68 Safety; changing the board's powers and duties; transferring the duties of the board of
69 Miners' Training, Education and Certification to the board of Coal Mine Health and Safety;
70 transferring the duties of the former Mine Inspectors' Examining Board to the board of
71 Coal Mine Health and Safety; providing that the Mine Safety Technology Task Force to be
72 continued as a part of the duties and powers of the board of Coal Mine Health and Safety;
73 providing that mine rescue teams be staffed by the Office of Miners' Health, Safety and
74 Training; requiring a mine emergency plan be developed; establishing conditions when a
75 person is permitted to perform mine rescue duties; deleting certain definitions; changing
76 certain existing definitions; removing certain criminal penalties; and requiring rule-making.

Be it enacted by the Legislature of West Virginia:

1 That §22-3-30a of the Code of West Virginia, 1931, as amended be repealed; that §22A-
2 2-14, §22A-2-28, §22A-2-30, §22A-2-31, §22A-2-32, §22A-2-33, §22A-2-34, §22A-2-35, §22A-2-
3 41, §22A-2-50, §22A-2-51, §22A-2-52, §22A-2-69 and §22A-2-73 of said code be repealed; that
4 §22A-2A-102, §22A-2A-201, §22A-2A-202, §22A-2A-203, §22A-2A-204, §22A-2A-204a, §22A-
5 2A-205, §22A-2A-206, §22A-2A-207, §22A-2A-208, §22A-2A-209, §22A-2A-210, §22A-2A-211,
6 §22A-2A-212, §22A-2A-213, §22A-2A-214, §22A-2A-301, §22A-2A-302, §22A-2A-303, §22A-2A-
7 304, §22A-2A-305, §22A-2A-306, §22A-2A-307, §22A-2A-308, §22A-2A-309, §22A-2A-310,
8 §22A-2A-401, §22A-2A-402, §22A-2A-403, §22A-2A-404, §22A-2A-405, §22A-2A-501, §22A-2A-
9 601, §22A-2A-602, §22A-2A-603, §22A-2A-604, §22A-2A-701, §22A-2A-702, §22A-2A-703,
10 §22A-2A-704, §22A-2A-801, §22A-2A-802, §22A-2A-803, §22A-2A-804, §22A-2A-805, §22A-2A-
11 806, §22A-2A-807 and §22A-2A-901 of said code be repealed; that §22A-6-7, §22A-6-8, §22A-
12 6-9, §22A-6-10, §22A-6-11, §22A-6-12 and §22A-6-13 of said code be repealed; that §22-1-17 of
13 said code be amended and reenacted; that §22-3-11, §22-3-13a, §22-3-23 and §22-3-35 of said
14 code be amended and reenacted; that §22-6-24 of said code be amended and reenacted; that
15 §22-11-1 of said code be amended and reenacted; that §22A-1-1, §22A-1-2, §22A-1-3, §22A-1-
16 4, §22A-1-5, §22A-1-6, §22A-1-14, §22A-1-15 of said code be amended and reenacted; that
17 §22A-2-2, §22A-2-3, §22A-2-4, §22A-2-4a, §22A-2-5, §22A-2-6, §22A-2-11, §22A-2-13, §22A-2-
18 20, §22A-2-24, §22A-2-25, §22A-2-26, §22A-2-27, §22A-2-29, §22A-2-36, §22A-2-37, §22A-2-
19 38, §22A-2-39, §22A-2-40, §22A-2-42, §22A-2-43, §22A-2-43a, §22A-2-44, §22A-2-45, §22A-2-
20 46, §22A-2-47, §22A-2-48, §22A-2-49, §22A-2-53, §22A-2-53a, §22A-2-53b, §22A-2-53c, §22A-
21 2-55, §22A-2-55a, §22A-2-56, §22A-2-57, §22A-2-58, §22A-2-59, §22A-2-60, §22A-2-61, §22A-
22 2-62, §22A-2-63, §22A-2-64, §22A-2-66, §22A-2-70, §22A-2-72, §22A-2-74, §22A-2-75 and
23 §22A-2-78 of said code be amended and reenacted; that §22A-2A-101 of said code be amended
24 and reenacted; that said code be amended by adding thereto a new section, designated §22A-
25 2-1001; that §22A-6-1, §22A-6-3, §22A-6-4, §22A-6-5 and §22A-6-6 of said code be amended
26 and reenacted; that §22A-7-2, §22A-7-3, §22A-7-4, §22A-7-5, §22A-7-5a and §22A-7-7 of said

27 code be amended and reenacted; that §22A-9-1 of said code be amended and reenacted; that
28 §22A-11-2, §22A-11-3 and §22A-11-4 of said code be amended and reenacted; that said code
29 be amended by adding thereto two new sections, designated §22A-11-5 and §22A-11-6, all to
30 read as follows:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-17. Special reclamation fund advisory council.

1 (a) There is hereby created within the Department of Environmental Protection a special
2 reclamation fund advisory and special reclamation water trust fund council. The council's purpose
3 is to ensure the effective, efficient and financially stable operation of the Special Reclamation
4 Fund and Special Reclamation Water Trust Fund. The special reclamation advisory council shall
5 consist of eight members, including the secretary of the Department of Environmental Protection
6 or his or her designee, the treasurer of the State of West Virginia or his or her designee, the
7 director of the national mine land reclamation center at West Virginia University and five members
8 to be appointed by the Governor with the advice and consent of the Senate.

9 (b) Each appointed member of the council shall be selected based on his or her ability to
10 serve on the council and effectuate its purposes. The Governor shall appoint, from a list of three
11 names submitted by the major trade association representing the coal industry regulated under
12 article three of this chapter, a member to represent the interests of the industry. The Governor
13 shall appoint, from a list of three names submitted by organizations advocating environmental
14 protection, one member to represent the interest of environmental protection organizations. The
15 Governor shall appoint, from a list of four names submitted by the coal mining industry and the
16 organizations advocating environmental protection, one member who, by training and profession,
17 is an actuary or an economist. The Governor shall appoint, from a list of three names submitted
18 by the united mine workers of America, one member to represent the interests of coal miners.

19 The Governor shall appoint a member to represent the interests of the general public.

20 (c) The terms of all members shall begin on July 1, 2002. The secretary shall be an ex
21 officio, nonvoting member and serve as chairperson of the council. The terms of the Governor's
22 appointees shall be for six years. Appointees may be reappointed to serve on the council. The
23 terms of the appointed members first taking office are to be expired as designated by the Governor
24 at the time of the nomination, two at the end of the second year, two at the end of the fourth year
25 and one at the end of the sixth year. As the original appointments expire, each subsequent
26 appointment will be for a full six-year term. Any appointed member whose term has expired shall
27 serve until a successor has been duly appointed and qualified. Any person appointed to fill a
28 vacancy is to serve only for the unexpired term.

29 (d) Appointed members of the council shall be paid the same compensation and expense
30 reimbursement as is provided for members of the Legislature pursuant to sections six and eight,
31 article two-a, chapter four of this code. Council members who are state employees or officials
32 shall be reimbursed for expenses in accordance with the applicable agency's policy.

33 (e) The council shall meet at the call of the chairperson or his or her designee, but not less
34 than once every six months. The secretary shall provide funds for necessary administrative and
35 technical services for the council from the special reclamation fund.

36 (f) The council shall, at a minimum:

37 (1) Study the effectiveness, efficiency and financial stability of the Special Reclamation
38 Fund and Special Reclamation Water Trust Fund with an emphasis on development of a financial
39 process that ensures long-term stability of the special reclamation program;

40 (2) Identify and define problems associated with the Special Reclamation Fund, including,
41 but not limited to, the enforcement of federal and state law, regulation and rules pertaining to
42 contemporaneous reclamation and the Special Reclamation Water Trust Fund, including the
43 treatment of water discharges from forfeited sites where the secretary has obtained or applied for
44 an NPDES permit as of the effective date of this article;

45 (3) Evaluate bond forfeiture collection, reclamation efforts at bond forfeiture sites and
46 compliance with approved reclamation plans as well as any modifications;

47 (4) Provide a forum for a full and fair discussion of issues relating to the Special
48 Reclamation Fund and Special Reclamation Water Trust Fund;

49 (5) Contract with a qualified actuary who shall make a determination as to the Special
50 Reclamation Fund's and Special Reclamation Water Trust Fund's fiscal soundness. This
51 determination shall be completed on December 31, 2004, and every four years thereafter. The
52 review is to include an evaluation of the present and prospective assets and liabilities of the
53 Special Reclamation Fund and Special Reclamation Water Trust Fund; and

54 (6) Study and recommend to the Legislature alternative approaches to the current funding
55 scheme of the Special Reclamation Fund, considering revisions which will assure future proper
56 reclamation of all mine sites and continued financial viability of the state's coal industry.

57 (g) On or before January 1, 2003, and every year thereafter, the council shall submit to
58 the Legislature and the Governor a report on the adequacy of the special reclamation tax and the
59 fiscal condition of the Special Reclamation Fund and Special Reclamation Water Trust Fund. The
60 report shall, at a minimum, contain:

61 (1) A recommendation as to whether or not any adjustments to the special reclamation tax
62 should be made considering the cost, timeliness and adequacy of bond forfeiture reclamation;
63 ~~including water treatment;~~

64 (2) A recommendation as to whether or not any adjustments to the Special Reclamation
65 Water Trust Fund tax should be made considering the cost, timeliness and the adequacy of funds
66 available in the Special Reclamation Water Trust Fund to treat water discharges at forfeited sites
67 where the secretary has obtained or applied for an NPDES permit as of the effective date of this
68 article;

69 ~~(2)~~ (3) A discussion of the council is required to study issues as set forth in subsection (f)
70 of this section; and

71 ~~(3)~~ (4) The availability of federal abandoned mine lands funds for West Virginia
72 reclamation projects.

ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.

§22-3-11. Bonds; amount and method of bonding; bonding requirements; special reclamation tax and funds; prohibited acts; period of bond liability.

1 (a) After a surface mining permit application has been approved pursuant to this article,
2 but before a permit has been issued, each operator shall furnish a penal bond, on a form to be
3 prescribed and furnished by the secretary, payable to the State of West Virginia and conditioned
4 upon the operator faithfully performing all of the requirements of this article and of the permit. The
5 penal amount of the bond shall be not less than \$1,000 nor more than \$5,000 for each acre or
6 fraction of an acre: *Provided*, That the minimum amount of bond furnished for any type of
7 reclamation bonding shall be \$10,000. The bond shall cover: (1) The entire permit area; or (2)
8 that increment of land within the permit area upon which the operator will initiate and conduct
9 surface mining and reclamation operations within the initial term of the permit. If the operator
10 chooses to use incremental bonding, as succeeding increments of surface mining and
11 reclamation operations are to be initiated and conducted within the permit area, the operator shall
12 file with the secretary an additional bond or bonds to cover the increments in accordance with this
13 section: *Provided, however*, That once the operator has chosen to proceed with bonding either
14 the entire permit area or with incremental bonding, the operator shall continue bonding in that
15 manner for the term of the permit.

16 (b) The period of liability for bond coverage begins with issuance of a permit and continues
17 for the full term of the permit plus any additional period necessary to achieve compliance with the
18 requirements in the reclamation plan of the permit.

19 (c)(1) The form of the bond shall be approved by the secretary and may include, at the
20 option of the operator, surety bonding, collateral bonding (including cash and securities),
21 establishment of an escrow account, self bonding or a combination of these methods. If collateral

22 bonding is used, the operator may elect to deposit cash or collateral securities or certificates as
23 follows: Bonds of the United States or its possessions of the Federal Land Bank or of the
24 Homeowners' Loan Corporation; full faith and credit general obligation bonds of the State of West
25 Virginia or other states and of any county, district or municipality of the State of West Virginia or
26 other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of
27 the department. The cash deposit or market value of the securities or certificates shall be equal
28 to or greater than the penal sum of the bond. The secretary shall, upon receipt of any deposit of
29 cash, securities or certificates, promptly place the same with the Treasurer of the State of West
30 Virginia whose duty it is to receive and hold the deposit in the name of the state in trust for the
31 purpose for which the deposit is made when the permit is issued. The operator making the deposit
32 is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the
33 secretary, the whole or any portion of any cash, securities or certificates so deposited, upon
34 depositing with him or her in lieu thereof cash or other securities or certificates of the classes
35 specified in this subsection having value equal to or greater than the sum of the bond.

36 (2) The secretary may approve an alternative bonding system if it will: (A) Reasonably
37 assure that sufficient funds will be available to complete the reclamation, restoration and
38 abatement provisions for all permit areas which may be in default at any time; and (B) provide a
39 substantial economic incentive for the permittee to comply with all reclamation provisions.

40 (d) The secretary may accept the bond of the applicant itself without separate surety when
41 the applicant demonstrates to the satisfaction of the secretary the existence of a suitable agent
42 to receive service of process and a history of financial solvency and continuous operation
43 sufficient for authorization to self insure.

44 (e) It is unlawful for the owner of surface or mineral rights to interfere with the present
45 operator in the discharge of the operator's obligations to the state for the reclamation of lands
46 disturbed by the operator.

47 (f) All bond releases shall be accomplished in accordance with the provisions of section

48 twenty-three of this article.

49 (g)(1) The Special Reclamation Fund previously created is continued. The Special
50 Reclamation Water Trust Fund is created within the State Treasury into and from which moneys
51 shall be paid for the purpose of assuring a reliable source of capital ~~to reclaim and restore water~~
52 ~~treatment systems on forfeited sites~~ and operating expenses for the treatment of water discharges
53 from forfeited sites where the secretary has obtained or applied for an NPDES permit as of the
54 effective date of this article. The moneys accrued in both funds. The moneys accrued in both
55 funds, any interest earned thereon and yield from investments by the State Treasurer or West
56 Virginia Investment Management Board are reserved solely and exclusively for the purposes set
57 forth in this section and section seventeen, article one of this chapter.

58 (2) The funds shall be administered by the secretary who is authorized to expend the
59 moneys in both funds for the reclamation and rehabilitation of lands which were subjected to
60 permitted surface mining operations and abandoned after August 3, 1977, where the amount of
61 the bond posted and forfeited on the land is less than the actual cost of reclamation, and where
62 the land is not eligible for abandoned mine land reclamation funds under article two of this chapter.
63 ~~The secretary shall develop a long-range planning process for selection and prioritization of sites~~
64 ~~to be reclaimed so as to avoid inordinate short-term obligations of the assets in both funds of such~~
65 ~~magnitude that the solvency of either is jeopardized. The secretary may use both funds for the~~
66 ~~purpose of designing, constructing and maintaining water treatment systems when they are~~
67 ~~required for a complete reclamation of the affected lands described in this subsection.~~ The
68 secretary may also expend an amount not to exceed ten percent of the total annual assets in both
69 funds to implement and administer the provisions of this article and, as they apply to the Surface
70 Mine Board, articles one and four, chapter twenty-two-b of this code.

71 (3) The Special Reclamation Water Trust Fund shall be administered by the secretary who
72 is authorized to expend moneys from the Special Reclamation Water Trust fund for the treatment
73 of water discharged from forfeited sites where the secretary has obtained or applied for an NPDES

74 permit as of the effective date of this article.

75 (4) The secretary shall develop a long-range planning process for selection and
76 prioritization of sites to be reclaimed to avoid inordinate short-term obligations of the assets in the
77 Special Reclamation Fund of such magnitude that its solvency may be jeopardized.

78 ~~(2)~~ (5) (A) A tax credit shall be granted against the tax imposed by subsection (i) of this
79 section to any mine operator who performs reclamation or remediation at a bond forfeiture site
80 which otherwise would have been reclaimed using funds from the Special Reclamation Fund or
81 Special Reclamation Water Trust Fund The credit authorized pursuant to this subdivision is
82 retroactive and may be claimed for reclamation or remediation performed on or after January 1,
83 2012: *Provided*, That for reclamation or remediation performed prior to July 13, 2013, no tax credit
84 may be granted unless a written application for the tax credit was submitted to the Tax
85 Commissioner prior to September 1, 2014. The amount of credit shall be determined as provided
86 in this section.

87 (B) The amount of a reclamation tax credit granted under this subsection shall be equal to
88 the amount that the Tax Commissioner determines, based on the project costs, as shown in the
89 records of the secretary, that would have been spent from the Special Reclamation Fund or
90 Special Reclamation Water Trust Fund to accomplish the reclamation or remediation performed
91 by the mine operator, including expenditures for water treatment.

92 (C) To claim the credit, the mine operator shall, from time to time, file with the Tax
93 Commissioner a written application seeking the amount of the credit earned. Within thirty days of
94 receipt of the application, the Tax Commissioner shall issue a certification of the amount of tax
95 credit, if any, to be allocated to the eligible taxpayer. Should the amount of the credit certified be
96 less than the amount applied for, the Tax Commissioner shall set forth in writing the reason for
97 the difference. Should no certification be issued within the thirty-day period, the application will be
98 deemed certified. Any decision by the Tax Commissioner is appealable pursuant to the provisions
99 of the West Virginia Tax Procedure and Administration Act set forth in article ten, chapter eleven

100 of the code. Applications for certification of the proposed tax credit shall contain the information
101 and be in the detail and form as required by the Tax Commissioner.

102 (h) The Tax Commissioner may promulgate rules for legislative approval pursuant to the
103 provisions of article three, chapter twenty-nine-a of this code to carry out the purposes of this
104 subdivision two, subsection (g) of this section.

105 (i)(1) Rate, deposits and review.

106 (A) For tax periods commencing on and after July 1, 2009, every person conducting coal
107 surface mining shall remit a special reclamation tax of fourteen and four-tenths cents per ton of
108 clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in the
109 Special Reclamation Fund and the Special Reclamation Water Trust Fund.

110 (B) For tax periods commencing on and after July 1, 2012, the rate of tax specified in
111 paragraph (A) of this subdivision is discontinued and is replaced by the rate of tax specified in this
112 paragraph. For tax periods commencing on and after July 1, 2012, every person conducting coal
113 surface mining shall remit a special reclamation tax of twenty-seven and nine-tenths cents per
114 ton of clean coal mined, the proceeds of which shall be allocated by the secretary for deposit in
115 the Special Reclamation Fund and the Special Reclamation Water Trust Fund. Of that amount,
116 fifteen cents per ton of clean coal mined shall be deposited into the Special Reclamation Water
117 Trust Fund.

118 (C) The tax shall be levied upon each ton of clean coal severed or clean coal obtained
119 from refuse pile and slurry pond recovery or clean coal from other mining methods extracting a
120 combination of coal and waste material as part of a fuel supply.

121 (D) Beginning with the tax period commencing on July 1, 2009, and every two years
122 thereafter, the special reclamation tax shall be reviewed by the Legislature to determine whether
123 the tax should be continued: *Provided*, That the tax may not be reduced until the Special
124 Reclamation Fund and Special Reclamation Water Trust Fund have sufficient moneys to meet
125 the reclamation responsibilities of the state established in this section.

126 (2) In managing the special reclamation program, the secretary shall: (A) Pursue cost-
127 effective alternative water treatment strategies; and (B) conduct formal actuarial studies every two
128 years and conduct informal reviews annually on the Special Reclamation Fund and Special
129 Reclamation Water Trust Fund.

130 ~~(3) Prior to December 31, 2008, the secretary shall:~~

131 ~~(A) Determine the feasibility of creating an alternate program, on a voluntary basis, for~~
132 ~~financially sound operators by which those operators pay an increased tax into the Special~~
133 ~~Reclamation Fund in exchange for a maximum per-acre bond that is less than the maximum~~
134 ~~established in subsection (a) of this section;~~

135 ~~(B) Determine the feasibility of creating an incremental bonding program by which~~
136 ~~operators can post a reclamation bond for those areas actually disturbed within a permit area, but~~
137 ~~for less than all of the proposed disturbance and obtain incremental release of portions of that~~
138 ~~bond as reclamation advances so that the released bond can be applied to approved future~~
139 ~~disturbance; and~~

140 ~~(C) Determine the feasibility for sites requiring water reclamation by creating a separate~~
141 ~~water reclamation security account or bond for the costs so that the existing reclamation bond in~~
142 ~~place may be released to the extent it exceeds the costs of water reclamation.~~

143 ~~(4) If the secretary determines that the alternative program, the incremental bonding~~
144 ~~program or the water reclamation account or bonding programs reasonably assure that sufficient~~
145 ~~funds will be available to complete the reclamation of a forfeited site and that the Special~~
146 ~~Reclamation Fund will remain fiscally stable, the secretary is authorized to propose legislative~~
147 ~~rules in accordance with article three, chapter twenty-nine-a of this code to implement an alternate~~
148 ~~program, a water reclamation account or bonding program or other funding mechanisms or a~~
149 ~~combination thereof~~

150 (j) This special reclamation tax shall be collected by the Tax Commissioner in the same
151 manner, at the same time and upon the same tonnage as the minimum severance tax imposed

152 by article twelve-b, chapter eleven of this code is collected: *Provided*, That under no circumstance
153 shall the special reclamation tax be construed to be an increase in either the minimum severance
154 tax imposed by said article or the severance tax imposed by article thirteen of said chapter.

155 (k) Every person liable for payment of the special reclamation tax shall pay the amount
156 due without notice or demand for payment.

157 (l) The Tax Commissioner shall provide to the secretary a quarterly listing of all persons
158 known to be delinquent in payment of the special reclamation tax. The secretary may take the
159 delinquencies into account in making determinations on the issuance, renewal or revision of any
160 permit.

161 (m) The Tax Commissioner shall deposit the moneys collected with the Treasurer of the
162 State of West Virginia to the credit of the Special Reclamation Fund and Special Reclamation
163 Water Trust Fund.

164 (n) At the beginning of each quarter, the secretary shall advise the Tax Commissioner and
165 the Governor of the assets, excluding payments, expenditures and liabilities, in both funds.

166 (o) To the extent that this section modifies any powers, duties, functions and
167 responsibilities of the department that may require approval of one or more federal agencies or
168 officials in order to avoid disruption of the federal-state relationship involved in the implementation
169 of the federal Surface Mining Control and Reclamation Act, 30 U. S. C. §1270 by the state, the
170 modifications will become effective upon the approval of the modifications by the appropriate
171 federal agency or official.

§22-3-13a. Preblast survey requirements.

1 (a) At least thirty days prior to commencing blasting, as defined in section twenty-two-a of
2 this article, an operator or an operator's designee shall make the following notifications in writing
3 to all owners and occupants of man-made dwellings or structures that the operator or operator's
4 designee will perform preblast surveys in accordance with subsection (f) (e) of this section:

5 (1) For surface mining operations ~~that are less than two hundred acres in a single~~

6 ~~permitted area or less than three hundred acres of contiguous or nearly contiguous area of two~~
7 ~~or more permitted areas~~ the required notifications shall be to all owners and occupants of man-
8 made dwellings or structures within ~~five tenths~~ one half of the permitted area or areas; and

9 ~~(2) For all other surface mining operations, the required notifications shall be to all owners~~
10 ~~and occupants of man-made dwellings or structures within five tenths of a mile of the permitted~~
11 ~~area or areas or seven tenths of a mile of the proposed blasting site, whichever is greater; and~~

12 ~~(3) (2) For blasting associated with permitted surface disturbance of underground mines~~
13 ~~and blasting associated with specified construction, including but not limited to, haul roads, shafts,~~
14 ~~and/or drainage structures, The operator may file a request to the secretary that the required~~
15 notifications shall be limited to all owners and occupants of man-made dwellings or structures
16 within ~~five tenths~~ one half of a mile of the ~~permitted surface area or areas~~ proposed blasting area.

