

**REPORT OF THE
JOINT SUBCOMMITTEE STUDYING**

Coal Mine Rescue

**TO THE GOVERNOR AND
THE GENERAL ASSEMBLY OF VIRGINIA**



House Document No. 27

**COMMONWEALTH OF VIRGINIA
RICHMOND
1985**

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**Report of the
Joint Subcommittee Studying
Coal Mine Rescue
To
The Governor and the General Assembly of Virginia
Richmond, Virginia
January, 1985**

To: Honorable Charles S. Robb, Governor of Virginia,
and
The General Assembly of Virginia

I. INTRODUCTION

The Joint Subcommittee Studying Coal Mine Rescue was established through House Joint Resolution 150. This resolution came about in response to the recommendation of the Governor's Advisory Committee on Mine Safety that a study be undertaken to assess Virginia's coal mine rescue capability. Specifically, the subcommittee sought to determine the extent and type of state involvement that is desirable in developing a coal mine rescue program.

II. 1984 DELIBERATIONS

The initial joint subcommittee meeting was held on July 17, 1984. The subcommittee heard from Eva Teig, Commissioner of Labor and Industry, who reviewed some of the problems uncovered by the Mine Safety Advisory Committee. She suggested that the joint subcommittee's study consider the following:

- (a) the federal government does not police the quality of mine rescue operations that it requires;
- (b) the Commonwealth does not require a mine operator to maintain mine rescue teams;
- (c) while large companies maintain their own rescue teams, small companies cannot afford to do so;
- (d) some confusion exists as to who has responsibility for those teams that voluntarily assist at another mine during a rescue operation.

The subcommittee reviewed the federal regulations and policies governing rescue operations. Mr. Harry Childress, Chief of the Division of Mines, discussed Virginia's current law and policies with regards to mine rescue. He suggested that any state plan would require at least two teams of eight men each in order to meet the federal Mine Safety and Health Administration and other requirements. Upon the subcommittee's request, Mr. Childress supplied cost estimates for a state-supported rescue program. He estimated that such a program would have initial per station costs of \$214,584 annually, plus yearly operating costs of \$73,972, including \$5,472 for training.

A second subcommittee meeting was held August 9, 1984. Subcommittee members attended the Virginia Mining Institute's "Safety Day Contest" activities during the morning. In the afternoon the subcommittee members considered the implications of the passage of HB 661, which mandated that volunteers engaged in coal mine rescue be covered under provisions of the "Good Samaritan Law" (§ 8.01-225).

The subcommittee also reviewed the rescue programs being administered by West Virginia and Kentucky. The Kentucky program consists of twelve six-member teams. These teams are comprised of state mine inspectors and an analyst, all of whom are state employees. All mines use the service at no cost to them. West Virginia has nineteen teams, each composed of five to six members. The rescue service is targeted for small mines and requires a fee of \$50 to \$100 monthly or supplying manpower for the rescue teams. Both West Virginia and Kentucky require two teams per station and each team has to be within an hour's travel time of each mine for

which they provide rescue services.

The subcommittee held two public hearings on October 2, 1984. The speakers included several coal producers who discussed the advantages and disadvantages of state-supported versus contracted rescue teams. As a result of their hearings and subcommittee discussions, a list of rescue program options was considered. These options included:

- (a) retain the current program;
- (b) establish state regulations for training and equipping for all mine rescue programs (If this option is chosen the Chief of the Division of Mines will need an additional employee at a cost of approximately \$50,000 to oversee the program.);
- (c) establish a state-funded and state-staffed mine rescue program;
- (d) levy fees on small operators to be used in a state grant program (Grants would then go to company or contract teams agreeing to offer mine rescue service to small operators);
- (e) similar to (d), but fees would be levied on all operators, then forwarded as grants to designated state teams;
- (f) try to have federal law changed;
- (g) amend the Good Samaritan Law (§ 8.01-225).

