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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

Com. Sub. For

HOUSE BILL No. 4213

(By Delegate *Kiss*)



Passed *March 9,* 1996

In Effect *Ninety Days From* Passage

96 MAR 21 11 36 AM '96
LEGISLATIVE SERVICES
DIVISION

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4213

(BY DELEGATE KISS)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact section fifteen, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to laboratory certification; expanding the aggregate amount which can be received annually in the environmental laboratory certification fund; requiring out-of-state laboratories performance testing and payment of certification fees; and allowing the division of environmental protection to expend any interest accumulated in the environmental laboratory certification fund.

Be it enacted by the Legislature of West Virginia:

That section fifteen, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-15. Laboratory certification; rules; fees; revocation and suspension; environmental laboratory certification fund; programs affected; and appeals.

- 1 (a) The director shall promulgate rules to require the

2 certification of laboratories conducting waste and
3 wastewater tests and analyses to be used for purposes of
4 demonstrating compliance under the covered statutory
5 programs, including reasonable annual certification fees
6 based upon the type or classification of tests or analyses
7 being conducted by laboratories not to exceed an annual
8 program aggregate of three hundred thousand dollars, to
9 be assessed against laboratory owners or operators in an
10 amount necessary to cover the actual costs of administra-
11 tion of this program and the processing of certification
12 applications, to be deposited in the state environmental
13 laboratory certification fund created pursuant to this sec-
14 tion. By the first day of July of each year, the director
15 shall provide to the secretary a written report reflecting
16 funds collected, how the funds were expended, and an
17 assessment of the adequacy of the funding to administer
18 the program.

19 (b) After the effective date of the rules promulgated
20 pursuant to this section, waste and wastewater tests and
21 analyses conducted in laboratories that are not certified
22 for the parameters or toxicity being tested or analyses
23 shall not be accepted by the division, except as otherwise
24 provided, as being in compliance with the requirements,
25 rules or orders of the division issued under authority of
26 one or more of the covered statutory programs: *Provided,*
27 That field tests and remote monitoring or testing equip-
28 ment which is conducted or located away from any labo-
29 ratory shall not be considered a laboratory for purposes of
30 assessing the fee, but shall be subject to such quality assur-
31 ance and quality control standards as may be established
32 by the director in rules promulgated pursuant to this sec-
33 tion. The director shall provide by rule for the granting
34 of certification for laboratories located outside of West
35 Virginia pursuant to this section if the laboratories provide
36 written documentation that approval has been received
37 under requirements in their state and determined by the
38 director to be equivalent to the West Virginia laboratory
39 certification program. The reciprocal certification shall be
40 granted only for testing methods and parameters for

41 which the laboratory holds a valid authorization in the
42 other state and only for laboratories in states which allow
43 reciprocity with respect to laboratories located in this state.

44 (c) Application shall be made to the director for ap-
45 proval or certification by laboratories on forms and in a
46 manner prescribed by the director.

47 (d) Certification shall be renewed on an annual basis.
48 The existing certification remains in effect until the direc-
49 tor notifies the applicant for renewal that renewal of certif-
50 ication has been granted or denied.

51 (e) Certification shall be granted for those tests or
52 parameters for which the laboratory demonstrates ade-
53 quate performance on performance evaluation tests based
54 on the criteria established in rules by the director. The
55 director shall, by rule, establish criteria governing what
56 shall be considered in any decision to deny or issue a
57 certification.

58 (f) Failure to comply with the requirements of the
59 applicable analytical methods and procedures or standards
60 specified in the rules of the director is grounds for revoca-
61 tion or suspension of certification for the affected test
62 procedures or parameters.

63 (g) No person subject to the covered statutory pro-
64 grams shall be allowed to use data or test results from
65 waste and wastewater tests and analyses conducted at labo-
66 ratories lacking certification for purposes of demonstrat-
67 ing compliance under the covered statutory programs:
68 *Provided*, That any person whose data or test results are
69 invalidated because that person had relied upon a labora-
70 tory which loses its certification, shall be granted thirty
71 days after notice of the invalidated test results by the di-
72 rector during which data or test results may be repeated or
73 reanalyzed by a certified laboratory for purposes of dem-
74 onstrating compliance under the covered statutory pro-
75 grams.

76 (h) A special revenue fund designated the "environ-

77 mental laboratory certification fund" shall be continued in
78 the state treasury on the first day of July, one thousand
79 nine hundred ninety-four. The net proceeds of all fees
80 collected pursuant to this section shall be deposited in the
81 environmental laboratory certification fund. Upon line
82 item appropriation by the Legislature, the director shall
83 expend the proceeds, including the interest thereon, of the
84 environmental laboratory certification fund solely for the
85 administration of the requirements of this section.

86 (i) For purposes of this section, "covered statutory
87 program" means one of the regulatory programs devel-
88 oped under statutory authority of one of the following
89 acts of the Legislature: Water Pollution Control Act, arti-
90 cle eleven of this chapter; Hazardous Waste Management
91 Act, article eighteen of this chapter; Hazardous Waste
92 Emergency Response Fund Act, article nineteen of this
93 chapter; Underground Storage Tank Act, article seventeen
94 of this chapter; the Solid Waste Management Act, article
95 fifteen of this chapter; or the Groundwater Protection Act,
96 article twelve of this chapter.

97 (j) Any person adversely affected by an order or ac-
98 tion by the director pursuant to this section, or aggrieved
99 by the failure or refusal of the director to act within a
100 reasonable time, or by the action of the director in grant-
101 ing or denying a certification or renewal of a certification
102 may appeal to the environmental quality board pursuant
103 to article one, chapter twenty-two-b of this code.

104 (k) The provisions of this section apply only to tests
105 and analyses of waste or wastewater subject to regulation
106 by the division of environmental protection. The provi-
107 sions of this section do not apply to tests or analyses of
108 potable or drinking water.

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



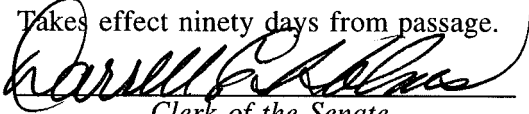
Chairman Senate Committee



Chairman House Committee

Originating in the House.

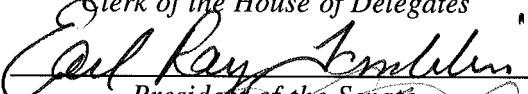
Takes effect ninety days from passage.



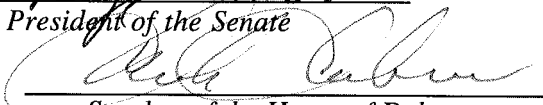
Clerk of the Senate



Clerk of the House of Delegates

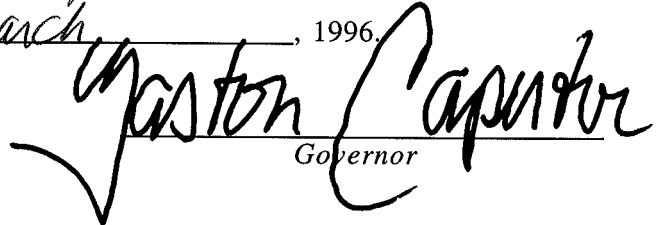


President of the Senate



Speaker of the House of Delegates

The within is approved this the 21st
day of March, 1996.



Governor

PRESENTED TO THE

GOVERNOR

Date 3/9/96

Time 3:26 pm