17 ~~(b) Any operator identified in subdivision (2), subsection (a) of this section that has already~~
18 ~~completed preblast surveys for man-made dwellings or structures within five tenths of a mile of~~
19 ~~the permit area and has commenced operations by the effective date of this section shall notify in~~
20 ~~writing all additional owners and occupants of man-made dwellings or structures within seven~~
21 ~~tenths of a mile of the proposed blasting site. Except for those dwellings or structures for which~~
22 ~~the operator secures a written waiver or executes an affidavit in accordance with the requirements~~
23 ~~of subsection (c) of this section, the operator or the operator's designee must perform the~~
24 ~~additional preblast surveys in accordance with subsection (f) of this section~~

25 ~~(c) (b) An occupant or owner of a man-made dwelling or structure within the areas~~
26 ~~described in subdivision (1) or (2), subsection (a) of this section may waive the right to a preblast~~
27 ~~survey in writing. If a dwelling is occupied by a person other than the owner, both the owner and~~
28 ~~the occupant must waive the right to a preblast survey in writing. If an occupant or owner of a man-~~
29 ~~made dwelling or structure refuses to allow the operator or the operator's designee access to the~~
30 ~~dwelling or structure and refuses to waive in writing the right to a preblast survey or to the extent~~
31 ~~that access to any portion of the structure, underground water supply or well is impossible or~~

32 impractical under the circumstances, the preblast survey shall indicate that access was refused,
33 impossible or impractical. The operator or the operator's designee shall execute a sworn affidavit
34 explaining the reasons and circumstances surrounding the refusals. The Division of Mining and
35 Reclamation may not determine the preblast survey to be incomplete because it indicates that
36 access to a particular structure, underground water supply or well was refused, impossible or
37 impractical. The operator shall send copies of all written waivers and affidavits executed pursuant
38 to this subsection to the Division of Mining and Reclamation.

39 ~~(d)~~ (c) If a preblast survey was waived by the owner and was within the requisite area and
40 the property was sold, the new owner may request a preblast survey from the operator.

41 ~~(e)~~ (d) An owner within the requisite area may request, from the operator, a preblast survey
42 on structures constructed after the original preblast survey.

43 ~~(f)~~ (e) The preblast survey shall include:

44 (1) The names, addresses or description of structure location and telephone numbers of
45 the owner and the residents of the structure being surveyed and the structure number from the
46 permit blasting map;

47 (2) The current home insurer of the owner and the residents of the structure;

48 (3) The names, addresses and telephone numbers of the surface mining operator and the
49 permit number;

50 (4) The current general liability insurer of the surface mining operator;

51 (5) The name, address and telephone number of the person or firm performing the preblast
52 survey;

53 (6) The current general liability insurer of the person or firm performing the preblast survey;

54 (7) The date of the preblast survey and the date it was mailed or delivered to the Division
55 of Mining and Reclamation.

56 (8) A general description of the structure and its appurtenances, including, but not limited
57 to: (A) The number of stories; (B) the construction materials for the frame and the exterior and

58 interior finish; (C) the type of construction including any unusual or substandard construction; and
59 (D) the approximate age of the structure;

60 (9) A general description of the survey methods and the direction of progression of the
61 survey, including a key to abbreviations used;

62 (10) Written documentation and drawings, videos or photographs of the preblast defects
63 and other physical conditions of all structures, appurtenances and water sources which could be
64 affected by blasting;

65 (11) Written documentation and drawings, videos or photographs of the exterior and
66 interior of the structure to indicate preblast defects and condition;

67 (12) Written documentation and drawings, videos or photographs of the exterior and
68 interior of any appurtenance of the structure to indicate preblast defects and condition;

69 (13) Sufficient exterior and interior photographs or videos, using a variety of angles, of the
70 structure and its appurtenances to indicate preblast defects and the condition of the structure and
71 appurtenances;

72 (14) Written documentation and drawings, videos or photographs of any unusual or
73 substandard construction technique and materials used on the structure or its appurtenances or
74 both structure and appurtenances;

75 (15) Written documentation relating to the type of water supply, including a description of
76 the type of system and treatment being used, an analysis of untreated water supplies, a water
77 analysis of water supplies other than public utilities and information relating to the quantity and
78 quality of water;

79 (16) When the water supply is a well, written documentation, where available, relating to
80 the type of well; the well log; the depth, age and type of casing or lining; the static water level;
81 flow data; the pump capacity; the drilling contractor; and the source or sources of the
82 documentation;

83 (17) A description of any portion of the structure and appurtenances not documented or

84 photographed and the reasons;

85 (18) The signature of the person performing the survey; and

86 (19) Any other information required by the secretary which additional information shall be
87 established by rule in accordance with article three, chapter twenty-nine-a of this code.

88 ~~(g) (f) Except for additional preblast surveys prepared within one hundred twenty days of~~
89 ~~the effective date of this section, pursuant to subsection (b) of this section, the preblast survey~~
90 shall be submitted to the Division of Mining and Reclamation at least fifteen days prior to the
91 commencement of any production blasting. The Division of Mining and Reclamation shall review
92 each preblast survey as to form and completeness only and notify the operator of any deficiencies:
93 *Provided, That once all required surveys have been reviewed and accepted by the Division of*
94 *Mining and Reclamation, blasting may commence sooner than fifteen days after submittal. The*
95 *Division of Mining and Reclamation shall provide a copy of the preblast survey to the owner or*
96 *occupant.*

97 ~~(h) The surface mining operator shall file notice of the preblast survey or the waiver in the~~
98 ~~office of the county clerk of the county commission of the county where the man-made dwelling~~
99 ~~or structure is located to notify the public that a preblast survey has been conducted or waived.~~
100 ~~The notice shall be on a form prescribed by the Division of Mining and Reclamation~~

101 ~~(i) (g) The secretary shall propose rules for legislative approval in accordance with article~~
102 ~~three, chapter twenty-nine-a of this code dealing with preblast survey requirements and setting~~
103 ~~the qualifications for individuals and firms performing preblast surveys.~~

104 ~~(j) (h) The provisions of this section do not apply to the extraction of minerals by~~
105 ~~underground mining methods.~~

**§22-3-23. Release of bond or deposits; application; notice; duties of secretary; public
hearings; final maps on grade release.**

1 (a) The permittee may file a request with the secretary for the release of a bond or deposit.

2 The permittee shall publish an advertisement regarding the request for release in the same

3 manner as is required of advertisements for permit applications. A copy of the advertisement shall
4 be submitted to the secretary as part of any bond release application and shall contain a
5 notification of the precise location of the land affected, the number of acres, the permit and the
6 date approved, the amount of the bond filed and the portion sought to be released, the type and
7 appropriate dates of reclamation work performed and a description of the results achieved as they
8 relate to the permittee's approved reclamation plan. In addition, as part of any bond release
9 application, the permittee shall submit copies of letters which the permittee has sent to adjoining
10 property owners, local government bodies, planning agencies, sewage and water treatment
11 authorities or water companies in the locality in which the surface mining operation is located,
12 notifying them of the permittee's intention to seek release from the bond. Any request for grade
13 release shall also be accompanied by final maps.

14 (b) Upon receipt of the application for bond release, the secretary, within thirty days, taking
15 into consideration existing weather conditions, shall conduct an inspection and evaluation of the
16 reclamation work involved. The evaluation shall consider, among other things, the degree of
17 difficulty to complete any remaining reclamation, whether pollution of surface and subsurface
18 water is occurring, the probability of continuance or future occurrence of the pollution and the
19 estimated cost of abating the pollution. The secretary shall notify the permittee in writing of his or
20 her decision to release or not to release all or part of the bond or deposit within sixty days from
21 the date of the initial publication of the advertisement if no public hearing is requested. If a public
22 hearing is held, the secretary's decision shall be issued within thirty days thereafter.

23 (c) If the secretary is satisfied that reclamation covered by the bond or deposit or portion
24 thereof has been accomplished as required by this article, he or she may release the bond or
25 deposit, in whole or in part, according to the following schedule:

26 ~~(1) For all operations except those with an approved variance from approximate original~~
27 ~~contour:~~

28 (A) (1) When the operator completes the backfilling, regrading and drainage control of a

29 bonded area in accordance with the operator's approved reclamation plan, the release of sixty
30 percent of the bond or collateral for the applicable bonded area. ~~Provided, That a minimum bond~~
31 ~~of \$10,000 shall be retained after grade release;~~

32 ~~(B) Two years after the last augmented seeding, fertilizing, irrigation or other work to~~
33 ~~ensure compliance with subdivision (19), subsection (b), section thirteen of this article, the release~~
34 ~~of an additional twenty-five percent of the bond or collateral for the applicable bonded area:~~
35 ~~Provided, That a minimum bond of \$10,000 shall be retained after the release provided for in this~~
36 ~~subdivision; and~~

37 (2) After revegetation has been established on the regraded mined lands in accordance
38 with the approved reclamation plan. When determining the amount of bond to be released after
39 successful revegetation has been established, the director shall retain that amount of bond for
40 the revegetated area which would be sufficient for a third party to cover the cost of reestablishing
41 revegetation and for the period specified for operator responsibility in section thirteen of this article
42 of reestablishing revegetation. No part of the bond or deposit shall be released under this
43 paragraph so long as the lands to which the release would be applicable are contributing
44 suspended solids to streamflow or runoff outside the permit area in excess of the requirements
45 set by subdivision (10), subsection (b) of that section or until soil productivity for prime farm lands
46 has returned to equivalent levels of yield as nonmined land of the same soil type in the
47 surrounding area under equivalent management practices as determined from the soil survey
48 performed pursuant to subdivision (15), subsection (a), section nine of this article. Where a silt
49 dam is to be retained as a permanent impoundment pursuant to subdivision (8), subsection (b),
50 section thirteen of this article, the portion of bond may be released under this subdivision so long
51 as provisions for sound future maintenance by the operator or the landowner have been made
52 with the director.

53 ~~(C) When the operator has completed successfully all surface mining and reclamation~~
54 ~~activities, the release of the remaining portion of the bond, but not before the expiration of the~~

55 ~~period specified in subdivision (20), subsection (b), section thirteen of this article: *Provided, That*~~
56 ~~the revegetation has been established on the regraded mined lands in accordance with the~~
57 ~~approved reclamation plan: *Provided, however,*~~

58 (3) When the operator has completed successfully all surface coal mining and reclamation
59 activities, the release of the remaining portion of the bond, but not before the expiration of the
60 period specified for operator responsibility in section thirteen of this article: *Provided, That no*
61 bond shall be fully released until all reclamation requirements of this article are fully met: *Provided,*
62 *however,* That the release may be made where the quality of the untreated post-mining water
63 discharged is better than or equal to the premining water quality discharged from the mining site
64 where expressly authorized by legislative rule promulgated pursuant to section three, article one
65 of this chapter.

66 ~~(2) For operations with an approved variance from approximate original contour:~~

67 ~~(A) When the operator completes the backfilling, regrading and drainage control of a~~
68 ~~bonded area in accordance with the operator's approved reclamation plan, the release of fifty~~
69 ~~percent of the bond or collateral for the applicable bonded area: *Provided, That a minimum bond*~~
70 ~~of \$10,000 shall be retained after grade release;~~

71 ~~(B) Two years after the last augmented seeding, fertilizing, irrigation or other work to~~
72 ~~ensure compliance with subdivision (19), subsection (b), section thirteen of this article, the release~~
73 ~~of an additional ten percent of the bond or collateral for the applicable bonded area: *Provided,*~~
74 ~~That a minimum bond of \$10,000 shall be retained after the release provided for in this~~
75 ~~subdivision; and~~

76 ~~(C) When the operator has completed successfully all surface mining and reclamation~~
77 ~~activities, the release of the remaining portion of the bond, but not before the expiration of the~~
78 ~~period specified in subdivision (20), subsection (b), section thirteen of this article: *Provided, That*~~
79 ~~the revegetation has been established on the regraded mined lands in accordance with the~~
80 ~~approved reclamation plan and if applicable the necessary post-mining infrastructure is~~

81 ~~established and any necessary financing is completed: *Provided, however,* That the release may~~
82 ~~be made where the quality of the untreated post-mining water discharged is better than or equal~~
83 ~~to the premining water quality discharged from the mining site where expressly authorized by~~
84 ~~legislative rule promulgated pursuant to section three, article one of this chapter.~~

85 ~~No part of the bond or deposit may be released under this subsection so long as the lands~~
86 ~~to which the release would be applicable are contributing additional suspended solids to~~
87 ~~streamflow or runoff outside the permit area in excess of the requirements set by section thirteen~~
88 ~~of this article, or until soil productivity for prime farmlands has returned to equivalent levels of yield~~
89 ~~as nonmined land of the same soil type in the surrounding area under equivalent management~~
90 ~~practices as determined from the soil survey performed pursuant to section nine of this article.~~
91 ~~Where a sediment dam is to be retained as a permanent impoundment pursuant to section~~
92 ~~thirteen of this article, or where a road or minor deviation is to be retained for sound future~~
93 ~~maintenance of the operation, the portion of the bond may be released under this subsection so~~
94 ~~long as provisions for sound future maintenance by the operator or the landowner have been~~
95 ~~made with the secretary.~~

96 ~~Notwithstanding the bond release scheduling provisions of subdivisions (1) and (2) of this~~
97 ~~subsection, if the operator completes the backfilling and reclamation in accordance with an~~
98 ~~approved post-mining land use plan that has been approved by the Department of Environmental~~
99 ~~Protection and accepted by a local or regional economic development or planning agency for the~~
100 ~~county or region in which the operation is located, provisions for sound future maintenance are~~
101 ~~assured by the local or regional economic development or planning agency, and the quality of~~
102 ~~any untreated post-mining water discharge complies with applicable water quality criteria for bond~~
103 ~~release, the secretary may release the entire amount of the bond or deposit. The secretary shall~~
104 ~~propose rules for legislative approval in accordance with the provisions of article three, chapter~~
105 ~~twenty-nine-a of this code to govern a bond release pursuant to the terms of this paragraph~~

106 (d) If the secretary disapproves the application for release of the bond or portion thereof,

107 the secretary shall notify the permittee, in writing, stating the reasons for disapproval and
108 recommending corrective actions necessary to secure the release and notifying the operator of
109 the right to a hearing.

110 (e) When any application for total or partial bond release is filed with the secretary, he or
111 she shall notify the municipality in which a surface-mining operation is located by registered or
112 certified mail at least thirty days prior to the release of all or a portion of the bond.

113 (f) Any person with a valid legal interest which is or may be adversely affected by release
114 of the bond or the responsible officer or head of any federal, state or local governmental agency
115 which has jurisdiction by law or special expertise with respect to any environmental, social or
116 economic impact involved in the operation, or is authorized to develop and enforce environmental
117 standards with respect to the operations, has the right to file written objections to the proposed
118 bond release and request a hearing with the secretary within thirty days after the last publication
119 of the permittee's advertisement. If written objections are filed and a hearing requested, the
120 secretary shall inform all of the interested parties of the time and place of the hearing and shall
121 hold a public hearing in the locality of the surface-mining operation proposed for bond release
122 within three weeks after the close of the public comment period. The date, time and location of
123 the public hearing shall also be advertised by the secretary in a newspaper of general circulation
124 in the same locality.

125 (g) Without prejudice to the rights of the objectors, the applicant, or the responsibilities of
126 the secretary pursuant to this section, the secretary may hold an informal conference to resolve
127 any written objections and satisfy the hearing requirements of this section thereby.

128 (h) For the purpose of the hearing, the secretary has the authority and is hereby
129 empowered to administer oaths, subpoena witnesses and written or printed materials, compel the
130 attendance of witnesses, or production of materials, and take evidence, including, but not limited
131 to, inspections of the land affected and other surface-mining operations carried on by the applicant
132 in the general vicinity. A verbatim record of each public hearing required by this section shall be

133 made and a transcript made available on the motion of any party or by order of the secretary at
134 the cost of the person requesting the transcript.

135 (i) The secretary shall propose rules or emergency rules for legislative approval in
136 accordance with article three, chapter twenty-nine-a of the code during the 2018 Regular
137 Legislative Session and revisions to 38 C.S.R. §2 et. seq. to implement the revisions to this article
138 made during the 2017 Legislative Session. The secretary shall specifically consider the adoption
139 of corresponding federal standards codified at 30 C.F.R. 700 et.seq.

**§22-3-35. Legislative rules on surface-mining blasting; disciplinary procedures for certified
blasters.**

1 (a) All authority to promulgate rules pursuant to article three, chapter twenty-nine-a of this
2 code is hereby transferred from the office of explosives and blasting to the Division of Mining and
3 Reclamation as of the effective date of enactment of this section and article during the 2016
4 session of the Legislature: *Provided*, That any rule promulgated by the office of explosives and
5 blasting shall remain in force and effect as though promulgated by the Division of Mining and
6 Reclamation until the secretary amends the rules in accordance with the provisions of article
7 three, chapter twenty-nine-a of this code. Any rules promulgated by the secretary shall include,
8 but not be limited to, the following:

9 (1) A procedure for the review, modification and approval, prior to the issuance of any
10 permit, of any blasting plan required to be submitted with any application for a permit to be issued
11 by the secretary pursuant to article three of this chapter, which sets forth procedures for the
12 inspection and monitoring of blasting operations for compliance with blasting laws and rules, and
13 for the review and modification of the blasting plan of any operator against whom an enforcement
14 action is taken by the Department of Environmental Protection;

15 (2) Specific minimum requirements for preblast surveys, as set forth in section thirteen-a,
16 article three of this chapter;

17 (3) A procedure for review of preblast surveys required to be submitted under section

18 thirteen-a, article three of this chapter;

19 (4) A procedure for the use of seismographs for production blasting which shall be made
20 part of the blasting log;

21 (5) A procedure to warn of impending blasting to the owners or occupants adjoining the
22 blasting area;

23 (6) A procedure to limit the type of explosives and detonating equipment, the size, the
24 timing and frequency of blasts based upon the physical conditions of the site so as to: (A) Prevent
25 injury to persons; (B) prevent damage to public and private property outside the permit area; (C)
26 prevent adverse impacts on any underground mine; (D) prevent change in the course, channel or
27 availability of ground or surface water outside the permit area; and (E) reduce dust outside the
28 permit area;

29 (7) Provisions for requiring mining operators to publish the planned blasting schedule in a
30 newspaper of general circulation in the locality of the mining operation;

31 (8) Provisions for requiring mining operators to provide adequate advance written notice
32 of the proposed blasting schedule to local governments, owners and occupants living within the
33 distances prescribed in subsection (a), section thirteen-a, article three of this chapter;

34 (9) Provisions for establishing a process for the education, training, examination and
35 certification of blasters working on surface-mining operations;

36 (10) Provisions for establishing disciplinary procedures for all certified blasters responsible
37 for blasting on surface-mining operations conducted within this state in violation of any law or rule
38 promulgated by the Department of Environmental Protection to regulate blasting; ~~and~~

39 (11) Provisions for establishing a fee on each quantity of explosive material used for any
40 purpose on surface mining operations, which fee shall be calculated to generate sufficient money
41 to provide for the operation of the explosives and blasting program ~~and the Division of Energy~~
42 within the Division of Mining and Reclamation. The secretary shall deposit all moneys received
43 from these fees into a special revenue fund in the State Treasury known as the Mountaintop

44 ~~Removal Fund to be expended by the secretary and the Division of Energy in the performance of~~
45 ~~their duties~~ Mining and Reclamation Operations Fund; and

46 (12) The secretary shall propose rules or emergency rules in accordance with article three,
47 chapter twenty-nine-a of the code for legislative approval during the 2018 Regular Session and
48 revisions to rules related to the use of explosives and blasting at mining operations governed by
49 this article. The secretary shall specifically consider the adoption of corresponding federal
50 standards codified at 30 C.F.R. §816.61 to §816.68 and 30 C.F.R. §817.61 to §817.68.

**ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS; ADMINISTRATION;
ENFORCEMENT.**

§22-6-24. Methods of plugging well.

1 Upon the abandonment or cessation of the operation of any well drilled for natural gas or
2 petroleum, or drilled or converted for the introduction of pressure, whether liquid or gas, or for the
3 introduction of liquid for the purposes provided for in section twenty-five of this article or for the
4 disposal of pollutants or the effluent therefrom the well operator, at the time of such abandonment
5 or cessation, shall fill and plug the well in the following manner:

6 (a) Where the well does not penetrate workable coal beds, it shall either be filled with mud,
7 clay or other nonporous material from the bottom of the well to a point twenty feet above the top
8 of its lowest oil, gas or water-bearing stratum; or a permanent bridge shall be anchored thirty feet
9 below its lowest oil, gas or water-bearing stratum, and from such bridge it shall be filled with mud,
10 clay or other nonporous material to a point twenty feet above such stratum; at this point there
11 shall be placed a plug of cement or other suitable material which will completely seal the hole.
12 Between this sealing plug and a point twenty feet above the next higher oil, gas or water-bearing
13 stratum, the hole shall be filled, in the manner just described; and at such point there shall be
14 placed another plug of cement or other suitable material which will completely seal the hole. In
15 like manner the hole shall be filled and plugged, with reference to each of its oil, gas or water-

16 bearing strata. However, whenever such strata are not widely separated and are free from water,
17 they may be grouped and treated as a single sand, gas or petroleum horizon, and the aforesaid
18 filling and plugging be performed as though there were but one horizon. After the plugging of all
19 oil, gas or water-bearing strata, as aforesaid, a final cement plug shall be placed approximately
20 ten feet below the bottom of the largest casing in the well; from this point to the surface the well
21 shall be filled with mud, clay or other nonporous material. In case any of the oil or gas-bearing
22 strata in a well shall have been shot, thereby creating cavities which cannot readily be filled in the
23 manner above described, the well operator shall follow either of the following methods:

24 (1) Should the stratum which has been shot be the lowest one in the well, there shall be
25 placed, at the nearest suitable point, but not less than twenty feet above the stratum, a plug of
26 cement or other suitable material which will completely seal the hole. In the event, however, that
27 the shooting has been done above one or more oil or gas-bearing strata in the well, plugging in
28 the manner specified shall be done at the nearest suitable point, but not less than twenty feet
29 below and above the stratum shot; or

30 (2) When such cavity shall be in the lowest oil or gas-bearing stratum in the well, a liner
31 shall be placed which shall extend from below the stratum to a suitable point, but not less than
32 twenty feet above the stratum in which shooting has been done. In the event, however, that the
33 shooting has been done above one or more oil or gas-bearing strata in the well, the liner shall be
34 so placed that it will extend not less than twenty feet above, nor less than twenty feet below, the
35 stratum in which shooting has been done. Following the placing of the liner in the manner here
36 specified it shall be compactly filled with cement, mud, clay or other nonporous sealing material.