At its final meeting on November 14, 1984, the joint subcommittee discussed the various program options but chose a new approach which contained several aspects of the previously mentioned options. The subcommittee recommended the designation of state rescue teams. To be eligible for state designation, a request is made by the owner or operator of the company employing the team. The team must also be certified as a mine rescue team by the federal Mine Safety and Health Administration. These teams would be responsible for providing rescue services to those mine operations requesting mine rescue services and specified by the Chief of the Division of Mines. A rescue fee of \$1,000 to administer the rescue program would be paid into a fund by operators who request mine rescue service. The subcommittee asked staff to reflect this approach through draft legislation, a copy of which appears as Appendix A.

III. RECOMMENDATIONS

Based on its study during the past year, the subcommittee makes these recommendations:

1. That the draft legislation which authorizes state-designated teams and a mine reserve fund be recommended for consideration by the 1985 Session of the General Assembly.
2. That a letter be sent to Virginia representatives in the United States Senate and House of Representatives requesting repeal of or exemption from the federal regulations requiring mine rescue contracts. (See sample letter, Appendix B.)

Respectfully submitted,

James W. Robinson, Chairman

J. Robert Dobyms

Charles R. Hawkins

Daniel W. Bird, Jr.

Clive L. DuVal, 2d

APPENDIX A

LD5552554

HOUSE BILL NO. 1201

House Amendments in [] - February 3, 1985

A BILL to amend the Code of Virginia by adding sections numbered 45.1-33.5:1 through 45.1-33.5:4, relating to mine rescue.

Patrons—Robinson, J. W., Dobyns, Hawkins, Quillen, Brown, McGlothlin, Jennings, and Finney;
Senators: Bird and DuVal

Referred to the Committee on Mining and Mineral Resources

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding sections numbered 45.1-33.5:1 through 45.1-33.5:4 as follows:

§ 45.1-33.5:1. *State-designated rescue teams.*—The Chief may, upon the request of the operator or company which employs such a team, designate two or more mine rescue teams as “state-designated mine rescue teams.” Any team which is certified as a mine rescue team by the Mine Safety and Health Administration under 30 CFR Part 49 shall be eligible to be a state-designated team. Following the designation of any such teams, the Chief shall, upon the payment of [~~a~~ an annual] rescue fee of \$1,000 by an operator to the Department, assign two or more state-designated teams to the operator. [~~The rescue fee shall be paid annually.~~] The payment of the rescue fee entitles an operator to the [rescue] services of a state-designated rescue team at no additional charge.

§ 45.1-33.5:2. *Mine Rescue Fund.*—The Mine Rescue Fund is created as a special fund in the office of the State Treasurer. All moneys collected from operators pursuant to the provisions of § 45.1-33.5:1 shall be paid into the Mine Rescue Fund.

On July 1 of each year, or as soon thereafter as sufficient moneys are in the Mine Rescue Fund as are needed for this purpose, [~~ten percent of the Fund~~ twenty-five percent of the Fund in 1986, and ten percent of the Fund thereafter] shall be transferred from the Fund to the Department for purposes of administering §§ 45.1-33.5:1 through 45.1-33.5:3. On an annual basis, funds in excess of the sum which is transferred for administrative purposes shall be divided equally among all state-designated mine rescue teams.

No moneys in the Mine Rescue Fund shall revert to the general fund.

§ 45.1-33.5:3. *Inspections; Mine Rescue Coordinator.*—The Chief shall (i) inspect, or cause to be inspected, the rescue station of each state-designated mine rescue team four times a year, (ii) ensure that all rescue stations are adequately equipped, and (iii) ensure that all team members are adequately trained.

The Chief shall appoint a Mine Rescue Coordinator. The Mine Rescue Coordinator shall be an employee of the Division of Mines and shall perform the duties assigned to him by the Chief.

§ 45.1-33.5:4. Workers' compensation; liability.—For the purpose of workers' compensation coverage during any mine disaster which a state-designated team responds to under the provisions of § 45.1-33.5:1, crew members shall be deemed to be within the employment of the operator of the mine at which the disaster occurred.