37 (b) Where the well penetrates one or more workable coal beds and a coal protection string
38 of casing has been circulated and cemented into the surface, the well shall be filled and securely
39 plugged in the manner provided in subsection (a) of this section, except that expanding cement
40 shall be used instead of regular hydraulic cement, to a point approximately one hundred feet
41 below the bottom of the coal protection string of casing. A one hundred foot plug of expanding

42 cement shall then be placed in the well so that the top of such plug is located at a point just below
43 the coal protection string of casing. After such plug has been securely placed in the well, the coal
44 protection string of casing shall be emptied of liquid from the surface to a point one hundred feet
45 below the lowest workable coal bed or to the bottom of the coal protection string of casing,
46 whichever is shallower. A vent or other device approved by the director shall then be installed on
47 the top of the coal protection string of casing in such a manner that will prevent liquids and solids
48 from entering the well but will permit ready access to the full internal diameter of the coal
49 protection string of casing when required. The coal protection string of casing and the vent or
50 other device approved by the director shall extend, when finally in place, a distance of not less
51 than thirty inches above ground level and shall be permanently marked with the well number
52 assigned by the director;

53 (c) Where the well penetrates one or more workable coal beds and a coal protection string
54 of casing has not been circulated and cemented in to the surface, the well shall be filled and
55 securely plugged in the manner provided in subsection (a) of this section to a point fifty feet below
56 the lowest workable coal bed. Thereafter, a plug of cement shall be placed in the well at a point
57 not less than forty feet below the lowest workable coal bed. After the cement plug has been
58 securely placed in the well, the well shall be filled with cement to a point twenty feet above the
59 lowest workable coal bed. From this point the well shall be filled with mud, clay or other nonporous
60 material to a point forty feet beneath the next overlying workable coal bed, if such there be, and
61 the well shall then be filled with cement from this point to a point twenty feet above such workable
62 coal bed, and similarly, in case there are more overlying workable coal beds. After the filling and
63 plugging of the well to a point above the highest workable coal bed, filling and plugging of the well
64 shall continue in the manner provided in subsection (a) of this section to a point fifty feet below
65 the surface, and a plug of cement shall be installed from the point fifty feet below the surface to
66 the surface with a monument installed therein extending thirty inches above ground level;

67 (d)(1) Where the well penetrates one or more workable coal beds and a coal protection

68 string of casing has not been circulated and cemented in to the surface, a coal operator or coal
69 seam owner may request that the well be plugged in the manner provided in subdivision (3) of
70 this subsection rather than by the method provided in subsection (c) of this section. Such request
71 (forms for which shall be provided by the director) must be filed in writing with the director prior to
72 the scheduled plugging of the well, and must include the number of the well to be plugged and
73 the name and address of the well operator. At the time such request is filed with the director, a
74 copy of such request must also be mailed by registered or certified mail to the well operator named
75 in the request.

76 (2) Upon receipt of such request, the director shall issue an order staying the plugging of
77 the well and shall promptly determine the cost of plugging the well in the manner provided in
78 subdivision (3) of this subsection and the cost of plugging the well in the manner provided in
79 subsection (c) of this section. In making such determination, the director shall take into
80 consideration any agreement previously made between the well operator and the coal operator
81 or coal seam owner making the request. If the director determines that the cost of plugging the
82 well in the manner provided in subsection (c) of this section exceeds the cost of plugging the well
83 in the manner provided in subdivision (3) of this subsection, the director shall grant the request of
84 the coal operator or owner and shall issue an order requiring the well operator to plug the well in
85 the manner provided in subdivision (3) of this subsection. If the director determines that the cost
86 of plugging the well in the manner provided in subsection (c) of this section is less than the cost
87 of plugging the well in the manner provided in subdivision (3) of this subsection, the director shall
88 request payment into escrow of the difference between the determined costs by the coal operator
89 or coal seam owner making the request. Upon receipt of satisfactory notice of such payment, or
90 upon receipt of notice that the well operator has waived such payment, the director shall grant the
91 request of the coal operator or coal seam owner and shall issue an order requiring the well
92 operator to plug the well in the manner provided in subdivision (3) of this subsection. If satisfactory
93 notice of payment into escrow, or notice that the well operator has waived such payment, is not

94 received by the director within fifteen days after the request for payment into escrow, the director
95 shall issue an order permitting the plugging of the well in the manner provided in subsection (c)
96 of this section. Copies of all orders issued by the director shall be sent by registered or certified
97 mail to the coal operator or coal seam owner making the request and to the well operator. When
98 the escrow agent has received certification from the director of the satisfactory completion of the
99 plugging work and the reimbursable extra cost thereof (that is, the difference between the
100 director's determination of plugging cost in the manner provided in subsection (c) of this section
101 and the well operator's actual plugging cost in the manner provided in subdivision (3) of this
102 subsection), the escrow agent shall pay the reimbursable sum to the well operator or the well
103 operator's nominee from the payment into escrow to the extent available. The amount by which
104 the payment into escrow exceeds the reimbursable sum plus the escrow agent's fee, if any, shall
105 be repaid to the coal owner. If the amount paid to the well operator or the well operator's nominee
106 is less than the actual reimbursable sum, the escrow agent shall inform the coal owner, who shall
107 pay the deficiency to the well operator or the well operator's nominee within thirty days. If the coal
108 operator breaches this duty to pay the deficiency, the well operator shall have a right of action
109 and be entitled to recover damages as if for wrongful conversion of personalty, and reasonable
110 attorney fees.

111 (3) Where a request of a coal operator or coal seam owner filed pursuant to subdivision
112 (1) of this subsection has been granted by the director, the well shall be plugged in the manner
113 provided in subsection (a) of this section, except that expanding cement shall be used instead of
114 regular hydraulic cement, to a point approximately two hundred feet below the lowest workable
115 coal bed. A one hundred foot plug of expanding cement shall then be placed in the well beginning
116 at the point approximately two hundred feet below the lowest workable coal bed and extending to
117 a point approximately one hundred feet below the lowest workable coal bed. A string of casing
118 with an outside diameter no less than four and one-half inches shall then be run into the well to a
119 point approximately one hundred feet below the lowest workable coal bed and such string of

120 casing shall be circulated and cemented in to the surface. The casing shall then be emptied of
121 liquid from a point approximately one hundred feet below the lowest workable coal bed to the
122 surface, and a vent or other device approved by the director shall be installed on the top of the
123 string of casing in such a manner that it will prevent liquids and solids from entering the well but
124 will permit ready access to the full internal diameter of the coal protection string of casing when
125 required. The string of casing and the vent or other device approved by the director shall extend,
126 when finally in place, a distance of no less than thirty inches above ground level and shall be
127 permanently marked with the well number assigned by the director. Notwithstanding the foregoing
128 provisions of this subdivision, if under particular circumstances a different method of plugging is
129 required to obtain the approval of another governmental agency for the safe mining through of
130 said well, the director may approve such different method of plugging if the director finds the same
131 to be as safe for mining through and otherwise adequate to prevent gas or other fluid migration
132 from the oil and gas reservoirs as the method above specified.

133 (e) Notwithstanding anything in this section to the contrary, where the well to be plugged
134 is an abandoned well and the well operator is also a coal operator that intends to mine through
135 the well, the well shall, at a minimum, be plugged as provided in subdivisions (1) and (2) of this
136 subsection.

137 (1) The well will be cleaned out and prepared for plugging or replugging as follows:

138 (A) If the total depth of the well is less than four thousand feet, the operator shall
139 completely clean out the well from the surface to at least two hundred feet below the base of the
140 lowest mineable coal seam, but the director may require cleaning to a greater depth due to
141 excessive pressure within the well. If the total depth of the well is four thousand feet or greater,
142 the operator shall completely clean out the well from the surface to at least four hundred feet
143 below the base of the lowest mineable coal seam. The operator shall provide to the director all
144 information it possesses concerning the geological nature of the strata and the pressure of the
145 well, and shall remove all material from the entire diameter of the well, wall to wall;

146 (B) The operator shall prepare down-hole logs for each well. The logs shall consist of a
147 caliper survey and log(s) suitable for determining the top, bottom, and thickness of all coal seams
148 and potential hydrocarbon-producing strata, as well as the location for a bridge plug. The director
149 may approve the use of a down-hole camera survey in lieu of down-hole logs. In addition, a journal
150 shall be maintained that describes the depth of each material encountered; the nature of each
151 material encountered; the bit size and type used to drill each portion of the hole; the length and
152 type of each material used to plug the well; the length of casing(s) removed, perforated or ripped,
153 or left in place; any sections where casing was cut or milled; and any other pertinent information
154 concerning cleaning and sealing the well. Invoices, work orders, and other records relating to all
155 work on the well shall be maintained as part of the journal and provided to the director upon
156 request;

157 (C) When cleaning, the operator shall make a diligent effort to remove all the casing in the
158 well. If it is not possible to remove all the casing, then the operator shall take appropriate steps to
159 ensure that the annulus between the casing and between the casings and the well walls are filled
160 with expanding cement, with a minimum five-tenths of one percent expansion upon setting, and
161 contain no voids. If the casing cannot be removed, it must be cut or milled at all mineable coal
162 seam levels. Any casing which remains shall be perforated or ripped. If the total depth of the well
163 is less than four thousand feet, perforations or rips are required every fifty feet from two hundred
164 feet below the base of the lowest mineable coal seam up to one hundred feet above the
165 uppermost mineable coal seam. If the total depth of the well is four thousand feet or greater,
166 perforations or rips are required every fifty feet from four hundred feet below the base of the lowest
167 mineable coal seam up to one hundred feet above the uppermost mineable coal seam. If the
168 operator, using a casing bond log, demonstrates to the satisfaction of the director that all annuli
169 in the well are already adequately sealed with cement, then the operator shall not be required to
170 perforate or rip the casing. When multiple casing and tubing strings are present in the coal
171 horizon(s), any casing which remains shall be ripped or perforated and filled with expanding

172 cement in accordance with this paragraph. A casing bond log shall be maintained for each casing
173 and tubing string if used in lieu of ripping or perforating multiple strings;

174 (D) If the director concludes that the completely cleaned well emits excessive amounts of
175 gas, the operator must place a mechanical bridge plug in the well. If the total depth of the well is
176 less than four thousand feet, the mechanical bridge plug shall be placed in a competent stratum
177 at least two hundred feet below the base of the lowest mineable coal seam, but above the top of
178 the uppermost hydrocarbon-producing stratum. If the total depth of the well is four thousand feet
179 or greater, the mechanical bridge plug shall be placed in a competent stratum at least four
180 hundred feet below the base of the lowest mineable coal seam, but above the top of the
181 uppermost hydrocarbon-producing stratum: *Provided*, That the director may require a greater
182 distance to set the mechanical bridge plug, regardless of the total depth of the well, based upon
183 excessive pressure within the well. The operator shall provide the director with all information it
184 possesses concerning the geologic nature of the strata and pressure of the well. If it is not possible
185 to set a mechanical bridge plug, an appropriately sized packer may be used; and

186 (E) If the upper-most hydrocarbon-producing stratum is within three hundred feet of the
187 base of the lowest mineable coal seam, the operator shall properly place mechanical bridge plugs
188 as described in paragraph (D) of this subdivision to isolate the hydrocarbon-producing stratum
189 from the expanding cement plug. Nevertheless, if the total depth of the well is less than four
190 thousand feet, the operator shall place a minimum of two hundred feet of expanding cement below
191 the lowest mineable coal seam. If the total depth of the well is four thousand feet or greater, the
192 operator shall place a minimum of four hundred feet of expanding cement below the lowest
193 mineable coal seam: *Provided*, That the director may require a greater distance to set the
194 mechanical bridge plug, regardless of the total depth of the well, based upon excessive pressure
195 within the well.

196 (2) After the well is completely cleaned pursuant to subdivision one of this subsection, the
197 well will be plugged or replugged to the surface as follows:

198 (A) If the total depth of the well is less than four thousand feet, the operator shall pump
199 expanding cement slurry down the well to form a plug which runs from at least two hundred feet
200 below the base of the lowest mineable coal seam to the surface. If the total depth of the well is
201 four thousand feet or greater, the operator shall pump expanding cement slurry down the well to
202 form a plug which runs from at least four hundred feet below the base of the lowest mineable coal
203 seam to the surface: *Provided*, That the director may, regardless of the total depth of the well,
204 require a lower depth based upon excessive pressure within the well. The expanding cement
205 slurry will be placed in the well under a pressure of at least two hundred pounds per square inch.
206 Portland cement or a lightweight cement mixture shall be used to fill the area from one hundred
207 feet above the top of the uppermost mineable coal seam to the surface: *Provided*, That the director
208 may require a higher distance based upon excessive pressure within the well; and

209 (B) The operator shall embed steel turnings or other small magnetic particles in the top of
210 the cement near the surface to serve as a permanent magnetic monument of the well. In the
211 alternative, a four and one-half inch or larger casing, set in cement, shall extend at least thirty-six
212 inches above the ground level with the API well number engraved or welded on the casing. If the
213 hole cannot be marked with a physical monument, high resolution GPS coordinates of one-half
214 meter resolution shall be obtained and maintained by the operator.

215 (e) (f) Any person may apply to the director for an order to clean out and replug a previously
216 plugged well in a manner which will permit the safe mining through of such well. Such application
217 shall be filed with the director and shall contain the well number, a general description of the well
218 location, the name and address of the owner of the surface land upon which the well is located,
219 a copy of or record reference to a deed, lease or other document which entitles the applicant to
220 enter upon the surface land, a description of the methods by which the well was previously
221 plugged, and a description of the method by which such applicant proposes to clean out and
222 replug the well. At the time an application is filed with the director, a copy shall be mailed by
223 registered or certified mail to the owner or owners of the land, and the oil and gas lessee of record,

224 if any, of the site upon which the well is located. If no objection to the replugging of the well is filed
225 by any such landowner or oil and gas lessee within thirty days after the filing of the application,
226 and if the director determines that the method proposed for replugging the well will permit the safe
227 mining through of such well, the director shall grant the application by an order authorizing the
228 replugging of the well. Such order shall specify the method by which the well shall be replugged,
229 and copies thereof shall be mailed by certified or registered mail to the applicant and to the owner
230 or owners of the land, and the oil and gas lessee, if any, of the site upon which such well is
231 located. If any such landowner or oil and gas lessee objects to the replugging of the well, the
232 director shall notify the applicant of such objection. Thereafter, the director shall schedule a
233 hearing to consider the objection, which hearing shall be held after notice by registered or certified
234 mail to the objectors and the applicant. After consideration of the evidence presented at the
235 hearing, the director shall issue an order authorizing the replugging of the well if the director
236 determines that replugging of the well will permit the safe mining through of such well. Such order
237 shall specify the manner in which the well shall be replugged and copies thereof shall be sent by
238 registered or certified mail to the applicant and objectors. The director shall issue an order
239 rejecting the application if the director determines that the proposed method for replugging the
240 well will not permit the safe mining through of such well;

241 (f) (g) All persons adversely affected, by a determination or order of the director issued
242 pursuant to the provisions of this section shall be entitled to judicial review in accordance with the
243 provisions of articles five and six, chapter twenty-nine-a of this code.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-1. Short title.

1 (a) This article may be known and cited as the Water Pollution Control Act.

2 (b) Findings. – The Legislature finds:

3 (1) That there are concerns within West Virginia regarding the identification and listing of

4 trout waters pursuant to 47 C.S.R §2; and

5 (2) That the definition of trout waters set forth in 47 C.S.R. §2-2.19 is broad and contains
6 multiple classifications of trout waters, ranging from naturally reproducing trout streams to streams
7 that maintain stocked populations of more hardy trout species.

8 (b) The secretary is directed:

9 (1) To develop, within twenty-four months, categories of trout waters and to develop
10 criteria for classification and listing of trout waters in each of these categories; and

11 (2) To identify and list, within thirty-six months, trout waters under each category for public
12 comment and review and for Legislative review and approval.

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

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

§22A-1-1. Continuation of the office of miners' health, safety and training; purpose.

1 (a) The Office of Miners' Health, Safety and Training is continued and is a separate office
2 within the Department of Commerce. ~~labor and environmental resources.~~ The office shall be
3 administered, in accordance with the provisions of this article, under the supervision and direction
4 of the Director of the Office of Miners' Health, Safety and Training.

5 (b) The division of health, safety and training shall have as its purpose the supervision of
6 the execution and enforcement of the provisions of this chapter and, in carrying out the aforesaid
7 purposes, it shall give prime consideration to the protection of the safety and health of persons
8 employed within or at the mines of this state. In addition, the division shall, consistent with the
9 aforesaid prime consideration, protect and preserve mining property and property used in
10 connection therewith.

§22A-1-2. Definitions.

1 Unless the context in which used clearly requires a different meaning, the following

2 definitions apply to this chapter:

3 (a) *General.*

4 (1) Accident: The term “accident” means any mine explosion, mine ignition, mine fire, or
5 mine inundation, or injury to, or death of any person.

6 (2) Agent: The term “agent” means any person charged with responsibility for the
7 operation of all or a part of a mine or the supervision of the miners in a mine.

8 (3) Approved: The term “approved” means in strict compliance with mining law, or, in the
9 absence of law, accepted by a recognized standardizing body or organization whose approval is
10 generally recognized as authoritative on the subject.

11 (4) Face equipment: The term “face equipment” means mobile or portable mining
12 machinery having electric motors or accessory equipment normally installed or operated in by the
13 last open crosscut in an entry or room.

14 (5) Imminent danger: The term “imminent danger” means the existence of any condition
15 or practice in a coal mine which could reasonably be expected to cause death or serious physical
16 harm before such condition or practice can be abated.

17 (6) Mine: The term “mine” includes the shafts, slopes, drifts or inclines connected with, or
18 intended in the future to be connected with, excavations penetrating coal seams or strata, which
19 excavations are ventilated by one general air current or divisions thereof, and connected by one
20 general system of mine haulage over which coal may be delivered to one or more points outside
21 the mine, and the surface structures or equipment connected or associated therewith which
22 contribute directly or indirectly to the mining, preparation or handling of coal, or construction
23 thereof.

24 (7) Miner: The term “miner” means any individual working in a coal mine.

25 (8) Operator: The term “operator” means any firm, corporation, partnership or individual
26 operating any coal mine, or part thereof, or engaged in the construction of any facility associated
27 with a coal mine.

28 ~~(9) Permissible: The term “permissible” means any equipment, device or explosive that~~
29 ~~has been approved as permissible by the federal mine safety and health administration and/or~~
30 ~~the United States Bureau of Mines and meets all requirements, restrictions, exceptions, limitations~~
31 ~~and conditions attached to such classification by that agency or the bureau~~

32 (40) (9) Person: The term “person” means any individual, partnership, association,
33 corporation, firm, subsidiary of a corporation or other organization.

34 ~~(44)~~ (10) Work of preparing the coal: The term “work of preparing the coal” means the
35 breaking, crushing, sizing, cleaning, washing, drying, mixing, storing and loading of bituminous
36 coal or lignite and such other work of preparing such coal as is usually done by the operator of
37 the coal mine.

38 (b) *Office of Miners' Health, Safety and Training.*

39 (1) Board of appeals: The term “board of appeals” means as provided for in article five of
40 this chapter.

41 (2) Director: The term “director” means the Director of the Office of Miners' Health, Safety
42 and Training provided for in section three of this article.

43 (3) Mine inspector: The term “mine inspector” means a state mine inspector provided for
44 in section eight of this article.

45 ~~(4) Mine Inspectors' Examining Board: The term “Mine Inspectors' Examining Board” shall~~
46 ~~mean the Mine Inspectors' Examining Board provided for in article nine of this chapter.~~

47 ~~(5)~~ (4) Office: The term “office” means, when referring to a specific office, the Office of
48 Miners' Health, Safety and Training provided for in this article. The term “office”, when used
49 generically, includes any office, board, agency, unit, organizational entity or component thereof.

50 (c) *Mine areas.*

51 (1) Abandoned workings: The term “abandoned workings” means excavation, either caved
52 or sealed, that is deserted and in which further mining is not intended, or open workings which
53 are ventilated and not inspected regularly.

54 (2) Active workings: The term “active workings” means all places in a mine that are
55 ventilated and inspected regularly.

56 (3) Drift: The term “drift” means a horizontal or approximately horizontal opening through
57 the strata or in a coal seam and used for the same purposes as a shaft.

58 (4) Excavations and workings: The term “excavations and workings” means any or all parts
59 of a mine excavated or being excavated, including shafts, slopes, drifts, tunnels, entries, rooms
60 and working places, whether abandoned or in use.

61 (5) Inactive workings: The term “inactive workings” includes all portions of a mine in which
62 operations have been suspended for an indefinite period, but have not been abandoned.

63 (6) Mechanical working section: The term “mechanical working section” means an area of
64 a mine: (A) In which coal is loaded mechanically; (B) which is comprised of a number of working
65 places that are generally contiguous; and (C) which is of such size to permit necessary
66 supervision during shift operation, including preshift and on-shift examinations and tests required
67 by law.

68 (7) Panel: The term “panel” means workings that are or have been developed off of
69 submain entries which do not exceed three thousand feet in length.

70 (8) Return air: The term “return air” means a volume of air that has passed through and
71 ventilated all the working places in a mine section.

72 (9) Shaft: The term “shaft” means a vertical opening through the strata that is or may be
73 used for the purpose of ventilation, drainage, and the hoisting and transportation of individuals
74 and material, in connection with the mining of coal.

75 (10) Slope: The term “slope” means a plane or incline roadway, usually driven to a coal
76 seam from the surface and used for the same purposes as a shaft.

77 (11) Working face: The term “working face” means any place in a coal mine in which work
78 of extracting coal from its natural deposit in the earth is performed during the mining cycle.

79 (12) Working place: The term “working place” means the area of a coal mine in by the last

80 open crosscut.

81 (13) Working section: The term “working section” means all areas of the coal mine from
82 the loading point of the section to and including the working faces.

83 (14) Working unit: The term “working unit” means an area of a mine in which coal is mined
84 with a set of production equipment; a conventional mining unit by a single loading machine; a
85 continuous mining unit by a single continuous mining machine, which is comprised of a number
86 of working places.

87 (d) *Mine personnel.*

88 (1) Assistant mine foreman: The term “assistant mine foreman” means a certified person
89 designated to assist the mine foreman in the supervision of a portion or the whole of a mine or of
90 the persons employed therein.

91 (2) Certified electrician: The term “certified electrician” means any person who is qualified
92 as a mine electrician and who has passed an examination given by the office, or has at least three
93 years of experience in performing electrical work underground in a coal mine, in the surface work
94 areas of an underground coal mine, in a surface coal mine, in a noncoal mine, in the mine
95 equipment manufacturing industry or in any other industry using or manufacturing similar
96 equipment, and has satisfactorily completed a coal mine electrical training program approved by
97 the office or any person who is qualified as a mine electrician in any state that recognizes certified
98 electricians licensed in West Virginia.

99 (3) Certified person: The term “certified person”, when used to designate the kind of person
100 to whom the performance of a duty in connection with the operation of a mine shall be assigned,
101 means a person who is qualified under the provisions of this law to perform such duty.

102 (4) Interested persons: The term “interested persons” includes the operator, members of
103 any mine safety committee at the mine affected and other duly authorized representatives of the
104 mine workers and the office.

105 (5) Mine foreman: The term “mine foreman” means the certified person whom the operator

106 or superintendent shall place in charge of the inside workings of the mine and of the persons
107 employed therein.

108 (6) Qualified person: The term "qualified person" means a person who has completed an
109 examination and is considered qualified on record by the office.

110 (7) Shot firer: The term "shot firer" means any person having had at least two years of
111 practical experience in coal mines, who has a knowledge of ventilation, mine roof and timbering,
112 and who has demonstrated his or her knowledge of mine gases, the use of a flame safety lamp,
113 and other approved detecting devices by examination and certification given him or her by the
114 office.

115 (8) Superintendent: The term "superintendent" means the person who has, on behalf of
116 the operator, immediate supervision of one or more mines.

117 (9) Supervisor: The term "supervisor" means a superintendent, mine foreman, assistant
118 mine foreman or any person specifically designated by the superintendent or mine foreman to
119 supervise work or employees and who is acting pursuant to such specific designation and
120 instructions.

121 ~~(e) Electrical:~~

122 ~~(1) Armored cable: The term "armored cable" means a cable provided with a wrapping of~~
123 ~~metal, usually steel wires or tapes, primarily for the purpose of mechanical protection.~~

124 ~~(2) Borehole cable: The term "borehole cable" means a cable designed for vertical~~
125 ~~suspension in a borehole or shaft and used for power circuits in the mine.~~

126 ~~(3) Branch circuit: The term "branch circuit" means any circuit, alternating current or direct~~
127 ~~current, connected to and leading from the main power lines.~~

128 ~~(4) Cable: The term "cable" means a standard conductor (single conductor cable) or a~~
129 ~~combination of conductors insulated from one another (multiple conductor cable).~~

130 ~~(5) Circuit breaker: The term "circuit breaker" means a device for interrupting a circuit~~
131 ~~between separable contacts under normal or abnormal conditions.~~

132 ~~(6) Delta connected: The term “delta connected” means a power system in which the~~
133 ~~windings or transformers or a.c. generators are connected to form a triangular phase relationship,~~
134 ~~and with phase conductors connected to each point of the triangle.~~

135 ~~(7) Effectively grounded: The term “effectively grounded” is an expression which means~~
136 ~~grounded through a grounding connection of sufficiently low impedance (inherent or intentionally~~
137 ~~added or both) so that fault grounds which may occur cannot build up voltages in excess of limits~~
138 ~~established for apparatus, circuits or systems so grounded.~~

139 ~~(8) Flame-resistant cable, portable: The term “flame-resistant cable, portable” means a~~
140 ~~portable flame-resistant cable that has passed the flame tests of the federal mine safety and~~
141 ~~health administration.~~

142 ~~(9) Ground or grounding conductor (mining): The term “ground or grounding conductor~~
143 ~~(mining)”, also referred to as a safety ground conductor, safety ground and frame ground, means~~
144 ~~a metallic conductor used to connect the metal frame or enclosure of any equipment, device or~~
145 ~~wiring system with a mine track or other effective grounding medium.~~

146 ~~(10) Grounded (earthed): The term “grounded (earthed)” means that the system, circuit or~~
147 ~~apparatus referred to is provided with a ground.~~

148 ~~(11) High voltage: The term “high voltage” means voltages of more than one thousand~~
149 ~~volts.~~

150 ~~(12) Lightning arrester: The term “lightning arrester” means a protective device for limiting~~
151 ~~surge voltage on equipment by discharging or by passing surge current; it prevents continued~~
152 ~~flow of follow current to ground and is capable of repeating these functions as specified.~~

153 ~~(13) Low voltage: The term “low voltage” means up to and including six hundred sixty~~
154 ~~volts.~~

155 ~~(14) Medium voltage: The term “medium voltage” means voltages from six hundred sixty-~~
156 ~~one to one thousand volts.~~

157 ~~(15) Mine power center or distribution center: The term “mine power center or distribution~~

158 ~~center” means a combined transformer or distribution unit, complete within a metal enclosure from~~
159 ~~which one or more low-voltage power circuits are taken.~~

160 ~~(16) Neutral (derived): The term “neutral (derived)” means a neutral point or connection~~
161 ~~established by the addition of a “zig-zag” or grounding transformer to a normally underground~~
162 ~~power system.~~

163 ~~(17) Neutral point: The term “neutral point” means the connection point of transformer or~~
164 ~~generator windings from which the voltage to ground is nominally zero, and is the point generally~~
165 ~~used for system groundings in wye-connected a.c. power system.~~

166 ~~(18) Portable (trailing) cable: The term “portable (trailing) cable” means a flexible cable or~~
167 ~~cord used for connecting mobile, portable or stationary equipment in mines to a trolley system or~~
168 ~~other external source of electric energy where permanent mine wiring is prohibited or is~~
169 ~~impracticable.~~

170 ~~(19) Wye-connected: The term “wye-connected” means a power system connection in~~
171 ~~which one end of each phase windings or transformers or a.c. generators are connected together~~
172 ~~to form a neutral point, and a neutral conductor may or may not be connected to the neutral point,~~
173 ~~and the neutral point may or may not be grounded.~~

174 ~~(20) Zig-zag transformer (grounding transformer): The term “zig-zag transformer~~
175 ~~(grounding transformer)” means a transformer intended primarily to provide a neutral point for~~
176 ~~grounding purposes~~

§22A-1-3. Director of the Office of Miners' Health, Safety and Training.

1 (a) The Director of the Office of Miners' Health, Safety and Training is responsible for
2 surface and underground safety ~~inspections~~ compliance visits and education of coal mines and
3 the administration of the Office of Miners' Health, Safety and Training.

4 (b) The director is the chief executive officer of the office. Subject to provisions of law, he
5 or she shall organize the office into those offices, sections, agencies and other units of activity
6 found by the director to be desirable for the orderly, efficient and economical administration of the

7 office. The director may appoint any other employees needed for the operation of the office and
8 may prescribe their powers and duties and fix their compensation within amounts appropriated.

9 (c) The director shall be appointed by the Governor, by and with the advice and consent
10 of the Senate, and shall serve at the will and pleasure of the Governor.

11 (d) The Director of the Office of Miners' Health, Safety and Training shall be a citizen of
12 West Virginia, shall be a competent person of good repute and temperate habits with a
13 demonstrated interest and five years' education or training in underground mining safety, and
14 three years' experience in underground mining and shall have at least three years of experience
15 in a position of responsibility in at least one discipline relating to the duties and responsibilities for
16 which the director will be responsible upon assumption of the office of director. Special reference
17 shall be given to his or her administrative experience and ability. The director shall devote all of
18 his or her time to the duties of the position of director and shall not be directly interested financially
19 in any mine in this or any other state nor shall the director, either directly or indirectly, be a majority
20 owner of, or have control of or a controlling interest in, a mine in this or any other state. The
21 director shall not be a candidate for or hold any other public office, shall not be a member of any
22 political party committee and shall immediately forfeit and vacate his or her office as director in
23 the event he or she becomes a candidate for or accepts appointment to any other public office or
24 political party committee: *Provided*, That, in the event of a vacancy in the position of director, the
25 Governor may fill the director's position on an interim basis by appointing an acting director to
26 exercise the powers of the director. The acting director shall be a citizen of West Virginia, shall
27 be a competent person of good repute and temperate habits with a demonstrated interest and
28 five years' education, training or experience in underground coal mining safety and shall have at
29 least three years of experience in a position of responsibility in at least one discipline relating to
30 the duties and responsibilities for which the acting director will be responsible during his or her
31 interim service in the office of director. The interim service appointment cannot last for more than
32 one year, after which a permanent director must be appointed.

33 (e) The director shall be allowed and paid necessary expenses incident to the performance
34 of his or her official duties. Prior to the assumption of his or her official duties, the director shall
35 take the oath required of public officials prescribed by section five, article IV of the Constitution of
36 West Virginia and shall execute a bond, with surety approved by the Governor, in the penal sum
37 of \$10,000. The executed oath and bond shall be filed in the Office of the Secretary of State.
38 Premiums on the bond shall be paid from office funds.

**§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 and Training is hereby empowered
2 and it is his or her duty to administer and enforce the provisions of this chapter relating to health
3 and safety ~~inspections~~ compliance visits, and enforcement of mine certifications and Individual
4 Penalty Assessments (IPAs) and training in coal mines, underground clay mines, open pit mines,
5 cement manufacturing plants and underground limestone and sandstone mines.

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

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

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

12 (3) Assign mine inspectors to divisions or districts in accordance with the provisions of
13 section eight of this article as may be necessary to fully and effectively carry out the provisions of
14 this law, including the training of inspectors for the specialized requirements of surface mining,
15 shaft and slope sinking and surface installations and to supervise and direct the mine inspectors
16 in the performance of their duties.

17 (4) Suspend, for good cause, any mine inspector without compensation for a period not
18 exceeding thirty days in any calendar year.

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

21 (6) Hear and determine applications made by mine operators for the annulment or revision
22 of orders made by mine inspectors, and to make ~~inspections~~ safety compliance assistance visits
23 of mines, in accordance with the provisions of this article.

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

26 (8) Make annually a full and complete written report of the administration of the office to
27 the Governor and the Legislature of the state for the year ending June 30. The report shall include
28 the number of visits and ~~inspections~~ safety compliance assistance visits of mines in the state by
29 mine inspectors, the quantity of coal, coke and other minerals (excluding oil and gas) produced
30 in the state, the number of individuals employed, number of mines in operation, statistics with
31 regard to health and safety of persons working in the mines including the causes of injuries and
32 deaths, improvements made, prosecutions, the total funds of the office from all sources identifying
33 each source of the funds, the expenditures of the office, the surplus or deficit of the office at the
34 beginning and end of the year, ~~the amount of fines collected, the amount of fines imposed~~ the
35 value of fines pending, the number and type of violations found, ~~the amount of fines imposed,~~
36 ~~levied and turned over for collection, the total amount of fines levied but not paid during the prior~~
37 ~~year~~ the titles and salaries of all inspectors and other officials of the office, and the number of
38 ~~inspections~~ safety compliance visits made by each inspector. ~~the number and type of violations~~
39 ~~found by each inspector.~~ However, no inspector may be identified by name in this report. Such
40 reports shall be filed with the Governor and the Legislature on or before December 31 of the same
41 year for which it was made, and shall upon proper authority be printed and distributed to interested
42 persons.

43 (9) Call or subpoena witnesses, for the purpose of conducting hearings into mine fires,
44 mine explosions or any mine accident; to administer oaths and to require production of any books,

45 papers, records or other documents relevant or material to any hearing, investigation or
46 examination of any mine permitted by this chapter. Any witness so called or subpoenaed shall
47 receive \$40 per diem and shall receive mileage at the rate of \$.15 for each mile actually traveled,
48 which shall be paid out of the State Treasury upon a requisition upon the State Auditor, properly
49 certified by the witness.

50 (10) Institute civil actions for relief, including permanent or temporary injunctions,
51 restraining orders, or any other appropriate action in the appropriate federal or state court
52 whenever any ~~operator or the operator's agent~~ certified person violates or fails or refuses to
53 comply with any lawful order, notice or decision issued by the director or his or her representative.

54 (11) Beginning January 1, 2013, the director shall share information regarding suspension
55 or revocation of a certificate of a certified person, as defined in this article for violation of the
56 substance abuse provisions of article one-a of this chapter with other states that subject similar
57 persons to disciplinary action for violation of a substance abuse policy.

58 (12) The director shall propose rules for legislative approval pursuant to article three,
59 chapter twenty-nine-a of this code, a rule establishing a program for the sharing of information
60 between employers who employ certified persons regarding the discharge of persons in safety
61 sensitive positions as defined in section one, article one-a of this chapter for violation of an
62 employer's substance abuse policy.

63 (13) Perform all other duties which are expressly imposed upon him or her by the
64 provisions of this chapter.

65 (14) Impose reasonable fees upon applicants taking tests administered pursuant to the
66 requirements of this chapter.

67 (15) Impose reasonable fees for the issuance of certifications required under this chapter.

68 (16) Prepare study guides and other forms of publications relating to mine safety and
69 charge a reasonable fee for the sale of the publications.

70 (17) Make all records of the office open for inspection of interested persons and the public.

71 (c) The Director of the Office of Miners' Health, Safety and Training, or his or her designee,
 72 upon receipt of the list of approved innovative mine safety technologies from the ~~Mine Safety~~
 73 ~~Technology Task Force~~ Board of Coal Mine Health and Safety, has thirty days to approve or
 74 amend the list as provided in section four, article thirteen-bb, chapter eleven of this code. At the
 75 expiration of the time period, the director shall publish the list of approved innovative mine safety
 76 technologies as provided in section four, article thirteen-bb, chapter eleven of this code.

§22A-1-5. Offices continued in the Office of Miners' Health, Safety and Training.

1 (a) There are hereby continued in the Office of Miners' Health, Safety and Training the
 2 following offices:

3 ~~(1) The Board of Coal Mine Health and Safety established pursuant to article six of this~~
 4 ~~chapter;~~

5 ~~(2) The Coal Mine Safety and Technical Review Committee established pursuant to article~~
 6 ~~six of this chapter;~~

7 ~~(3) The Board of Miner Training, Education and Certification established pursuant to article~~
 8 ~~seven of this chapter;~~

9 ~~(4) The Mine Inspectors' Examining Board established pursuant to article nine of this~~
 10 ~~chapter; and~~

11 ~~(5) The Board of Appeals provided for pursuant to the provisions of article five of this~~
 12 ~~chapter.~~

13 (b) Nothing in this article may authorize the director or the Secretary of the Department of
 14 Commerce ~~Labor and Environmental Resources~~ to alter, discontinue or abolish any office, board
 15 or commission or the functions thereof, which are established by statute.

§22A-1-6. Director's authority to promulgate rules.

1 The director has the power and authority to propose or promulgate rules to organize the
 2 office and to carry out and implement the provisions of this chapter relating to health and safety
 3 ~~inspections and enforcement. All rules in effect on the effective date of this article which pertain~~

4 ~~to the provisions of this chapter as they relate to health and safety inspection and enforcement~~
5 ~~shall remain in effect until changed or superseded by the director, or as appropriate~~ compliance
6 visits and enforcement of state mine certifications and Individual Penalty Assessments (IPAs).
7 Except when specifically exempted by the provisions of this chapter, all rules or changes thereto
8 shall be proposed or promulgated by the director in accordance with the provisions of chapter
9 twenty-nine-a of this code.

**§22A-1-14. Director and inspectors authorized to enter mines; duties of inspectors to
examine mines; no advance notice of an inspection; reports after fatal accidents.**

1 (a) The director, or his or her authorized representative, has authority to visit, enter, and
2 examine any mine, whether underground or on the surface, and may call for the assistance of
3 any district mine inspector or inspectors whenever assistance is necessary in the examination of
4 any mine for safety compliance assistance. The operator of every coal mine shall furnish the
5 director or his or her authorized representative proper facilities for entering the mine and making
6 examination or obtaining information.

7 (b) If miners or one of their authorized representatives, have reason to believe, at any
8 time, that dangerous conditions are existing or that the law is not being complied with, they may
9 request the director to have an immediate investigation made: *Provided*, That miners are always
10 encouraged to work with mine management with regards to safety concerns.

11 (c) Mine inspectors shall devote their full-time and undivided attention to the performance
12 of their duties, and they shall examine all of the mines in their respective districts at least ~~four~~
13 ~~times annually~~ once per year, and as often, in addition thereto, as the director may direct, or the
14 necessities of the case or the condition of the mine or mines may require, ~~with no advance notice~~
15 ~~of inspection provided to any person, and they shall make a personal examination of each working~~
16 ~~face and all entrances to abandoned parts of the mine where gas is known to liberate for the~~
17 purpose of determining whether an imminent danger, referred to in section fifteen of this article,
18 exists in the mine ~~or whether any provision of article two of this chapter is being violated or has~~

19 ~~been violated within the past forty-eight hours in the mine. No other person shall, with the intent~~
20 ~~of undermining the integrity of an unannounced mine inspection, provide advance notice of any~~
21 ~~inspection or of an inspector's presence at a mine to any person at that mine. Any person who,~~
22 ~~with the requisite intent, knowingly causes or conspires to provide advance notice of any~~
23 ~~inspection or of an inspector's presence at a mine is guilty of a felony and, upon conviction thereof,~~
24 ~~shall be fined not more than \$15,000 or imprisoned in a state correctional facility not less than~~
25 ~~one year and not more than five years, or both fined and imprisoned and provide safety~~
26 ~~compliance assistance to all mines in this state on ways to improve the miner's health and safety~~
27 ~~and improve existing safety plans and programs.~~

28 ~~(d) In addition to the other duties imposed by this article and article two of this chapter, it~~
29 ~~is the duty of each inspector to note each violation he or she finds and issue a finding, order, or~~
30 ~~notice, as appropriate for each violation so noted. During the investigation of any accident, any~~
31 ~~violation may be noted whether or not the inspector actually observes the violation and whether~~
32 ~~or not the violation exists at the time the inspector notes the violation, so long as the inspector~~
33 ~~has clear and convincing evidence the violation has occurred or is occurring~~

34 ~~(e)~~ (d) An inspector shall require the operator or other employer to investigate all
35 complaints received by the Office of Miners' Health, Safety and Training involving a certified
36 person's substance abuse or alcohol related impairment at a mine. Within thirty days following
37 notification by the Office of Miners' Health, Safety and Training to the operator or other employer
38 of the complaint, the operator or other employer shall file with the director a summary of its
39 investigation into the alleged substance abuse or alcohol related impairment of a certified person.

40 (f) (e) The mine inspector shall visit the scene of each fatal accident occurring in any mine
41 within his or her district and shall make an examination into the particular facts of the accident;
42 make a report to the director, setting forth the results of the examination, including the condition
43 of the mine and the cause or causes of the fatal accident, if known, and all the reports shall be
44 made available to the interested parties, upon written requests.

45 ~~(g)~~ (f) At the commencement of any ~~inspection~~ safety compliance assistance visit of a coal
46 mine by an authorized representative of the director, the authorized representative of the miners
47 at the mine, as well as a salaried employee of management, at the time of the inspection shall be
48 given an opportunity to accompany the authorized representative of the director on the ~~inspection~~
49 visit. At the close of the compliance assistance visit, the authorized representative of the director
50 shall report his or her findings to the authorized representative of the miners at the mine.

§22A-1-15. Findings, orders and notices.

1 (a) If upon any ~~inspection~~ safety compliance assistance visit of a coal mine an authorized
2 representative of the director finds that an imminent danger exists, the representative shall
3 determine the area throughout which the danger exists and shall immediately issue an order
4 requiring the operator of the mine or the operator's agent to cause immediately all persons, except
5 those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn
6 from and to be prohibited from entering the area until an authorized representative of the director
7 determines that the imminent danger no longer exists.

8 ~~(b) If upon any inspection of a coal mine an authorized representative of the director finds~~
9 ~~that there has been a violation of the law, but the violation has not created an imminent danger,~~
10 ~~he or she shall issue a notice to the operator or the operator's agent fixing a reasonable time for~~
11 ~~the abatement of the violation. If upon the expiration of the period of time, as originally fixed or~~
12 ~~subsequently extended, an authorized representative of the director finds that the violation has~~
13 ~~not been totally abated, and if the director also finds that the period of time should not be further~~
14 ~~extended, the director shall find the extent of the area affected by the violation and shall promptly~~
15 ~~issue an order requiring the operator of the mine or the operator's agent to cause immediately all~~
16 ~~persons, except those referred to in subdivisions (1), (2), (3) and (4), subsection (e) of this section,~~
17 ~~to be withdrawn from and to be prohibited from entering the area until an authorized representative~~
18 ~~of the director determines that the violation has been abated~~

19 ~~(e)~~ (b) If upon any inspection of a coal mine an authorized representative of the director

20 finds that an imminent danger exists in an area of the mine, in addition to issuing an order pursuant
21 to subsection (a) of this section, the director shall review the compliance record of the mine.

22 (1) A review of the compliance record conducted in accordance with this subsection shall,
23 at a minimum, include a review of the following:

24 (A) Any closure order issued pursuant to subsection (a) of this section;

25 ~~(B) Any closure order issued pursuant to subsection (b) of this section;~~

26 ~~(C) Any enforcement measures taken pursuant to this chapter, other than those authorized~~
27 ~~under subsections (a) and (b) of this section;~~

28 ~~(D) Any evidence of the operator's lack of good faith in abating significant and substantial~~
29 ~~violations at the mine;~~

30 ~~(E)~~ (B) Any accident, injury or illness record that demonstrates a serious safety or health
31 management problem at the mine; and

32 ~~(F)~~ (C) Any mitigating circumstances.

33 ~~(2) If, after review of the mine's compliance record, the director determines that the mine~~
34 ~~has a history of repeated significant and substantial violations of a particular standard caused by~~
35 ~~unwarrantable failure to comply or a history of repeated significant and substantial violations of~~
36 ~~standards related to the same hazard caused by unwarrantable failure to comply and the history~~
37 ~~or histories demonstrate the operator's disregard for the health and safety of miners, the director~~
38 ~~shall issue a closure order for the entire mine or area throughout which the director determines~~
39 ~~the dangerous condition exists and shall immediately issue an order requiring the operator of the~~
40 ~~mine or the operator's agent to cause immediately all persons, except those referred to in~~
41 ~~subdivisions (1), (2), (3) and (4), subsection (e) of this section, to be withdrawn from and to be~~
42 ~~prohibited from entering the mine or area throughout which the director determines the dangerous~~
43 ~~condition until a thorough inspection of the mine or area has been conducted by the office and~~
44 ~~the director determines that the operator has abated all violations related to the imminent danger~~
45 ~~and any violations unearthed in the course of the inspection~~

46 ~~(d)~~ (c) All employees on the inside and outside of a mine who are idled as a result of the
47 posting of a withdrawal order by a mine inspector shall be compensated by the operator at their
48 regular rates of pay for the period they are idled, but not for more than the balance of the shift. If
49 the order is not terminated prior to the next working shift, all the employees on that shift who are
50 idled by the order are entitled to full compensation by the operator at their regular rates of pay for
51 the period they are idled, but for not more than four hours of the shift.