Any member of a state-designated team engaging in rescue [~~or recovery~~] work at a mine shall not be liable for civil damages for acts or omissions resulting from the rendering of such rescue [~~or recovery~~] work unless the act or omission was the result of gross negligence or willful misconduct.

Furthermore, any mine operator or company providing personnel to such a rescue team to engage in rescue [~~or recovery~~] work at a mine not owned or operated by the operator or the company shall not be liable for any civil damages for acts or omissions resulting from the rendering of such rescue [~~or recovery~~] work.



APPENDIX B

COMMONWEALTH OF VIRGINIA
HOUSE OF DELEGATES
RICHMOND

JAMES W. ROBINSON
P. O. BOX 187
POUND, VIRGINIA 24279
SECOND DISTRICT

COMMITTEE ASSIGNMENTS:
FINANCE
AGRICULTURE
MINING AND MINERAL RESOURCES

January 28, 1985

The Honorable Frederick C. Boucher
428 Cannon House Office Bldg.
Washington, D.C. 20515

Dear Congressman Boucher:

I am writing to you as chairman of the Joint Subcommittee Studying Coal Mine Rescue. This special subcommittee was established by the 1984 Session of the General Assembly pursuant to House Joint Resolution 150. That resolution came about in response to a recommendation of the Governor's Advisory Committee on Mine Safety which suggested that a study be undertaken to assess Virginia's coal mine rescue capability.

The subcommittee had several meetings and public hearings during the course of the year. We found that an adequate number of very competent rescue teams currently exist in the Commonwealth and that none of these teams would hesitate to volunteer their services at the scene of any accident.

Despite this finding, the Commonwealth is in a dilemma which results from the Federal Mine Safety and Health Act (MSHA) amendments of 1981. The sections of that Act which concern us most are 30 C.F.R. § 49.1 through § 49.5 (1984).

MSHA currently requires that all mine operators either maintain or have contract services from two mine rescue teams at an available distance of no more than two hours traveling time. 30 C.F.R. § 49.2.

Under this federal requirement, many small mining operators in Virginia which cannot afford to maintain their own teams must now contract for rescue services from larger company teams, where those services were guaranteed before by very effective voluntary responses from neighboring mines.

Imposition of a contract situation on the mines that can provide rescue teams has resulted in understandable concern as to liability for damages caused during the performance of such services. Under Virginia's Good Samaritan Law, Virginia Code § 8.01-225 (1984), volunteers, and

The Honorable Frederick C. Boucher
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company teams voluntarily participating in rescue efforts, are exempt from liability for civil damages resulting from rendering rescue work in good faith. However, the federal requirements for contracted services cause contracted rescue teams to be ineligible for protection under the Good Samaritan Law, since such teams can no longer be considered "volunteers."

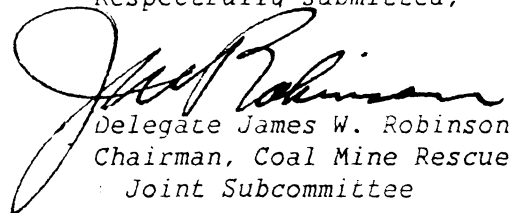
The Virginia voluntary program was working quite well until the federal MSHA requirements were passed. During our public hearings, we heard testimony that the federal requirements at issue were adopted in response to a need in the western states.

In light of the preceding problems, my subcommittee unanimously agreed that our representatives on the federal level should be informed of this matter and requested to introduce legislation which would exempt Virginia from the provisions of 30 C.F.R. § 49.1 through § 49.5.

On behalf of the Coal Mine Rescue Joint Subcommittee, I hereby submit that request and urge you to introduce such legislation. We feel that exempting Virginia from the sections mentioned will alleviate a very serious impediment to an otherwise efficient and responsive system.

Thank you for your attention to and consideration of this matter.

Respectfully submitted,


Delegate James W. Robinson
Chairman, Coal Mine Rescue
Joint Subcommittee

mec

cc: J. Robert Dobyns
Charles R. Hawkins
Daniel W. Bird, Jr.
Clive L. DuVal, 2d
Harry Childress
Blaine Carter
Virginia Liaison Office