52 ~~(e)~~ (d) The following persons are not required to be withdrawn from or prohibited from
53 entering any area of the coal mine subject to an order issued under this section:

54 (1) Any person whose presence in the area is necessary, in the judgment of the operator
55 or an authorized representative of the director, to eliminate the condition described in the order;

56 (2) Any public official whose official duties require him or her to enter the area;

57 (3) Any representative of the miners in the mine who is, in the judgment of the operator or
58 an authorized representative of the director, qualified to make coal mine examinations or who is
59 accompanied by such a person and whose presence in the area is necessary for the investigation
60 of the conditions described in the order; and

61 (4) Any consultant to any of the persons set forth in this subsection.

62 ~~(f) Notices and orders~~ (e) Orders issued pursuant to this section shall contain a detailed
63 description of the conditions or practices which cause and constitute an imminent danger ~~or a~~
64 ~~violation of any mandatory health or safety standard~~ and, where appropriate, a description of the
65 area of the coal mine from which persons must be withdrawn and prohibited from entering.

66 ~~(g) (f) Each notice or compliance assistance visit notices or imminent danger order~~ issued
67 under this section shall be given promptly to the operator of the coal mine or the operator's agent
68 by an authorized representative of the director issuing the notice or order and all the notices and
69 orders shall be in writing and shall be signed by the representative and posted on the bulletin
70 board at the mine.

71 ~~(h) (g) A notice or~~ An order issued pursuant to this section may be modified or terminated

72 by an authorized representative of the director.

73 (†) (h) Each finding, order and notice made under this section shall promptly be given to
74 the operator of the mine to which it pertains by the person making the finding, order or notice.

75 (j) ~~Definitions.~~ For the purposes of this section only, the following terms have the
76 following meanings:

77 (1) ~~"Unwarrantable failure" means aggravated conduct, constituting more than ordinary~~
78 ~~negligence, by a mine operator in relation to a violation of this chapter of the code; and~~

79 (2) ~~"Significant and substantial violation" shall have the same meaning as that established~~
80 ~~in 6 FMSHRC 1 (1984)~~

ARTICLE 2. UNDERGROUND MINES.

§22A-2-2. Submittal of detailed ventilation plan to director.

1 ~~(a) A mine operator shall submit a detailed ventilation plan and any addendums to the~~
2 ~~director for review and comment. The mine operator shall review the plan with the director and~~
3 ~~address concerns to the extent practicable. The operator shall deliver to the miners'~~
4 ~~representative employed by the operator at the mine, if any, a copy of the operator's proposed~~
5 ~~annual ventilation plan at least ten days prior to the date of submission. The miners'~~
6 ~~representative, if any, shall be afforded the opportunity to submit written comments to the operator~~
7 ~~prior to such submission; in addition the miners' representative, if any, may submit written~~
8 ~~comments to the director. The director shall submit any concern that is not addressed to the~~
9 ~~United States Department of Labor - Mine Safety and Health Administration (MSHA) through~~
10 ~~comments to the plan. The mine operator shall provide a copy of the plan to the director ten days~~
11 ~~prior to the submittal of the plan to MSHA~~

12 (a) A Ventilation Plan approved by the federal Mine Safety and Health Administration shall
13 meet all requirements for operating a mine under the state laws of West Virginia. A separate state
14 ventilation shall not be required. The mine operator shall submit its approved MSHA ventilation

15 plan to the West Virginia Office of Miner's Health Safety and Training.

16 (b) The operator shall give the director a copy of the MSHA-approved plan and any
17 addendums as soon as the operator receives the approval.

18 ~~(c) In the event of an unforeseen situation requiring immediate action on a plan revision,~~
19 ~~the operator shall submit the proposed revision to the director and the miners' representative, if~~
20 ~~any, employed by the operator at the mine when the proposed revision is submitted to MSHA.~~
21 ~~The director shall work with the operator to review and comment on the proposed plan revision to~~
22 ~~MSHA as quickly as possible~~

23 ~~(d) (c) Upon approval by MSHA, the plan is enforceable by the director. The approved~~
24 ~~plan and all revisions and addendums thereto shall be posted on the mine bulletin board and~~
25 ~~made available for inspection by the miners at that mine for the period of time that they are in~~
26 ~~effect.~~

§22A-2-3. Fans.

1 The ventilation of mines, the systems for which extend for more than two hundred feet
2 underground and which are opened after the effective date of this article, shall be governed by
3 standards established by the U.S. Mine Safety and Health Administration.

§22A-2-4. Ventilation of mines in general.

1 The ventilation of mines shall be governed by standards established by the U.S. Mine
2 Safety and Health Administration and MSHA approved ventilation plans.

§22A-2-4a. Use of belt air.

1 (a) For purposes of this section, "belt air" means the use of a belt conveyor entry as an
2 intake air course to ventilate the working sections of a mine or areas where mechanized mining
3 equipment is being installed or removed.

4 (b) Upon the effective date of the enactment of this section, any belt air approved by the
5 U.S. Mine Safety and Health Administration may be used in any coal mine in the State of West
6 Virginia.

§22A-2-5. Unused and abandoned parts of mine.

1 In any mine, all workings which are abandoned after July 1, 1971, shall be sealed or
2 ventilated as per standards established by the U.S. Mine Safety and Health Administration.

§22A-2-6. Requirements for movement of off-track mining equipment in areas of active workings where energized trolley wires or trolley feeder wires are present; premovement requirements; certified and qualified persons.

1 Mining equipment being transported or trammed underground, other than ordinary
2 sectional movements, shall be transported or trammed by qualified personnel and under
3 standards established by the U.S. Mine Safety and Health Administration.

§22A-2-11. Boreholes.

1 The drilling of boreholes shall be governed by standards established by the U.S. Mine
2 Safety and Health Administration.

§22A-2-13. Daily inspection of working places; records.

1 Before the beginning of any shift upon which they shall perform supervisory duties, the
2 mine foreman or his or her assistant shall review carefully and countersign all books and records
3 reflecting the conditions and the areas under their supervision, exclusive of equipment logs, which
4 the operator is required to keep under this chapter. All examinations shall be made as required
5 by the U.S. Mine Safety and Health Administration.

§22A-2-20. Preparation of danger signal by fire boss or certified person acting as such prior to examination; report; records open for inspection.

1 (a) It is the duty of the fire boss, or a certified person acting as such, to prepare a danger
2 signal (a separate signal for each shift) with red color at the mine entrance at the beginning of his
3 or her shift or prior to his or her entering the mine to make his or her examination and, except for
4 those persons already on assigned duty, no person except the mine owner, operator or agent,
5 and only then in the case of necessity, shall pass beyond this danger signal until the mine has
6 been examined by the fire boss or other certified person and the mine or certain parts thereof

7 reported by him or her to be safe. When reported by him or her to be safe, the danger sign or
8 color thereof shall be changed to indicate that the mine is safe in order that employees going on
9 shift may begin work. Each person designated to make the fire boss examinations shall be
10 assigned a definite underground area of the mine, and, in making his or her examination shall
11 examine all active working places in the assigned area and make tests with an approved device
12 for accumulations of methane and oxygen deficiency; examine seals and doors; examine and test
13 the roof, face and ribs in the working places and on active roadways and travelways, approaches
14 to abandoned workings, accessible falls in active sections and areas where any person is
15 scheduled to work or travel underground. He or she shall place his or her initials and the date at
16 or near the face of each place he or she examines. Should he or she find a condition which he or
17 she considers dangerous to persons entering the areas, he or she shall place a conspicuous
18 danger sign at all entrances to the place or places. Only persons authorized by the mine
19 management may enter the places while the sign is posted and only for the purpose of eliminating
20 the dangerous condition. Upon completing his or her examination he or she shall report by suitable
21 communication system or in person the results of this examination to a certified person trained as
22 a certified miner with at least two years mining experience designated by mine management to
23 receive and record the report, at a designated station on the surface of the premises of the mine
24 or underground, before other persons enter the mine to work in coal-producing shifts. He or she
25 shall also record the results of his or her examination with ink or indelible pencil in a book
26 prescribed by the director, kept for the purpose at a place on the surface of the mine designated
27 by mine management. All records of daily and weekly reports, as prescribed herein, shall be open
28 for inspection by interested persons.

29 (b) *Supplemental examination.* - When it becomes necessary to have workers enter areas
30 of the mine not covered during the preshift examination, a supplemental examination shall be
31 performed by a fire boss or certified person acting as such within three hours before any person
32 enters the area. The fire boss or certified person acting as such shall examine the area for

33 ~~hazardous conditions, determine if air is traveling in its proper direction and test for oxygen~~
34 ~~deficiency and methane~~ under standards established by the U.S. Mine Safety and Health
35 Administration.

36 ~~(c) Each examined area shall be certified by date, time and the initials of the examiner~~

37 ~~(d)~~ (c) The results of the examination shall be recorded with ink or indelible pencil by the
38 examiner in the book referenced in subsection (a) of this section before he or she leaves the mine
39 on that shift.

§22A-2-24. Control of coal dust; rock dusting.

1 In all mines, dangerous accumulations of fine, dry coal and coal dust shall be removed
2 from the mine, and all dry and dusty operating sections and haulageways and conveyors and
3 back entries shall be rock dusted or dust allayed by other methods as required by regulations
4 established by the U.S. Mine Safety and Health Administration.

ROOF-FACE-RIBS

§22A-2-25. Roof control programs and plans; refusal to work under unsupported roof.

1 ~~(a) Each operator shall undertake to carry out on a continuing basis a program to improve~~
2 ~~the roof control system of each coal mine and the means and measures to accomplish such~~
3 ~~system. The roof and ribs of all active underground roadways, travelways and working places~~
4 ~~shall be supported or otherwise controlled adequately to protect persons from falls of the roof or~~
5 ~~ribs. A roof control plan and revisions thereof suitable to the roof conditions and mining systems~~
6 ~~of each coal mine and approved by the director shall be adopted and set out in printed form before~~
7 ~~new operations. The safety committee of the miners of each mine where such committee exists~~
8 ~~shall be afforded the opportunity to review and submit comments and recommendations to the~~
9 ~~director and operator concerning the development, modification or revision of such roof control~~
10 ~~plans. The plan shall show the type of support and spacing approved by the director. Such plan~~
11 ~~shall be reviewed periodically, at least every six months by the director, taking into consideration~~

12 ~~any falls of roof or rib or inadequacy of support of roof or ribs. A copy of the plan shall be furnished~~
13 ~~to the director or his or her authorized representative and shall be available to the miners and~~
14 ~~their representatives~~

15 (a) A Roof Control Plan approved by the Federal Mine Safety and Health Administration
16 shall meet all requirements for operating a mine under the state laws of West Virginia. A separate
17 state roof control plan shall not be required. The mine operator will submit its approved MSHA
18 Roof Control Plan to the West Virginia Office of Miner's Health Safety and Training. All revisions
19 to the MSHA Roof Control Plan shall be submitted to the WVOMHST immediately on approval by
20 MSHA.

21 (b) The operator, in accordance with the approved plan, shall provide at or near each
22 working face and at such other locations in the coal mine, as the director may prescribe, an ample
23 supply of suitable materials of proper size with which to secure the roof thereof of all working
24 places in a safe manner. ~~Safety posts, jacks, or other approved devices shall be used to protect~~
25 ~~the workmen when roof material is being taken down, crossbars are being installed, roof bolt holes~~
26 ~~are being drilled, roof bolts are being installed and in such other circumstances as may be~~
27 ~~appropriate. Loose roof and overhanging or loose faces and ribs shall be taken down or~~
28 ~~supported. When overhangs or brows occur along rib lines they shall be promptly removed. All~~
29 ~~sections shall be maintained as near as possible on center. Except in the case of recovery work,~~
30 ~~supports knocked out shall be replaced promptly. Apprentice miners shall not be permitted to set~~
31 ~~temporary supports on a working section without the direct immediate supervision of a certified~~
32 ~~miner~~

33 (c) The operator of a mine ~~has primary responsibility to prevent injuries and deaths~~
34 ~~resulting from working under unsupported roof. Every operator shall require that no person may~~
35 ~~proceed beyond the last permanent support unless adequate temporary support is provided or~~
36 ~~temporary support is not required under an approved roof control plan and absence of such~~
37 ~~support will not pose a hazard to the miners~~ shall comply with all standards of the U.S. Mine

38 Safety and Health Administration for supporting unsupported roof before entering those areas.

39 ~~(d) The immediate supervisor of any area in which unsupported roof is located shall not~~
40 ~~direct or knowingly permit any person to proceed beyond the last permanent support unless~~
41 ~~adequate temporary support is provided or temporary support is not required under an approved~~
42 ~~roof control plan and absence of such support will not pose a hazard to the miners.~~

43 ~~(e) No miner shall proceed beyond the last permanent support in violation of a direct or~~
44 ~~standing order of an operator, a foreman or an assistant foreman, unless adequate temporary~~
45 ~~support is provided or temporary support is not required under an approved roof control plan and~~
46 ~~absence of such support will not pose a hazard to the miner.~~

47 ~~(f) The immediate supervisor of each miner who will be engaged in any activity involving~~
48 ~~the securing of roof or rib during a shift shall, at the onset of any such shift, orally review those~~
49 ~~parts of the roof control plan relevant to the type of mining and roof control to be pursued by such~~
50 ~~miner~~

51 ~~(g) (d)~~ Any action taken against a miner due, in whole or in part, to his or her refusal to
52 work under unsupported roof, where such work would constitute a violation of this section, is
53 prohibited as an act of discrimination pursuant to section twenty-two, article one of this chapter.
54 Upon a finding of discrimination by the appeals board pursuant to subsection (b), section twenty-
55 two, article one of this chapter, the miner shall be awarded by the appeals board all reliefs
56 available pursuant to subsections (b) and (c), section twenty-two, article one of this chapter.

57 (e) This section does not apply if the miner files a charge of discrimination with the U.S.
58 Mine Safety and Health Administration. The filing of a charge with MSHA terminates state
59 jurisdiction over any state discrimination charge.

§22A-2-26. Roof support; specific requirements.

1 The method of mining followed in any coal mine shall not expose the miner to unusual
2 dangers from roof falls and all roof support shall be conducted under standards required by the
3 U.S. Mine Safety and Health Administration and the MSHA approved Roof Control Plans.

§22A-2-27. Canopies or cabs; electric face equipment.

1 The use of canopies and cabs are governed by standards and plans established by the
2 U.S. Mine Safety and Health Administration.

EXPLOSIVES AND BLASTING

§22A-2-29. Use of authorized explosives; storage or use of unauthorized explosives.

3 Permissible explosives or permissible blasting devices only shall be used in blasting coal
4 or other material in underground coal mines. ~~It shall be unlawful to have, use or store any~~
5 ~~nonpermissible explosives or nonpermissible blasting devices in any coal mine or on the premises~~
6 ~~of the mine, without a permit from the director.~~ All blasting, including the storage of explosives,
7 shall be performed under standards established by the U.S. Mine Safety and Health
8 Administration.

HOISTING

§22A-2-36. Hoisting machinery; telephones; safety devices; hoisting engineers and drum runners.

1 The use of hoisting machinery shall be governed by standards established by the U.S.
2 Mine Safety and Health Administration.

§22A-2-37. Haulage roads and equipment; shelter holes; prohibited practices; signals; inspection.

1 Use of haulage road and equipment along with signals and inspection shall meet
2 standards established by the U.S. Mine Safety and Health Administration.

§22A-2-38. Transportation of miners by cars; self-propelled equipment; belts.

1 The transportation of miners shall be governed by standards established by the U.S. Mine
2 Safety and Health Administration.

§22A-2-39. Belt conveyor; installation; maintenance; examination of belt conveyors and belt entries.

1 (a) All belts, including installation, maintenance, examination of belt conveyors and entries
 2 shall meet standards established by the U.S. Mine Safety and Health Administration.

3 (b) The Board of Miner Training, Education and Certification shall establish criteria and
 4 standards for the training, examination and certification of "belt examiners". Persons seeking to
 5 be certified as a "belt examiner" must hold a miner's certificate and have at least two years
 6 practical underground mining experience. Such training, examination and certification program
 7 shall, as a minimum, require a demonstration of knowledge of belt conveyors roof control,
 8 ventilation and gases.

ELECTRICITY

§22A-2-40. General provisions.

1 Operators of coal mines in which electricity is used as a means of power shall comply with
 2 standards established by the U.S. Mine Safety and Health Administration.

§22A-2-42. Telephone service or communication facilities.

1 Telephone service or equivalent two-way communication facilities shall be provided in all
 2 mines to meet standards established by the U.S. Mine Safety and Health Administration.

§22A-2-43. Actions to detect and respond to excess methane.

1 Actions required to detect and respond to excess methane shall be governed by the
 2 standards established by the U.S. Mine Safety and Health Administration.

§22A-2-43a. Operation of cutting and mining machines; repair and maintenance of same.

1 The operation of cutting and mining machines and their repair and maintenance shall be
 2 governed by standards established by the U.S. Mine Safety and Health Administration.

§22A-2-44. Hand-held electric drills and rotating tools; trailing cables.

1 Electric drills and other electrically operated rotating tools intended to be held in the hand
 2 shall ~~have the electric switch constructed so as to break the circuit when the hand releases the~~
 3 ~~switch and shall be equipped with friction or safety clutches~~ meet standards established by the
 4 U.S. Mine Safety and Health Administration.

§22A-2-45. Installation of lighting.

1 Electric lights or other approved methods of lighting shall be installed so that they do not
2 come in contact with combustible materials, and the wires shall ~~be supported by suitable~~
3 ~~insulators and fastened securely to the power conductors~~ meet standards established by the U.S.
4 Mine Safety and Health Administration.

§22A-2-46. Welding and cutting.

1 All welding and cutting in the state’s mines shall meet standards established by the U.S.
2 Mine Safety and Health Administration.

§22A-2-47. Responsibility for care and maintenance of face equipment.

1 Mine operators shall maintain face equipment in safe operating condition under standards
2 set by the U.S. Mine Safety and Health Administration. Equipment operators shall exercise
3 reasonable care in the operation of the equipment entrusted to them and shall promptly report
4 defects known to them.

§22A-2-48. When respiratory equipment to be worn; control of dust.

1 Miners exposed for short periods to gas-, dust-, fume- and mist-inhalation hazards shall
2 wear permissible respiratory equipment ~~Dust shall be controlled by the use of permissible dust~~
3 ~~collectors or other approved methods~~ to meet standards established by the U.S. Mine Safety and
4 Health Administration.

SAFEGUARDS FOR MECHANICAL EQUIPMENT

§22A-2-49. Safeguards for mechanical equipment.

1 All safeguards for mechanical equipment shall meet standards established by the U.S.
2 Mine Safety and Health Administration.

§22A-2-53. Smoking in and around surface structures.

1 Smoking in or about surface structures shall be restricted to ~~places where it will not cause~~
2 ~~fire or an explosion~~ meet standards established by the U.S. Mine Safety and Health
3 Administration.

MISCELLANEOUS SAFETY PROVISIONS AND REQUIREMENTS

§22A-2-53a. Railroad cars; dumping areas; other surface areas.

1 Employees handling railroad cars shall meet standards established by the U.S. Mine
2 Safety and Health Administration.

§22A-2-53b. Haulage or surface areas.

1 All haulage and surface areas shall meet standards established by the U.S. Mine Safety
2 and Health Administration.

§22A-2-53c. Ramps; tipples; cleaning plants; other surface areas.

1 Surface installations, all general mine structures, enclosures and other facilities, including
2 custom coal preparation facilities shall be maintained to meet standards established by the U.S.
3 Mine Safety and Health Administration.

§22A-2-55. Protective equipment and clothing.

1 ~~(a) Welders and helpers shall use proper shields or goggles to protect their eyes. All~~
2 ~~employees shall have approved goggles or shields and use the same where there is a hazard~~
3 ~~from flying particles or other eye hazards.~~

4 ~~(b) Employees engaged in haulage operations and all other persons employed around~~
5 ~~moving equipment on the surface and underground shall wear snug-fitting clothing.~~

6 ~~(c) Protective gloves shall be worn when material which may injure hands is handled, but~~
7 ~~gloves with gauntleted cuffs shall not be worn around moving equipment.~~

8 ~~(d) Safety hats and safety-toed shoes shall be worn by all persons while in or around a~~
9 ~~mine: *Provided*, That metatarsal guards are not required to be worn by persons when working in~~
10 ~~those areas of underground mine workings which average less than forty-eight inches in height~~
11 ~~as measured from the floor to the roof of the underground mine workings.~~

12 ~~(e) Approved eye protection shall be worn by all persons while being transported in open-~~
13 ~~type man trips.~~

14 ~~(f) (1) A self-contained self-rescue device approved by the director shall be worn by each~~

15 ~~person underground or kept within his or her immediate reach and the device shall be provided~~
16 ~~by the operator. The self-contained self-rescue device shall be adequate to protect a miner for~~
17 ~~one hour or longer. Each operator shall train each miner in the use of the device and refresher~~
18 ~~training courses for all underground employees shall be held once each quarter. Quarters shall~~
19 ~~be based on a calendar year.~~

20 ~~(2) In addition to the requirements of subdivision (1) of this subsection, the operator shall~~
21 ~~also provide caches of additional self-contained self-rescue devices throughout the mine in~~
22 ~~accordance with a plan approved by the director. Each additional self-contained self-rescue~~
23 ~~device shall be adequate to protect a miner for one hour or longer. The total number of additional~~
24 ~~self-contained self-rescue devices, the total number of storage caches and the placement of each~~
25 ~~cache throughout the mine shall be established by rule pursuant to subsection (i) of this section.~~
26 ~~A luminescent sign with the words "SELF-CONTAINED SELF-RESCUER" or "SELF-~~
27 ~~CONTAINED SELF-RESCUERS" shall be conspicuously posted at each cache and luminescent~~
28 ~~direction signs shall be posted leading to each cache. Lifeline cords or other similar device, with~~
29 ~~reflective material at twenty-five foot intervals, shall be attached to each cache from the last open~~
30 ~~crosscut to the surface. The operator shall conduct weekly inspections of each cache and each~~
31 ~~lifeline cord or other similar device to ensure operability~~

32 ~~(a) All protective equipment and clothing used in mines in this state shall meet standards~~
33 ~~established by the U.S. Mine Safety and Health Administration.~~

34 ~~(3) (b) Any person that, without the authorization of the operator or the director, knowingly~~
35 ~~removes or attempts to remove any self-contained self-rescue device or lifeline cord from the~~
36 ~~mine or mine site with the intent to permanently deprive the operator of the device or lifeline cord~~
37 ~~or knowingly tampers with or attempts to tamper with the device or lifeline cord shall be guilty of~~
38 ~~a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not~~
39 ~~less than one year nor more than ten years or fined not less than \$10,000 nor more than \$100,000,~~
40 ~~or both.~~

41 ~~(g) (1) A wireless emergency communication device approved by the director and provided~~
42 ~~by the operator shall be worn by each person underground: *Provided*, That if a miner's wireless~~
43 ~~emergency communications device shall malfunction or cease to operate then such miner shall~~
44 ~~be assigned to be in sight or sound of a certified miner until such time an operating device shall~~
45 ~~be delivered. The wireless emergency communication device shall, at a minimum, be capable of~~
46 ~~receiving emergency communications from the surface at any location throughout the mine. Each~~
47 ~~operator shall train each miner in the use of the device and provide refresher training courses for~~
48 ~~all underground employees during each calendar year. The operator shall install in or around the~~
49 ~~mine any and all equipment necessary to transmit emergency communications from the surface~~
50 ~~to each wireless emergency communication device at any location throughout the mine~~

51 ~~(2) (c) Any person that, without the authorization of the operator or the director, knowingly~~
52 ~~removes or attempts to remove any wireless emergency communication device or related~~
53 ~~equipment, from the mine or mine site with the intent to permanently deprive the operator of the~~
54 ~~device or equipment or knowingly tampers with or attempts to tamper with the device or equipment~~
55 ~~shall be guilty of a felony and, upon conviction shall be imprisoned in a state correctional facility~~
56 ~~for not less than one year nor more than ten years or fined not less than \$10,000 nor more than~~
57 ~~\$100,000, or both fined and confined.~~

58 ~~(h) (1) A wireless tracking device approved by the director and provided by the operator~~
59 ~~shall be worn by each person underground. In the event of an accident or other emergency, the~~
60 ~~tracking device shall, at a minimum, be capable of providing real-time monitoring of the physical~~
61 ~~location of each person underground: *Provided*, That no person shall discharge or discriminate~~
62 ~~against any miner based on information gathered by a wireless tracking device during~~
63 ~~nonemergency monitoring. Each operator shall train each miner in the use of the device and~~
64 ~~provide refresher training courses for all underground employees during each calendar year. The~~
65 ~~operator shall install in or around the mine all equipment necessary to provide real-time~~
66 ~~emergency monitoring of the physical location of each person underground~~

67 ~~(2)~~ (d) Any person that, without the authorization of the operator or the director, knowingly
 68 removes or attempts to remove any wireless tracking device or related equipment, approved by
 69 the director, from a mine or mine site with the intent to permanently deprive the operator of the
 70 device or equipment or knowingly tampers with or attempts to tamper with the device or equipment
 71 shall be guilty of a felony and, upon conviction shall be imprisoned in a state correctional facility
 72 for not less than one year nor more than ten years or fined not less than \$10,000 nor more than
 73 \$100,000, or both fined and confined.

74 ~~(i) The director may promulgate emergency and legislative rules to implement and enforce~~
 75 ~~this section pursuant to the provisions of article three, chapter twenty-nine-a of this code~~

§22A-2-55a. Safety helmets.

1 All surface mine employees shall be required to wear safety helmets to meet standards
 2 established by the U.S. Mine Safety and Health Administration.

§22A-2-56. Checking systems.

1 Each mine shall have a check-in and check-out system which will provide positive
 2 identification of every person underground and will provide an accurate record of the persons in
 3 the mine kept on the surface in a place that will not be affected in the event of an explosion. Said
 4 record shall bear a number or name identical to the identification check that is securely fastened
 5 to the lamp belt of all persons underground. The identification check shall be made of a rust-
 6 resistant metal of no less than sixteen gauge and shall meet standards established by the U.S.
 7 Mine Safety and Health Administration.

**§22A-2-57. No act permitted endangering security of mine; search for intoxicants, matches,
 etc.**

1 (a) No miner, worker or other person shall knowingly injure any shaft, lamp, instrument,
 2 air course, or brattice, or obstruct or throw open airways, or carry matches or open lights in the
 3 places worked by safety lights, or disturb any part of the machinery or appliances, open a door
 4 closed for directing ventilation and not close it again, or enter any part of a mine against caution,

5 or disobey any order of any mine foreman or assistant mine foreman given in carrying out any of
6 the provisions of this section.

7 (b) Open lights, smoking and smokers' articles, including matches, are prohibited in all
8 mines. No person shall at any time enter mines with or carry therein any matches, pipes, cigars,
9 cigarettes or any device for making lights or fire not authorized or approved. The operator shall at
10 frequent intervals search, or cause to be searched, any person, including his or her clothing and
11 material belongings, entering or about to enter the mine, or inside the mine, to prevent such
12 person from taking or carrying therein any of the above-mentioned articles. Searches used to
13 comply with standards set by the U.S. Mine Safety and Health will meet the requirements of this
14 section.

15 (c) No person shall at any time carry into any mine any intoxicants or enter any mine while
16 under the influence of intoxicants.

§22A-2-58. Fire protection.

1 (a) Suitable fire protection shall be provided at surface installations of fans, shops, tipples
2 and preparation plants, substations, hoist rooms and compressor stations and shall meet
3 standards established by the U.S. Mine Safety and Health Administration.

4 ~~(b) Fire drills and demonstration of various types of available firefighting equipment shall~~
5 ~~be held for employees at least every six months.~~

6 ~~(c) The location of pipelines, location of valves and fire taps shall be shown on a map of~~
7 ~~the mine and kept available at the mine office at all times.~~

8 ~~(d) Each coal mine shall be provided with suitable firefighting equipment adapted for the~~
9 ~~size and condition of the mine. Firefighting equipment required under this article shall meet the~~
10 ~~following requirements:~~

11 ~~(1) Waterlines shall be capable of delivering fifty gallons of water at a nozzle pressure of~~
12 ~~fifty pounds per square inch.~~

13 ~~(2) A portable water car shall be of at least one thousand gallons capacity, and shall have~~

14 ~~at least three hundred feet of fire hose with nozzles. A portable water car shall be capable of~~
15 ~~providing a flow through the hose of fifty gallons of water per minute at a nozzle pressure of fifty~~
16 ~~pounds per square inch.~~

17 ~~(3) A portable chemical car shall carry enough chemicals to provide a fire extinguishing~~
18 ~~capacity equivalent to that of a portable water car.~~

19 ~~(4) A portable foam-generating machine shall have facilities and equipment for supplying~~
20 ~~the machine with thirty gallons of water per minute at thirty pounds per square inch for a period~~
21 ~~of thirty-five minutes.~~

22 ~~(5) A portable fire extinguisher shall be either a multipurpose dry chemical type, containing~~
23 ~~a nominal weight of five pounds of dry powder and enough expellant to apply the powder; or a~~
24 ~~foam-producing type containing at least two and one-half gallons of foam-producing liquid and~~
25 ~~enough expellant to supply the foam. Only fire extinguishers approved by the Underwriters~~
26 ~~Laboratories, Inc. or Factor Mutual Laboratories, carrying appropriate labels as to type and~~
27 ~~purpose shall be used after July 1, 1971, and all new portable fire extinguishers acquired for use~~
28 ~~in a coal mine shall be of the multipurpose dry chemical type, having a 2A 10BC or higher rating.~~

29 ~~(6) The fire hose shall be rubber-lined, mildew-proof and the cover shall be of flame-~~
30 ~~resistant qualities, meeting requirements for hose in Bureau of Mines Schedule 2G, except that~~
31 ~~the test flame shall be applied to the outer surface rather than to an open end. The bursting~~
32 ~~pressure shall be at least four times higher than the static water at the mine location; the maximum~~
33 ~~water pressure in the hose nozzle shall not exceed 100 p.s.i.g.~~

34 ~~(e) Each working section of coal mines producing three hundred tons or more per shift~~
35 ~~shall be provided with two portable fire extinguishers and two hundred forty pounds of bagged~~
36 ~~rock dust or equivalent; waterlines shall extend to each section loading point and be equipped~~
37 ~~with enough fire hose to reach each working face unless the section loading point is provided with~~
38 ~~one of the following: (1) Two portable water cars; or (2) two portable chemical cars; or (3) one~~
39 ~~portable water car or one portable chemical car and either a portable foam-generating machine~~

40 or a portable high-pressure rock-dusting machine, fitted with at least two hundred fifty feet of hose
41 and supplied with at least sixty sacks of rock dust.

42 ~~(f) In all coal mines, waterlines shall be installed parallel to the entire length of belt~~
43 ~~conveyors and shall be equipped with fire hose outlets with valves at three-hundred-foot intervals~~
44 ~~along each belt conveyor and at tailpieces. At least five hundred feet of fire hose with fittings~~
45 ~~suitable for connection with each belt conveyor waterline system shall be stored at strategic~~
46 ~~locations along the belt conveyor. Waterlines may be installed in entries adjacent to the conveyor~~
47 ~~entry belt as long as the outlets project into the belt conveyor entry. Each working section of coal~~
48 ~~mines producing less than three hundred tons of coal per shift shall be provided with two portable~~
49 ~~fire extinguishers, two hundred forty pounds of bagged rock dust and at least five hundred gallons~~
50 ~~of water and at least three pails of ten-quart capacity. In lieu of the five hundred gallon water~~
51 ~~supply, a waterline with sufficient hose to reach the working places, a portable water car of five~~
52 ~~hundred fifty gallons capacity, or a portable all-purpose dry powder chemical car of at least one~~
53 ~~hundred twenty-five pounds capacity may be provided.~~

54 ~~(g) In mines producing three hundred tons of coal or more per shift, waterlines shall be~~
55 ~~installed parallel to all haulage tracks using mechanized equipment in the track or adjacent entry~~
56 ~~and shall extend to the loading point of each working section. Waterlines shall be equipped with~~
57 ~~outlet valves at intervals of not more than five hundred feet, and five hundred feet of fire hose with~~
58 ~~fittings suitable for connection with such waterlines shall be provided at strategic locations. Two~~
59 ~~portable water cars, readily available, may be used in lieu of waterlines prescribed under this~~
60 ~~subsection.~~

61 ~~(h) In mines producing less than three hundred tons of coal per shift, there shall be~~
62 ~~provided at five-hundred-foot intervals in all main and secondary haulage roads: (1) A tank of~~
63 ~~water of at least fifty-five gallon capacity with at least three pails of not less than ten-quart capacity;~~
64 ~~or (2) not less than two hundred forty pounds of bagged rock dust.~~

65 ~~(i) Each track or off-track locomotive, self-propelled man-trip car, or personnel carrier shall~~

66 ~~be equipped with one portable fire extinguisher.~~

67 ~~(j) Two portable fire extinguishers shall be provided at each permanent electrical~~
68 ~~installation. One portable fire extinguisher and two hundred forty pounds of rock dust or equivalent~~
69 ~~shall be provided at each temporary electrical installation.~~

70 ~~(k) Two portable fire extinguishers and two hundred forty pounds of rock dust or equivalent~~
71 ~~shall be provided at each permanent underground oil storage station. One portable fire~~
72 ~~extinguisher shall be provided at each working section where twenty-five gallons or more of oil~~
73 ~~are stored in addition to extinguishers required under subsection (e) of this section.~~

74 ~~(l) One portable fire extinguisher or two hundred forty pounds of rock dust or equivalent~~
75 ~~and water shall be provided at locations where welding, cutting, or soldering with arc or flame is~~
76 ~~being done.~~

77 ~~(m) At each wooden door through which power lines pass there shall be one portable fire~~
78 ~~extinguisher or two hundred forty pounds of rock dust or equivalent within twenty-five feet of the~~
79 ~~door on the intake air side~~

80 ~~(n)~~ (b) At each mine producing three hundred tons of coal or more per shift, there shall be
81 readily available the following materials at locations not exceeding two miles from each working
82 section:

83 (1) One thousand board feet of brattice boards.

84 (2) Two rolls of brattice cloth.

85 (3) Two handsaws.

86 (4) Twenty-five pounds of 8 dwt nails.

87 (5) Twenty-five pounds of 10 dwt nails.

88 (6) Twenty-five pounds of 16 dwt nails.

89 (7) Three claw hammers.

90 (8) Twenty-five bags of wood fiber plaster or ten bags of cement (or equivalent material
91 for stoppings).

92 (9) Five tons of rock dust.

93 ~~(e)~~ (c) At each mine producing less than three hundred tons of coal per shift, the above
94 materials shall be available at the mine: *Provided*, That the emergency materials for one or more
95 mines may be stored at a central warehouse or building supply company and such supply must
96 be the equivalent of that required for all mines involved and within one hour's delivery time from
97 each mine. This exception shall not apply where the active working sections are more than two
98 miles from the surface.

§22A-2-59. First-aid equipment.

1 Each operator of an underground coal mine shall maintain a supply of first-aid equipment
2 to meet standards established by the U.S. Mine Safety and Health Administration.

§22A-2-60. Accessible outlets; safe roadways for emergencies; accessibility of first aid equipment; use of special capsule for removal of personnel.

1 Accessible outlets; safe roadways for emergencies; accessibility of first aid equipment;
2 use of special capsule for removal of personnel shall be governed by standards established by
3 the U.S. Mine Safety and Health Administration.

§22A-2-61. Coal storage bins; recovery tunnels; coal storage piles.

1 Coal storage bins, recovery tunnels and coal storage piles shall be governed under
2 standards established by the U.S. Mine Safety and Health Administration.

§22A-2-62. Thermal coal dryers and plants.

1 Thermal coal dryer plants shall be hereafter constructed, maintained and operated in
2 compliance with standards established by the U.S. Mine Safety and Health Administration.

§22A-2-63. No mine to be opened or reopened without prior approval of the Director of the Office of Miners' Health, Safety and Training; certificate of approval; approval fees; extension of certificate of approval; certificates of approval not transferable; section to be printed on certificates of approval.

1 (a) No mine may be opened or reopened unless prior approval has been obtained from

2 the Director of the Office of Miners' Health, Safety and Training. The director may not
3 unreasonably withhold approval. The operator shall pay a fee of \$100 for the approval, which
4 shall be tendered with the application for approval: *Provided*, That mines producing coal solely
5 for the operator's use shall be issued a permit without charge if coal production will be less than
6 fifty tons a year.

7 Within thirty days after January 1, of each year, the holder of a permit to open a mine shall
8 apply for the extension of the permit for an additional year. The permit, evidenced by a document
9 issued by the director, shall be granted as a matter of right for a fee of \$100 if, at the time
10 application is made, the permit holder is in compliance with the provisions of section seventy-
11 seven of this article. ~~and has paid or otherwise appealed all coal mine assessments issued to the~~
12 ~~mine if operated by the permit holder and imposed under article one of this chapter~~ Applications
13 for extension of permits not submitted within the time required shall be processed as an
14 application to open or reopen a mine and shall be accompanied by a fee of \$100.

15 (b) Permits issued pursuant to this section are not transferable.

16 (c) If the operator of a mine is not the permit holder as defined in subsection (a) of this
17 section, then the operator shall apply for and obtain a certificate of approval to operate the mine
18 on which the permit is held prior to commencing operations. The operator shall pay a fee of \$100,
19 which payment shall be tendered with the application for approval. The approval, evidenced by a
20 certificate issued by the director, shall be granted if, at the time application is made, the applicant
21 is in compliance with the provisions of section seventy-seven of this article and has paid or
22 otherwise appealed all coal mine assessments imposed on the applicant for the certificate of
23 approval under article one of this chapter.

24 ~~(d) In addition to the director's authority to file a petition for enforcement under subdivision~~
25 ~~(4), subsection (a), section twenty-one, article one of this chapter, if an operator holding a~~
26 ~~certificate of approval issued pursuant to subsection (c) of this section, has been assessed a civil~~
27 ~~penalty in accordance with section twenty-one, article one of this chapter, and its implementing~~

28 ~~rules, and the penalty has become final, fails to pay the penalty within the time prescribed in the~~
29 ~~order, the director or the authorized representative of the director, by certified mail, return receipt~~
30 ~~requested, shall send a notice to the operator advising the operator of the unpaid penalty. If the~~
31 ~~penalty is not paid in full within sixty days from the issuance of the notice of delinquency by the~~
32 ~~director, then the director may revoke the operator's certificate of approval: *Provided*, That the~~
33 ~~operator to whom the delinquency notice is issued has thirty days from receipt of the delinquency~~
34 ~~notice to request, by certified mail, return receipt requested, a public hearing held in accordance~~
35 ~~with the procedures of section seventeen, article one of this chapter, and its implementing rules,~~
36 ~~including application for temporary relief. Once the operator's certificate of approval is revoked~~
37 ~~pursuant to this subsection, the operator may not obtain any certificate of approval under the~~
38 ~~provisions of this section to operate any other mine until that operator pays the delinquent~~
39 ~~penalties that have become final~~

40 (e) (d) Every firm, corporation, partnership or individual that contracts to perform services
41 or construction at a coal mine is considered to be an operator and shall apply for and obtain a
42 certificate of approval prior to commencing operations: *Provided*, That these persons shall only
43 be required to obtain one certificate annually: *Provided, however*, That persons such as, but not
44 limited to, consultants, mine vendors, office equipment suppliers and maintenance and delivery
45 personnel are excluded from this requirement to obtain a certificate of approval. Operators who
46 are required to obtain a certificate of approval pursuant to the provisions of this subsection shall
47 pay a fee of \$100 which shall be tendered with the application for approval. Approval evidenced
48 by a certificate issued by the director, shall be granted if, at the time the application is made, the
49 applicant has paid or otherwise appealed all coal mine assessments imposed on the applicant
50 under article one of this chapter.

51 Within thirty days after January 1, of each year, the holder of a certificate of approval shall
52 apply for the extension of that approval for an additional year. Applications for extension shall be
53 accompanied by a fee of \$100. ~~An extension shall be granted if, at the time application is made,~~

54 ~~the applicant has paid or otherwise appealed all coal mine assessments imposed on the applicant~~
 55 ~~under article one of this chapter. All delinquent assessments which have been imposed upon a~~
 56 ~~certificate of approval holder or applicants under this section may not be imposed upon any permit~~
 57 ~~holder or certificate of approval holder or any applicant pursuant to subsection (a) or (c) of this~~
 58 ~~section~~

59 ~~(f)~~ (e) The provisions of this section shall be printed on the reverse side of every permit
 60 issued under subsection (a) of this section and certificate of approval issued under subsection (e)
 61 of this section.

62 ~~(g)~~ (f) The district mine inspector shall conduct a preinspection of the area proposed for
 63 underground mining prior to issuance of any new opening permit approval.

64 ~~(h)~~ (g) All moneys collected by the Office of Miners' Health, Safety and Training for the
 65 approval fees set forth in subsections (a), (c) and (e) of this section shall be deposited with the
 66 Treasurer of the State of West Virginia to the credit of the General Administration--Operating
 67 Permit Fees Fund. The operating permit fees fund shall be used by the director who is authorized
 68 to expend the moneys in the fund for the administration of this chapter.

§22A-2-64. Sealing permanently closed or abandoned mines.

1 After July 1, 1971, when any coal mine is worked out or indefinitely closed, such mine
 2 openings shall be properly sealed or abandoned under the standards of the U.S. Mine Safety and
 3 Health Administration.

§22A-2-66. Accident; notice; investigation by Office of Miners' Health, Safety and Training.

1 ~~(a) For the purposes of this section, the term accident means:~~

2 ~~(1) The death of an individual at a mine;~~

3 ~~(2) An injury to an individual at a mine which has a reasonable potential to cause death;~~

4 ~~(3) The entrapment of an individual;~~

5 ~~(4) The unplanned inundation of a mine by a liquid or gas;~~

6 ~~(5) The unplanned ignition or explosion of gas or dust;~~

7 ~~(6) The unplanned ignition or explosion of a blasting agent or an explosive;~~

8 ~~(7) An unplanned fire in or about a mine not extinguished within five minutes of ignition;~~

9 ~~(8) An unplanned roof fall at or above the anchorage zone in active workings where roof~~
10 ~~bolts are in use or an unplanned roof or rib fall in active workings that impairs ventilation or~~
11 ~~impedes passage;~~

12 ~~(9) A coal or rock outburst that causes withdrawal of miners or which disrupts regular~~
13 ~~mining activity for more than one hour;~~

14 ~~(10) An unstable condition at an impoundment, refuse pile or culm bank which requires~~
15 ~~emergency action in order to prevent failure, or which causes individuals to evacuate an area, or~~
16 ~~the failure of an impoundment, refuse pile or culm bank;~~

17 ~~(11) Damage to hoisting equipment in a shaft or slope which endangers an individual or~~
18 ~~which interferes with use of the equipment for more than thirty minutes; and~~

19 ~~(12) An event at a mine which causes death or bodily injury to an individual not at the mine~~
20 ~~at the time the event occurs~~

21 (a) The definition of an accident as defined by the standards set by the U.S. Mine Safety
22 and Health Administration shall be reported to the State of West Virginia within fifteen minutes of
23 reporting the incident to the U.S. Mine Safety and Health Administration.

24 (b) Whenever any accident occurs in or about any coal mine or the machinery connected
25 therewith, it is the duty of the operator or the mine foreman in charge of the mine to give notice,
26 within fifteen minutes of ascertaining the occurrence of an accident and reporting it to the U.S.
27 Mine Safety and Health Administration, to the Mine and Industrial Accident Emergency
28 Operations Center at the statewide telephone number established by the Director of the Division
29 of Homeland Security and Emergency Management pursuant to the provisions of article five-b,
30 chapter fifteen of this code stating the particulars of the accident: *Provided*, That the operator or
31 the mine foreman in charge of the mine may comply with this notice requirement by immediately
32 providing notice to the appropriate local organization for emergency services as defined in section

33 eight, article five of said chapter, or the appropriate local emergency telephone system operator
34 as defined in article six, chapter twenty-four of this code: *Provided, however,* That if, immediately
35 upon ascertaining the occurrence of an accident, the operator or the mine foreman in charge of
36 the mine provides notice to the local organization for emergency services as defined in section
37 eight, article five, chapter fifteen of this code, or the appropriate local emergency telephone
38 system operator as defined in article six, chapter twenty-four of this code, then, in order to comply
39 with this subsection, the operator or mine foreman in charge of the mine shall also give notice to
40 the Mine and Industrial Accident Emergency Operations Center at the statewide number identified
41 in this subsection within fifteen minutes of completing the telephone call to the local organization
42 for emergency services or the appropriate local emergency telephone system operator, as
43 applicable: *Provided further,* That nothing in this subsection shall be construed to relieve the
44 operator from any reporting or notification requirement under federal law.

45 (c) The Director of the Office of Miners' Health, Safety and Training shall impose, pursuant
46 to rules authorized in this section, a civil administrative penalty of up to \$100,000 on the operator
47 if it is determined that the operator or the mine foremen in charge of the mine failed to give
48 immediate notice as required in this section. The director may later amend the assessment of a
49 penalty under this section if so warranted: *Provided,* That the director may waive imposition of the
50 civil administrative penalty at any time if he or she finds that the failure to give immediate notice
51 was caused by circumstances wholly outside the control of the operator: *Provided, however,* That
52 the assessment of the civil administrative penalty set forth in this subsection may be appealed to
53 the Board of Appeals, and the Board of Appeals may, by a vote of two Board of Appeals Members,
54 reduce the amount of the civil administrative penalty upon a finding of mitigating circumstances
55 warranting the imposition of a lesser amount.

56 (d) If anyone is fatally injured, the inspector shall immediately go to the scene of the
57 accident and make recommendations and render assistance as he or she may deem necessary
58 for the future safety of the men and investigate the cause of the explosion or accident and make

59 a record. He or she shall preserve the record with the other records in his or her office. The cost
60 of the investigation records shall be paid by the Office of Miners' Health, Safety and Training. A
61 copy shall be furnished to the operator and other interested parties. To enable him or her to make
62 an investigation, he or she has the power to compel the attendance of witnesses and to administer
63 oaths or affirmations. The director has the right to appear and testify and to offer any testimony
64 that may be relevant to the questions and to cross-examine witnesses.

§22A-2-70. Shafts and slopes.

1 The construction of shafts and slopes shall be governed by standards established by the
2 U.S. Mine Safety and Health Administration.

§22A-2-72. Long wall and short wall mining.

1 Longwall and short wall mining in West Virginia shall be governed by standards
2 established by the U.S. Mine Safety and Health Administration.

§22A-2-74. Control of respirable dust.

1 The control of respirable dust shall be in accordance with standards established by the
2 U.S. Mine Safety and Health Administration.

§22A-2-75. Coal operators -- Procedure before operating near oil and gas wells.

1 The rules and procedures for operating near oil and gas wells in this state shall be
2 governed by standards established by the U.S. Mine Safety and Health Administration.

§22A-2-78. Examinations to determine compliance with permits.

1 (a) Whenever permits are issued by the Office of Miners' Health, Safety and Training,
2 requent examinations shall be made by the mine inspector during the tenure of the permit to
3 determine that provide compliance assistance with the requirements and limitations of the permit
4 are complied with. The director shall determine the rate of compliance assistance visits to
5 particular mines.

6 (b) When an inspector finds conditions that violate standards set by the U.S. Mine Safety
7 and Health Administration or other standards in this chapter, the inspector, in addition to imminent

8 danger withdrawal orders, may issue a Notice of Correction to the operator to correct any
 9 condition that does not create an imminent danger.

10 A Notice of Correction shall set a time for the condition to be abated. The office shall also
 11 help the operator with compliance assistance in resolving the issues.

12 While Notices of Correction shall not be assessed, they may be used in discipline of any
 13 state certified person and may be appealed by the operator to the Board of Appeals.

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

§22A-2A-101. Use of diesel-powered equipment authorized.

1 All approval and use of diesel powered equipment will be governed by standards set by
 2 the U.S. Mine Safety and Health Administration. Any diesel equipment approved by MSHA may
 3 be used in mines in the State of West Virginia. Training requirements and maintenance
 4 requirements will be governed by MSHA regulations and standard pertaining to diesel equipment.

PART X. EXISTING RULES TO BE REVISED

§22A-2-1001. Existing state rules to be revised.

1 By August 31, 2017, all existing state rules promulgated pursuant to the authority of this
 2 chapter shall be revised to reflect the changes in that chapter enacted by the Legislature during
 3 the 2017 Legislative Session.

ARTICLE 6. BOARD OF COAL MINE HEALTH AND SAFETY.

§22A-6-1. Declaration of legislative findings and purpose.

1 ~~(a)~~ The Legislature hereby finds and declares that ~~(1) The~~ the Legislature concurs with
 2 the congressional declaration made in the Federal Coal Mine Health and Safety Act of 1969 that
 3 "the first priority and concern of all in the coal mining industry must be the health and safety of its
 4 most precious resource -- the miner."

5 ~~(2) Coal mining is highly specialized, technical and complex and it requires frequent~~

6 ~~review, refinement and improvement of standards to protect the health and safety of miners;~~

7 ~~(3) During each session of the Legislature, coal mine health and safety standards are~~
8 ~~proposed which require knowledge and comprehension of scientific and technical data related to~~
9 ~~coal mining;~~

10 ~~(4) The formulation of appropriate rules and practices to improve health and safety and~~
11 ~~provide increased protection of miners can be accomplished more effectively by persons who~~
12 ~~have experience and competence in coal mining and coal mine health and safety.~~

13 ~~(b) In view of the foregoing findings, it is the purpose of this article to:~~

14 ~~(1) Continue the board of coal mine health and safety;~~

15 ~~(2) Require such board to continue as standard rules the coal mine health and safety~~
16 ~~provisions of this code;~~

17 ~~(3) Compel the board to review such standard rules and, when deemed appropriate to~~
18 ~~improve or enhance coal mine health and safety, to revise the same or develop and promulgate~~
19 ~~new rules dealing with coal mine health and safety; and~~

20 ~~(4) Authorize such board to conduct such other activities as it deems necessary to~~
21 ~~implement the provisions of this chapter~~

**§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 members are to
7 be appointed, the Governor shall request from the major trade association representing operators
8 in this state a list of three nominees for each such position on the board. All such nominees shall

9 be persons with special experience and competence in health and safety. There shall be
10 submitted with such list a summary of the qualifications of each nominee. If the full lists of
11 nominees are submitted in accordance with the provisions of this subdivision, the Governor shall
12 make the appointments from the persons so nominated. For purposes of this subdivision, the
13 major trade association representing operators in this state is that association which represents
14 operators accounting for over one half of the coal produced in mines in this state in the year prior
15 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 may also consider hourly employees not represented by a labor organization. The Governor shall
24 make the appointments from the ~~requested list of nominees~~ best qualified to sit on the board.

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

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

29 (b) Members serving on the board on July 1, 2010, may continue to serve until the
30 expiration of their terms. The term is three years. Members are eligible for reappointment.

31 (c) The Governor shall appoint, subject to the approval of a majority of the members of
32 the board appointed under subdivisions (1) and (2), subsection (a) of this section, a Health and
33 Safety Administrator in accordance with the provisions of section six of this article, who shall
34 certify all official records of the board. The Health and Safety Administrator shall be a full-time

35 officer of the Board of Coal Mine Health and Safety with the duties provided for in section six of
36 this article. The Health and Safety Administrator shall have such education and experience as the
37 Governor deems necessary to properly investigate areas of concern to the board in the
38 development of rules governing mine health and safety. The Governor shall appoint as Health
39 and Safety Administrator a person who has an independent and impartial viewpoint on issues
40 involving mine safety. The Health and Safety Administrator shall be a person who has not been
41 during the two years immediately preceding appointment, and is not during his or her term, an
42 officer, trustee, director, substantial shareholder, contractor, consultant or employee of any coal
43 operator, or an employee or officer of an employee organization or a spouse of any such person.
44 The Health and Safety Administrator shall have the expertise to draft proposed rules and shall
45 prepare such rules as are required by this code and on such other areas as will improve coal mine
46 health and safety.

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

60 When proposed rules are to be finally adopted by the board, copies of such proposed

61 rules shall be delivered to members not less than five days before the meeting at which such
62 action is to be taken. If not so delivered, any final adoption or rejection of rules shall be considered
63 on the second day of a meeting of the board held on two consecutive days, except that by the
64 concurrence of at least four members of the board, the board may suspend this rule of procedure
65 and proceed immediately to the consideration of final adoption or rejection of rules. When a
66 member fails to appear at three consecutive meetings of the board or at one half of the meetings
67 held during a one-year period, the Health and Safety Administrator shall notify the member and
68 the Governor of such fact. Such member shall be removed by the Governor unless good cause
69 for absences is shown.

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

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

§22A-6-4. Board powers and duties.

1 (a) ~~The board shall adopt as standard rules the "coal mine health and safety provisions of~~
2 ~~this chapter". Such standard rules and any other rules shall be adopted by the board without~~
3 ~~regard to the provisions of chapter twenty-nine-a of this code. The Board of Coal Mine Health and~~
4 ~~Safety shall devote its time toward promulgating rules in those areas specifically directed by this~~
5 ~~chapter and those necessary to prevent fatal accidents and injuries~~ study and adopt policies on

6 improvements to the health and safety of the state's miners in providing compliance assistance
7 to the state's coal mines. This shall include review of accidents in this state and the adoption of
8 practices to improve the safety of the state's miners.

9 ~~(b) The board shall review such standard rules and, when deemed appropriate to improve~~
10 ~~or enhance coal mine health and safety, revise the same or develop and promulgate new rules~~
11 ~~dealing with coal mine health and safety.~~

12 ~~(c) The board shall develop, promulgate and revise, as may be appropriate, rules as are~~
13 ~~necessary and proper to effectuate the purposes of article two of this chapter and to prevent the~~
14 ~~circumvention and evasion thereof, all without regard to the provisions of chapter twenty-nine-a~~
15 ~~of this code:~~

16 ~~(1) Upon consideration of the latest available scientific data in the field, the technical~~
17 ~~feasibility of standards, and experience gained under this and other safety statutes, such rules~~
18 ~~may expand protections afforded by this chapter notwithstanding specific language therein, and~~
19 ~~such rules may deal with subject areas not covered by this chapter to the end of affording the~~
20 ~~maximum possible protection to the health and safety of miners~~

21 ~~(2) No rules~~ (b) No policies promulgated by the board shall reduce or compromise the
22 level of safety or protection afforded miners below the level of safety or protection afforded by this
23 chapter.

24 ~~(3) Any miner or representative of any miner, or any coal operator has the power to petition~~
25 ~~the circuit court of Kanawha County for a determination as to whether any rule promulgated or~~
26 ~~revised reduces the protection afforded miners below that provided by this chapter, or is otherwise~~
27 ~~contrary to law: *Provided*, That any rule properly promulgated by the board pursuant to the terms~~
28 ~~and conditions of this chapter creates a rebuttable presumption that said rule does not reduce the~~
29 ~~protection afforded miners below that provided by this chapter.~~

30 ~~(4) The director shall cause proposed rules and a notice thereof to be posted as provided~~
31 ~~in section eighteen, article one of this chapter. The director shall deliver a copy of such proposed~~

32 ~~rules and accompanying notice to each operator affected. A copy of such proposed rules shall be~~
33 ~~provided to any individual by the director's request. The notice of proposed rules shall contain a~~
34 ~~summary in plain language explaining the effect of the proposed rules~~

35 (5) (c) The board shall afford interested persons a period of not less than thirty days after
36 releasing proposed rules to submit written data or comments. The board may, upon the expiration
37 of such period and after consideration of all relevant matters presented, promulgate such rules
38 with such modifications as it may deem appropriate.

39 (6) (d) On or before the last day of any period fixed for the submission of written data or
40 comments under ~~subdivision (5)~~ subsection (c) of this section, any interested person may file with
41 the board written objections to a proposed rule, stating the grounds therefor and requesting a
42 public hearing on such objections. As soon as practicable after the period for filing such objections
43 has expired, the board shall release a notice specifying the proposed rules to which objections
44 have been filed and a hearing requested.

45 (7) (e) Promptly after any such notice is released by the board under subdivision (6) of this
46 section, the board shall issue notice of, and hold a public hearing for the purpose of receiving
47 relevant evidence. Within sixty days after completion of the hearings, the board shall make
48 findings of fact which shall be public, and may promulgate such rules with such modifications as
49 it deems appropriate. In the event the board determines that a proposed rule should not be
50 promulgated or should be modified, it shall within a reasonable time publish the reasons for its
51 determination.

52 (8) (f) All rules promulgated by the board shall be to further compliance assistance visits
53 by the office and shall be published in the State Register and continue in effect until modified or
54 superseded in accordance with the provisions of this chapter.

55 (4) (g) To carry out its duties and responsibilities, the board is authorized to employ such
56 personnel, including legal counsel, experts and consultants, as it deems necessary. In addition,
57 the board, within the appropriations provided for by the Legislature, may conduct or contract for

58 research and studies and is entitled to the use of the services, facilities and personnel of any
59 agency, institution, school, college or university of this state.

60 ~~(e)~~ (h) The director shall within sixty days of a coal mining fatality or fatalities provide the
61 board with all available reports regarding such fatality or fatalities.

62 The board shall review all reports and any recommended rules submitted by the director,
63 receive any additional information it requests, and may, on its own initiative, investigate the
64 circumstances surrounding a coal mining fatality or fatalities and ascertain the cause or causes
65 of such coal mining fatality or fatalities. In order to investigate a coal mining fatality or fatalities, a
66 majority of the board must vote in favor of commencing an investigation. Within ninety days of the
67 receipt of the Federal Mine Safety and Health Administration's fatal accident report and the
68 director's report and recommended rules, the board shall review and consider the presentation of
69 said report and rules and the results of its own investigation, if any, and, if a majority of all voting
70 board members determines that additional ~~rules~~ suggested practices can assist in the prevention
71 of the specific type of fatality, the board shall either accept and promulgate the director's
72 recommended ~~rules~~ policy, amend the director's recommended ~~rules~~ policy or draft new ~~rules~~
73 policies as are necessary to prevent the recurrence of such fatality. If the board chooses to amend
74 the director's recommended ~~rules~~ policy or draft its own ~~rules~~ policy, a vote is required within one
75 hundred twenty days as to whether to promulgate the amended rule or the rule drafted by the
76 board: *Provided*, That the board may, by majority vote, find that exceptional circumstances exist
77 and the deadline cannot be met: *Provided, however*, That under no circumstances shall such
78 deadline be extended by more than a total of ninety days. A majority vote of the board is required
79 to promulgate any such ~~rule~~ policy.

80 The board shall annually, not later than July 1, review the major causes of coal mining
81 injuries during the previous calendar year, reviewing the causes in detail, and shall promulgate
82 such ~~rules~~ suggested policies as may be necessary to prevent the recurrence of such injuries.

83 Further, the board shall, on or before January 10, of each year, submit a report to the

84 Governor, President of the Senate and Speaker of the House, which report shall include, but is
85 not limited to:

86 (1) The number of fatalities during the previous calendar year, the apparent reason for
87 each fatality as determined by the Office of Miners' Health, Safety and Training and the action, if
88 any, taken by the board to help prevent such fatality through the development of compliance
89 assistance standards to be used the office's compliance assistance visits;

90 (2) Any ~~rules~~ suggested policies promulgated by the board during the last year;

91 (3) What rules the board intends to promulgate during the current calendar year;

92 (4) Any problem the board is having in its effort to promulgate rules to enhance health and
93 safety in the mining industry;

94 (5) Recommendations, if any, for the enactment, repeal or amendment of any statute
95 which would cause the enhancement of health and safety in the mining industry;

96 (6) Any other information the board deems appropriate;

97 (7) In addition to the report by the board, as herein contained, each individual member of
98 said board has right to submit a separate report, setting forth any views contrary to the report of
99 the board, and the separate report, if any, shall be appended to the report of the board and be
100 considered a part thereof.

§22A-6-5. Preliminary procedures for promulgation of rules.

1 (a) Prior to the posting of proposed rules as provided for in subsection (c), section four of
2 this article, the board shall observe the preliminary procedure for the development of ~~rules~~ policies
3 set forth in this section:

4 (1) During a board meeting or at any time when the board is not meeting, any board
5 member may suggest to the Health and Safety Administrator, or such administrator on his or her
6 own initiative may develop, subjects for investigation and possible ~~regulation~~ policies to improve
7 the health and safety of the state's miners. These policies shall include suggested training
8 recommendations, and other compliance assistance the state can provide;

9 (2) Upon receipt of a suggestion for investigation, the Health and Safety Administrator
10 shall prepare a report, to be given at the next scheduled board meeting, of the technical evidence
11 available which relates to such suggestion, the staff time required to develop the subject matter,
12 the legal authority of the board to act on the subject matter, including a description of findings of
13 fact and conclusions of law which will be necessary to support any proposed ~~rules~~ policy to help
14 in providing compliance assistance;

15 (3) The board shall by majority vote of those members who are present determine whether
16 the Health and Safety Administrator shall prepare a draft ~~rule~~ policy concerning the suggested
17 subject matter;

18 (4) After reviewing the draft ~~rule~~ policy, the board shall determine whether the proposed
19 ~~rules~~ policies should be posted and made available for comment as provided for in section four
20 of this article;

21 (5) The board shall receive and consider those comments to the proposed ~~rules~~ policies
22 as provided for in section four of this article;

23 (6) The board shall direct the Health and Safety Administrator to prepare for the next
24 scheduled board meeting findings of fact and conclusions of law for the proposed ~~rules~~ policies,
25 which may incorporate comments received and technical evidence developed, and which are
26 consistent with section four of this article;

27 (7) The board shall adopt or reject or modify the proposed findings of fact and conclusions
28 of law; and

29 (8) The board shall make a final adoption or rejection of the ~~rules~~ suggested policies to be
30 used in compliance assistance visits.

31 (b) By the concurrence of at least four members of the board, the board may dispense
32 with the procedure set out in subsection (a) of this section or any other procedural rule
33 established, except that the board shall in all instances when adopting rules prepare findings of
34 fact and conclusions of law consistent with this section and section four of this article.

35 (c) Without undue delay, the board shall adopt an order of business for the conduct of
36 meetings which will promote the orderly and efficient consideration of proposed ~~rules~~ policies in
37 accordance with the provisions of this section.

**§22A-6-6. Health and Safety Administrator; qualifications; duties; employees;
compensation.**

1 (a) The Governor shall appoint the Health and Safety Administrator of the board for a term
2 of employment of one year. The Health and Safety Administrator shall be entitled to have his or
3 her contract of employment renewed on an annual basis except where such renewal is denied for
4 cause: *Provided*, That the Governor has the power at any time to remove the Health and Safety
5 Administrator for misfeasance, malfeasance or nonfeasance: *Provided, however*, That the board
6 has the power to remove the Health and Safety Administrator without cause upon the concurrence
7 of five members of the board.

8 (b) The Health and Safety Administrator shall work at the direction of the board,
9 independently of the Director of the Office of Miners' Health, Safety and Training and has such
10 authority and shall perform such duties as may be required or necessary to effectuate this article.

11 (c) In addition to the Health and Safety Administrator, there shall be such other employees
12 hired by the Health and Safety Administrator as the board determines to be necessary. The Health
13 and Safety Administrator shall provide supervision and direction to the other employees of the
14 board in the performance of their duties.

15 (d) The employees of the board shall be compensated at rates determined by the board.
16 The salary of the Health and Safety Administrator shall be fixed by the Governor: *Provided*, That
17 the salary of the Health and Safety Administrator shall not be reduced during his or her annual
18 term of employment or upon the renewal of his or her contract for an additional term. Such salary
19 shall be fixed for any renewed term at least ninety days before the commencement thereof.

20 (e) (1) Appropriations for the salaries of the Health and Safety Administrator and any other
21 employees of the board and for necessary office and operating expenses shall be made to a

22 budget account established for those purposes in the General Revenue Fund. Such account shall
23 be separate from any accounts or appropriations for the Office of Miners' Health, Safety and
24 Training.

25 (2) Expenditures from the funds established in section three hundred ten, article two-a;
26 section seven, article six; section four, article seven; section three, article eleven of this chapter
27 shall be by the Health and Safety Administrator for administrative and operating expenses, such
28 operating expenses include mine health and safety, research, education and training programs
29 as determined by the entities.

30 (f) The Health and Safety Administrator shall review all coal mining fatalities and major
31 causes of injuries as mandated by section four of this article. An analysis of such fatalities and
32 major causes of injuries shall be prepared for consideration by the board within ninety days of the
33 occurrence of the accident.

34 (g) At the direction of the board, the administrator shall also conduct an annual study of
35 occupational health issues relating to employment in and around coal mines of this state and
36 submit a report to the board with findings and proposals to address the issues raised in such
37 study. The administrator is responsible for preparing the annual reports required by subsection
38 (e), section four of this article and section nine of this article.

39 ~~(h) The administrator shall provide administrative assistance to the West Virginia Diesel~~
40 ~~Commission, The State Coal Mine Safety and Technical Review Committee, Board of Coal Mine~~
41 ~~Health and Safety, Board of Miner Training, Education and Certification, and the Mine Safety~~
42 ~~Technology Task Force, and serve as the legislative liaison for budgetary issues. The~~
43 ~~Administrator shall serve as an ex officio, nonvoting member on the West Virginia Diesel~~
44 ~~Commission, The State Coal Mine Safety and Technical Review Committee, Board of Miner~~
45 ~~Training, Education and Certification, and the Mine Safety Technology Task Force~~

46 (†) (h) The administrator shall submit to each board or commission for its approval, the
47 proposed budget of the board or commission before submitting it to the Secretary of Revenue

ARTICLE 7. BOARD OF MINER TRAINING, EDUCATION AND CERTIFICATION.**§22A-7-2. Declaration of legislative findings and policy.**

1 The Legislature hereby finds and declares that:

2 (a) The continued prosperity of the coal industry is of primary importance to the State of
3 West Virginia;

4 (b) The highest priority and concern of this Legislature and all in the coal mining industry
5 must be the health and safety of the industry's most valuable resource -- the miner;

6 (c) A high priority must also be given to increasing the productivity and competitiveness of
7 the mines in this state;

8 (d) An inordinate number of miners, working on both the surface in surface mining and in
9 and at underground mines, are injured during the first few months of their experience in a mine;

10 (e) These injuries result in the loss of life and serious injury to miners and are an
11 impediment to the future growth of West Virginia's coal industry;

12 (f) Injuries can be avoided through proper miner training, education and certification;

13 (g) Mining is a technical occupation with various specialties requiring individualized
14 training and education; and

15 (h) It is the general purpose of this article to:

16 (1) Require adequate training, education and meaningful certification of all persons
17 employed in coal mines;

18 (2) Establish a board of miner training, education and certification and empower it to
19 require certain training and education of all prospective miners and miners certified by the state;

20 (3) Authorize a stipend for prospective miners enrolled in this state's miner training,
21 education and certification program;

22 (4) Direct the Director of the Office of Miners' Health, Safety and Training to apply and
23 implement the standards set by the Board of ~~Miner Training, Education and Certification~~ Coal

24 Mine Health and Safety by establishing programs for miner and prospective miner education and
25 training; and

26 (5) Provide for a program of continuing miner education for all categories of certified
27 miners.

§22A-7-3. Definitions.

1 Unless the context in which a word or phrase appears clearly requires a different meaning,
2 the words defined in section two, article one of this chapter have when used in this article the
3 meaning therein assigned to them. These words include, but are not limited to, the following:
4 Office, director, mine inspector, operator, miner, shotfirer and certified electrician.

5 "Board" means the Board of ~~Miner Training, Education and Certification~~ Coal Mine Health
6 and Safety established by section four of this article.

7 "Mine" means any mine, including a "surface mine," as that term is defined in section
8 three, article three, chapter twenty-two of this code, and in section two, article four of said chapter;
9 and a "mine" as that term is defined in section two, article one of this chapter.

**§22A-7-4. Board of Miner Training, Education and Certification continued as duties of the
board of Coal Mine Health and Safety**

1 The duties of the Board of Miner Training, Education and Certification shall be continued
2 in the Board of Coal Mine Health and Safety.

§22A-7-5. Additional Board of Coal Mine Health and Safety powers and duties.

1 (a) The board shall establish criteria and standards for a program of education, training
2 and examination to be required of all prospective miners and miners prior to their certification in
3 any of the various miner specialties requiring certification under this article or any other provision
4 of this code. The specialties include, but are not limited to, underground miner, surface miner,
5 apprentice, underground mine foreman-fire boss, assistant underground mine foreman-fire boss,
6 shotfirer, mine electrician and belt examiner. Notwithstanding the provisions of this section, the
7 director may by rule further subdivide the classifications for certification.

8 (b) The board may require certification in other miner occupational specialties: *Provided*,
9 That no new specialty may be created by the board unless certification in a new specialty is made
10 desirable by action of the federal government requiring certification in a specialty not enumerated
11 in this code.

12 (c) The board may establish criteria and standards for a program of preemployment
13 education and training to be required of miners working on the surface at underground mines who
14 are not certified under the provisions of this article or any other provision of this code.

15 (d) The board shall set minimum standards for a program of continuing education and
16 training of certified persons and other miners on an annual basis: *Provided*, That the standards
17 shall be consistent with the provisions of section seven of this article. Prior to issuing the
18 standards, the board shall conduct public hearings at which the parties who may be affected by
19 its actions may be heard. The education and training shall be provided in a manner determined
20 by the director to be sufficient to meet the standards established by the board.

21 (e) The board may, in conjunction with any state, local or federal agency or any other
22 person or institution, provide for the payment of a stipend to prospective miners enrolled in one
23 or more of the programs of miner education, training and certification provided in this article or
24 any other provision of this code.

25 (f) The board may also, from time to time, conduct any hearings and other oversight
26 activities required to ensure full implementation of programs established by it.

27 (g) Nothing in this article empowers the board to revoke or suspend any certificate issued
28 by the Director of the Office of Miners' Health, Safety and Training.

29 (h) The board may, upon its own motion or whenever requested to do so by the director,
30 consider two certificates issued by this state to be of equal value or consider training provided or
31 required by federal agencies to be sufficient to meet training and education requirements set by
32 it, the director, or by the provisions of this code.

33 (i) As part of the annual training required by this section, the board shall include training

34 of certified persons and other miners, instruction on miners' rights as they relate to the operation
35 of unsafe equipment as provided in section seventy-one, article two of this chapter, his or her right
36 to withdrawal from unsafe conditions as provided in section seventy-one-a of article two of this
37 chapter and his or her rights under section twenty-two, article one of this chapter.

§22A-7-5a. Study of miner training and education.

1 The ~~board~~ of Coal Mine Health and Safety is directed, from time to time, to conduct a study
2 of the overall program of education, training and examination associated with the various miner
3 specialties requiring certification under this article or any other provision of this code. The study
4 shall identify ways to enhance miner education and training to adequately reflect technological
5 advances in coal mining techniques and best practices used in modern coal mines, and improve
6 supervision of apprentice miners. Furthermore, the board shall place particular emphasis in its
7 study on ways to improve education and training in the areas of proper mine ventilation, methane
8 monitoring and equipment deenergization, fire-boss procedures and overall core mining
9 competencies. By December 31, 2012, the board shall report to the Legislature's Joint Committee
10 on Government and Finance with recommendations regarding the implementation of the findings
11 of this study.

§22A-7-7. Continuing education requirements for underground mine foreman-fire boss.

1 (a) An underground mine foreman-fire boss certified pursuant to this article on or after the
2 effective date of this section shall complete the continuing education requirements in this section
3 within two years of their certification and every two years thereafter. The continuing education
4 requirements of this section may not be satisfied by the completion of other training requirements
5 mandated by the provisions of this chapter.

6 (b) In order to receive continuing education credit pursuant to this section, a mine foreman-
7 fire boss shall satisfactorily complete a mine foreman-fire boss continuing education course
8 approved by the board and taught by a qualified instructor approved by the director. The mine
9 foreman-fire boss shall not suffer a loss in pay while attending a continuing education course. The

10 mine foreman-fire boss shall submit documentation to the office certified by the instructor that
11 indicates the required continuing education has been completed prior to the deadlines set forth in
12 this subsection: *Provided*, That a mine foreman-fire boss may submit documentation of continuing
13 education completed in another state for approval and acceptance by the board.

14 (c) The mine foreman-fire boss shall complete at least eight hours of continuing education
15 every two years.

16 (d) The content of the continuing education course shall include, but not be limited to:

17 (1) Selected provisions of this chapter and 30 U. S. C. § 801, *et seq.*;

18 (2) Selected provisions of the West Virginia and federal underground coal mine health and
19 safety rules and regulations;

20 (3) The responsibilities of a mine foreman-fire boss;

21 (4) Selected policies and memoranda of the Office of Miners' Health, Safety and Training,
22 the Board of Coal Mine Health and Safety ~~the board of Miner Training, Education and Certification,~~
23 and from any safety analysis performed by the company.

24 (5) A review of fatality and accident trends in underground coal mines; and

25 (6) ~~Other subjects as determined by the board of Miner Training, Education and~~
26 ~~Certification~~ The board shall solicit input from mining companies on the substance of the training
27 and discuss how the training shall be scheduled during the year.

28 (e) The board may approve alternative training programs tailored to specific mines.

29 (f) A mine foreman-fire boss who fails to complete the requirements of this section shall
30 have his or her certification suspended pending completion of the continuing education
31 requirements. During the pendency of the suspension, the individual may not perform statutory
32 duties assigned to a mine foreman-fire boss under West Virginia law. The office shall send notice
33 of any suspension to the last address the certified mine foreman-fire boss reported to the director.
34 If the requirements are not met within two years of the suspension date, the director may file a
35 petition with the board of appeals pursuant to the procedures set forth in section thirty-one, article

36 one of this chapter and, upon determining that the requirements have not been met, the board of
37 appeals may revoke the mine foreman-fire boss' certification, which shall not be renewed except
38 upon successful completion of the examination prescribed by law for mine foremen-fire bosses
39 or upon completion of other training requirements established by the board: *Provided*, That an
40 individual having his or her mine foreman-fire boss certification suspended pursuant to this section
41 who also holds a valid mine foreman-fire boss certification from another state may have the
42 suspension lifted by completing training requirements established by the board.

43 (g) The office shall make a program of instruction that meets the requirements for
44 continuing education set forth in this section regularly available in regions of the state, based on
45 demand, for individuals possessing mine foreman-fire boss certifications who are not serving in a
46 mine foreman-fire boss capacity: *Provided*, That the office may collect a fee from program
47 participants to offset the cost of the program.

48 (h) The office shall make available to operators and other interested parties a list of
49 individuals whose mine foreman-fire boss certification is in suspension or has been revoked.

ARTICLE 9. MINE INSPECTORS' EXAMINING BOARD.

§22A-9-1. Mine Inspectors' Examining Board duties shall be carried out by the Board of Coal Mine Health and Safety.

1 ~~The Mine Inspectors' Examining Board is continued. It consists of five members who,~~
2 ~~except for the public representative on such board, shall be appointed by the Governor, by and~~
3 ~~with the advice and consent of the Senate. Members so appointed may be removed only for the~~
4 ~~same causes and in like manner as elective state officers. One of the members of the board shall~~
5 ~~be a representative of the public, who shall be the Director of the School of Mines at West Virginia~~
6 ~~University. Two members of the board shall be persons who by reason of previous training and~~
7 ~~experience may reasonably be said to represent the viewpoint of coal mine operators and two~~
8 ~~members shall be persons who by reason of previous training and experience may reasonably~~

9 ~~be said to represent the viewpoint of coal mine workers.~~

10 ~~The Director of the Office of Miners' Health, Safety and Training is an ex officio member~~
11 ~~of the board and shall serve as secretary of the board, without additional compensation; but the~~
12 ~~director has no right to vote with respect to any matter before the board.~~

13 ~~The members of the board, except the public representative, shall be appointed for~~
14 ~~overlapping terms of eight years, except that the original appointments shall be for terms of two,~~
15 ~~four, six and eight years, respectively. Any member whose term expires may be reappointed by~~
16 ~~the Governor. Members serving on the effective date of this article may continue to serve until~~
17 ~~their terms expire.~~

18 ~~Each member of the board shall be paid the same compensation, and each member of~~
19 ~~the board shall be paid the expense reimbursement, as is paid to members of the Legislature for~~
20 ~~their interim duties as recommended by the Citizens Legislative Compensation Commission and~~
21 ~~authorized by law for each day or portion thereof engaged in the discharge of official duties. Any~~
22 ~~such amounts shall be paid out of the State Treasury upon a requisition upon the State Auditor,~~
23 ~~properly certified by such members of the board.~~

24 ~~The public member is chair of the board. Members of the board, before performing any~~
25 ~~duty, shall take and subscribe to the oath required by section 5, article IV of the Constitution of~~
26 ~~West Virginia.~~

27 ~~The Mine Inspectors' Examining Board shall meet at such times and places as shall be~~
28 ~~designated by the chair. It is the duty of the chair to call a meeting of the board on the written~~
29 ~~request of three members or the Director of the Office of Miners' Health, Safety and Training.~~
30 ~~Notice of each meeting shall be given in writing to each member by the secretary at least five~~
31 ~~days in advance of the meeting. Three members is a quorum for the transaction of business~~

32 The duties of the former Mine Inspectors' Examining Board are continued in the Board of
33 Coal Mine Health and Safety.

34 In addition to other duties expressly set forth elsewhere in this article, the board shall:

35 (1) Establish and, from time to time, revise forms of application for employment as mine
36 inspectors, which shall include the applicant's social security number, and forms for written
37 examinations to test the qualifications of candidates for that position;

38 (2) Adopt and promulgate reasonable rules relating to the examination, qualification and
39 certification of candidates for appointment as mine inspectors, and hearing for removal of
40 inspectors, required to be held by section twelve, article one of this chapter. All of such rules shall
41 be printed and a copy thereof furnished by the secretary of the board to any person upon request.
42 The office shall determine whether applicants have the necessary experience to take the mine
43 inspector examination and the examination of candidates for appointment as a mine inspector
44 shall be conducted by the office and it shall rank all applicants.

45 ~~(3) Conduct, after public notice of the time and place thereof, examinations of candidates~~
46 ~~for appointment as mine inspector. By unanimous agreement of all members of the board, one or~~
47 ~~more members of the board or an employee of the office of miners' health, safety and training~~
48 ~~may be designated to give a candidate the written portion of the examination;~~

49 ~~(4) Prepare and certify to the director of the office of miners' health, safety and training a~~

50 (3) The office shall prepare a register of qualified eligible candidates for appointment as
51 mine inspectors. The register shall list all qualified eligible candidates in the order of their grades,
52 the candidate with the highest grade appearing at the top of the list. ~~After each meeting of the~~
53 ~~board held to examine such candidates, and at least annually, the board shall prepare and submit~~
54 ~~to the director of the office of miners' health, safety and training a revised and corrected register~~
55 ~~of qualified eligible candidates for appointment as mine inspector, deleting from such revised~~
56 ~~register all~~ This list shall be kept updated by the office. Those persons: (a) Who are no longer
57 residents of West Virginia; (b) who have allowed a calendar year to expire without, in writing,
58 indicating their continued availability for such appointment; (c) who have been passed over for
59 appointment for three years; (d) who have become ineligible for appointment since the board
60 originally certified that such person was qualified and eligible for appointment as mine inspector;

61 or (e) who, in the judgment of ~~at least four members of the board~~ the office, should be removed
 62 from the register for good cause by the office;

63 ~~(5) Cause the secretary of the board to~~ (4) The office shall keep and preserve the written
 64 examination papers, manuscripts, grading sheets, and other papers of all applicants for
 65 appointment as mine inspector for ~~such period of time as may be established by the board~~ two
 66 years. Specimens of the examinations given, together with the correct solution of each question,
 67 shall be preserved; ~~permanently by the secretary of the board~~

68 ~~(6) Issue~~ (5) The office shall a letter or written notice of qualification to each successful
 69 eligible candidate;

70 ~~(7) Hear~~ (6) The Board of Coal Mine Health and Safety shall hear and determine
 71 proceedings for the removal of mine inspectors in accordance with the provisions of this article;

72 ~~(8) Hear~~ (7) The board shall hear and determine appeals of mine inspectors from
 73 suspension orders made by the director pursuant to the provisions of section four, article one of
 74 this chapter: *Provided*, That an aggrieved inspector, in order to appeal from any order of
 75 suspension, shall file such appeal in writing with the ~~mine inspectors' examining board~~ Board of
 76 Coal Mine Health and Safety not later than ten days after receipt of notice of suspension. On such
 77 appeal the board shall affirm the act of the director unless it be satisfied from a clear
 78 preponderance of the evidence that the director has acted arbitrarily;

79 ~~(9) Make~~ (8) The board and office shall make an annual report to the Governor and the
 80 director concerning the administration of mine inspection personnel in the state service, making
 81 such recommendations as the board considers to be in the public interest.

ARTICLE 11. MINE SAFETY TECHNOLOGY.

§22A-11-2. Mine Safety Technology Task Force continued as a part of the Board of Coal Mine Health and Safety.

The Mine Safety Technology Task Force is continued as a part of the duties and powers

of the Board of Coal Mine Health and Safety.

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

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

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

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

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

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

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

17 (c) The ~~task force~~ board shall on a continuous basis study, monitor and evaluate:

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

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

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

23 (4) Market forces impacting the development of new technologies, including issues
24 regarding the costs of research and development, regulatory certification and incentives designed

25 to stimulate the marketplace.

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

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

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

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

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

36 (e) In performing its duties, the ~~task force~~ board shall, where possible, consult with, among
37 others, mine engineering and mine safety experts, radio communication and telemetry experts
38 and relevant state and federal regulatory personnel.

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

41 (g) The ~~task force~~ board shall annually compile a proposed list of approved innovative
42 mine safety technologies and transmit the list to the Director of the Office of Miners' Health, Safety
43 and Training as provided in section four, article thirteen-bb, chapter eleven of this code. The list
44 shall be approved by unanimous vote of the ~~task force~~ board.

§22A-11-4. Approval of devices.

1 Prior to approving any protective equipment or device that has been evaluated by the ~~task~~
2 ~~force~~ board pursuant to the provisions of subsection (b), section three of this article, the director
3 shall consult with the task force and review any applicable written reports issued by the task force
4 and the findings set forth in the reports and shall consider the findings in making any approval
5 determination.

§22A-11-5. Mine rescue teams staffed by the Office of Miners' Health, Safety and Training.

1 (a) This section governs mine rescue requirements for the Office of Miners' Health, Safety
2 and Training (OMHS&T). This section does not relieve mine operators from their requirement to
3 either have their own mine rescue team or contract coverage.

4 (b) The director shall develop a mine emergency operation plan for the mine rescue teams
5 that represent the OMHS&T that would include, but is not limited to, the following criteria:

6 (1) Establish and maintain two mine rescue stations within the OMHS&T; one located in
7 the northern area of the state, and one located in the southern area of the state, at locations
8 determined by the director.

9 (2) To establish one fully trained mine rescue team per each OMHS&T regional office for
10 a total of four teams in the state, two in the north and two in the south.

11 (3) The members assigned to the mine rescue and recovery work may be inspectors,
12 instructors or other qualified employees of the OMHS&T as the director deems necessary. The
13 director shall employ additional employees as he or she deems necessary to fulfill the requirement
14 of this section.

15 (4) To provide the necessary fully equipped mine rescue vehicles for each OMHS&T mine
16 rescue station that would include but is not limited to cell phones, satellite telephone, landline
17 telephones (teleconferencing), on-site radios and fax/copy machines, computers with mine
18 mapping software (CAD) and modems; and any other equipment deemed necessary by the
19 director.

20 (5) To purchase new additional mine rescue equipment including, but is not limited to,
21 mask mounted radio connections and permissible radios for underground wireless
22 communications; new lifeline/communications reels with a "down hole" speaker microphone
23 system; new additional handheld gas detectors and infra-red and electrochemical gas monitoring
24 equipment, gas sampling tubing, satellite telephones and four channels of seismic inputs
25 (geophones); and any other equipment as deemed necessary by the director.

26 (c) As used in this section, mine rescue teams shall be considered available where teams
27 are capable of presenting themselves at the mine site(s) within a reasonable time after notification
28 of an occurrence which might require their services. Rescue team members will be considered
29 available even though performing regular work duties or while in an off-duty capacity.

30 (1) In the event of a fire, explosion, or recovery operations in or about any mine, the
31 director is hereby authorized to assign any mine rescue team to said mine to protect and preserve
32 life and property. The director may also assign mine rescue and recovery work to inspectors,
33 instructors or other qualified employees of the office as he or she deems necessary.

34 (2) The agency's mine rescue team members shall be considered "duly qualified
35 emergency service worker" as defined in section eleven, article five, chapter fifteen of this code.

36 (3) Each mine rescue team consists of five members and one alternate, who are fully
37 qualified, trained and equipped for providing emergency mine rescue service. Each mine rescue
38 team shall be trained by a state certified mine rescue instructor.

39 (4) Each member of a mine rescue team must have been employed in an underground
40 mine for a minimum of one year. For the purpose of mine rescue work only, miners who are
41 employed on the surface but work regularly underground meet the experience requirement. The
42 underground experience requirement is waived for those members of a mine rescue team on the
43 effective date of this section.

44 (5) An applicant for agency mine rescue training shall pass, on at least an annual basis, a
45 physical examination by a licensed physician certifying his or her fitness to perform mine rescue
46 work. A record that such examination was taken, together with pertinent data relating thereto,
47 shall be kept on file by the director. A team member requiring corrective eyeglasses will not be
48 disqualified provided the eyeglasses can be worn securely within an approved facepiece.

49 (d) In determining whether a miner applicant is physically capable of performing mine
50 rescue duties, the physician shall take the following conditions into consideration:

51 (1) Seizure disorder;

- 52 (2) Perforated eardrum;
- 53 (3) Hearing loss without a hearing aid greater than 40 decibels at 400, 1000, and 2000 hz;
- 54 (4) Repeated blood pressure (controlled or uncontrolled by medication) reading which
55 exceeds 160 systolic, or 100 diastolic, or which is less than 105 systolic, or 60 diastolic;
- 56 (5) Distant visual acuity (without glasses) less than 20/50 snellen scale in one eye, and
57 20/70 in the other;
- 58 (6) Heart disease;
- 59 (7) Hernia;
- 60 (8) Absence of a limb or hand; or
- 61 (9) Any other condition which the examining physician determines is relevant to the
62 question of whether the miner is fit for rescue team service.
- 63 (e) Upon completion of the initial training, all agency's mine rescue team members shall
64 receive at least ninety-six hours of refresher training annually.
- 65 (f) Each member of a mine rescue team shall be examined annually by a physician who
66 shall certify that each person is physically fit to perform mine rescue and recovery work for
67 prolonged periods under strenuous conditions.
- 68 (g) (1) Any person making application to participate in initial agency mine rescue training
69 shall have had an examination by a physician, who shall certify that such applicant is physically
70 fit to perform mine rescue and recovery work while wearing a self-contained oxygen breathing
71 apparatus. The physical examination shall be completed within thirty days prior to scheduled initial
72 training.
- 73 (2) A physician shall fill out a form prescribed by the director, and such form shall be
74 presented to the mine rescue training instructor five days prior to scheduled initial training.
- 75 (3) Agency mine rescue team members are to be paid a minimum of \$250 per month, with
76 the rate thereafter to be determined annually by the director.

77 (h) When engaged in rescue work required by an explosion, fire or other emergency at a
78 mine, all members of the agency's mine rescue teams assigned to rescue operations shall, during
79 the period of their rescue work, be employees of the operator of the mine where the emergency
80 exists, and shall be compensated by the operator at the rate established in the area for such work.
81 In no case shall this rate be less than the prevailing wage rate in the industry for the most skilled
82 class of inside mine labor and paid per the following criteria:

83 (1) Time and half – when on standby at hotel/home

84 (2) Double time – when available on the surface

85 (3) Triple time – when under apparatus underground

86 (4) the director will invoice the operator and ensure proper distribution to the individual
87 agency mine rescue team members.

88 (i) During the period of their emergency employment, members of mine rescue teams shall
89 be protected by the workers' compensation subscription of such emergency employer.

§22A-11-6. Existing state rules to be revised.

1 By August 31, 2017, all existing state rules promulgated pursuant to the authority of this
2 chapter shall be revised to reflect the changes in this chapter enacted by the Legislature during
3 the 2017 Legislative Session.

NOTE: The purpose of this bill concerns coal mining, coal mining safety and environmental protection. The bill creates a special reclamation water trust fund. The bill establishes additional duties for the Secretary of the Department of Environmental Protection. The bill permits coal operators to request that preblast surveys be limited to owners and occupants of man-made structures. The bill eliminates certain bond requirements. The bill provides that bonds may not be released until certain conditions are met. The bill provides for plugging and cleaning out of certain gas wells. The bill adds legislative findings. The bill provides that the Office of Miners' Health, Safety and Training to be within the Department of Commerce. The bill makes the Office of Miners' Health, Safety and Training responsible for safety, compliance visits and enforcement of state mine inspections. The bill eliminates certain boards and committees. The bill requires mine inspectors to provide safety compliance assistance in improving the miner's health and safety and to improve existing safety plans and programs. The bill adopts the federal standards in lieu of existing state standards in numerous areas of coal mining. The bill makes changes to who may serve on

the board of Coal Mine Health and Safety. The bill changes the board's powers and duties. The bill transfers the duties of the board of Miners' Training, Education and Certification and the duties of the former Mine Inspectors' Examining Board to the board of Coal Mine Health and Safety. The bill provides that the Mine Safety Technology Task Force to be continued as a part of the duties and powers of the board of Coal Mine Health and Safety. The bill provides that mine rescue teams be staffed by the Office of Miners' Health, Safety and Training. The bill requires a mine emergency plan be developed. The bill establishes conditions when a person is permitted to perform mine rescue duties. The bill deletes certain definitions. The bill changes certain existing definitions. The bill removes certain criminal penalties. The bill requires rule-making.

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

§22A-2-3, §22A-2-4, §22A-2-4a, §22A-2-5, §22A-2-6, §22A-2-11, §22A-2-13, §22A-2-24, §22A-2-26, §22A-2-27, §22A-2-36, §22A-2-37, §22A-2-38, §22A-2-39, §22A-2-40, §22A-2-42, §22A-2-43, §22A-2-43a, §22A-2-46, §22A-2-49, §22A-2-53a, §22A-2-53b, §22A-2-53c, §22A-2-55a, §22A-2-59, §22A-2-60, §22A-2-61, §22A-2-62, §22A-2-64, §22A-2-70, §22A-2-72, §22A-2-74, §22A-2-75, §22A-2A-101, §22A-7-4 and §22A-11-2 have been completely rewritten; therefore, have been completely underscored.