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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

House Bill No. 2735

(By Delegates Amores, Rowe and Buchanan)



Passed March 12, 1998

In Effect from Passage

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LEGISLATIVE SERVICE BUREAU

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[Passed March 12, 1998; in effect from passage.]

AN ACT to amend and reenact section six, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying status of division of environmental protection in-house counsel.

Be it enacted by the Legislature of West Virginia:

That section six, 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.

§22-1-6. Director of the division of environmental protection.

1 (a) The director is the chief executive officer of the
2 division. Subject to section seven of this article and other
3 provisions of law, the director shall organize the division
4 into such offices, sections, agencies and other units of
5 activity as may be found by the director to be desirable
6 for the orderly, efficient and economical administration of
7 the division and for the accomplishment of its objects and
8 purposes. The director may appoint assistants, hearing
9 officers, clerks, stenographers and other officers, technical
10 personnel and employees needed for the operation of the
11 division and may prescribe their powers and duties and fix
12 their compensation within amounts appropriated therefor.

13 (b) The director has the power to and may designate

14 supervisory officers or other officers or employees of the
15 division to substitute for him or her on any board or
16 commission established under this code or to sit in his or
17 her place in any hearings, appeals, meetings or other
18 activities with such substitute having the same powers,
19 duties, authority and responsibility as the director.
20 Additionally, the director has the power to delegate, as he
21 or she considers appropriate, to supervisory officers or
22 other officers or employees of the division his or her
23 powers, duties, authority and responsibility relating to
24 issuing permits, hiring and training inspectors and other
25 employees of the division, conducting hearings and
26 appeals and such other duties and functions set forth in
27 this chapter or elsewhere in this code.

28 (c) The director has responsibility for the conduct of
29 the intergovernmental relations of the division, including
30 assuring: (1) That the division carries out its functions in
31 a manner which supplements and complements the
32 environmental policies, programs and procedures of the
33 federal government, other state governments and other
34 instrumentalities of this state; and (2) that appropriate
35 officers and employees of the division consult with
36 individuals responsible for making policy relating to
37 environmental issues in the federal government, other state
38 governments and other instrumentalities of this state
39 concerning differences over environmental policies,
40 programs and procedures and concerning the impact of
41 statutory law and rules upon the environment of this state.

42 (d) In addition to other powers, duties and
43 responsibilities granted and assigned to the director by this
44 chapter, the director is hereby authorized and empowered
45 to:

46 (1) Sign and execute in the name of the state by the
47 "division of environmental protection" any contract or
48 agreement with the federal government or its departments
49 or agencies, subdivisions of the state, corporations,
50 associations, partnerships or individuals: *Provided*, That
51 the powers granted to the director to enter into agreements
52 or contracts and to make expenditures and obligations of
53 public funds under this subdivision shall not exceed or be

54 interpreted as authority to exceed the powers heretofore
55 granted by the Legislature to the various commissioners,
56 directors or board members of the various departments,
57 agencies or boards that comprise and are incorporated
58 into each secretary's department pursuant to the provisions
59 of chapter five-f of this code;

60 (2) Conduct research in improved environmental
61 protection methods and disseminate information to the
62 citizens of this state;

63 (3) Enter private lands to make surveys and
64 inspections for environmental protection purposes; to
65 investigate for violations of statutes or rules which the
66 division is charged with enforcing; to serve and execute
67 warrants and processes; to make arrests; issue orders,
68 which for the purposes of this chapter include consent
69 agreements; and to otherwise enforce the statutes or rules
70 which the division is charged with enforcing;

71 (4) Acquire for the state in the name of the "division
72 of environmental protection" by purchase, condemnation,
73 lease or agreement, or accept or reject for the state, in the
74 name of the division of environmental protection, gifts,
75 donations, contributions, bequests or devises of money,
76 security or property, both real and personal, and any
77 interest in such property;

78 (5) Provide for workshops, training programs and
79 other educational programs, apart from or in cooperation
80 with other governmental agencies, necessary to insure
81 adequate standards of public service in the division. The
82 director may also provide for technical training and
83 specialized instruction of any employee. Approved
84 educational programs, training and instruction time may
85 be compensated for as a part of regular employment. The
86 director is further authorized to pay out of federal or state
87 funds, or both, as such funds are available, fees and
88 expenses incidental to such educational programs,
89 training, and instruction. Eligibility for participation by
90 employees will be in accordance with guidelines
91 established by the director;

92 (6) Issue certifications required under 33 U.S.C.

93 §1341. Prior to issuing any such certification the director
94 shall solicit from the division of natural resources reports
95 and comments concerning the possible certification. The
96 reports and comments shall be directed from the division
97 of natural resources to the director for consideration; and

98 (7) Notwithstanding any provisions of this code to the
99 contrary, employ in-house counsel to perform all legal
100 services for the director and the division, including, but
101 not limited to, representing the director, any chief, the
102 division or any office thereof in any administrative
103 proceeding or in any proceeding in any state or federal
104 court, said counsel to be classified-exempt. Additionally,
105 the director may call upon the attorney general for legal
106 assistance and representation as provided by law.

107 (e) The director shall be appointed by the governor,
108 by and with the advice and consent of the Senate, and
109 serves at the will and pleasure of the governor: *Provided,*
110 That in lieu of appointing a director, the governor may
111 order the secretary to directly exercise the powers of the
112 director. The secretary shall designate the order in which
113 other officials of the division shall act for and perform the
114 functions of the secretary or the director during the
115 absence or disability of both the secretary and the director
116 or in the event of vacancies in both of those offices.

117 (f) At the time of his or her initial appointment, the
118 director shall be at least thirty years old and shall be
119 selected with special reference and consideration given to
120 his or her administrative experience and ability, to his or
121 her demonstrated interest in the effective and responsible
122 regulation of the energy industry and the conservation
123 and wise use of natural resources. The director shall have
124 at least a bachelor's degree in a related field and shall have
125 at least three years of experience in a position of
126 responsible charge in at least one discipline relating to the
127 duties and responsibilities for which the director will be
128 responsible upon assumption of the office of director.
129 The director shall not be a candidate for or hold any other
130 public office, shall not be a member of any political party
131 committee and shall immediately forfeit and vacate his or
132 her office as director in the event he or she becomes a

133 candidate for or accepts appointment to any other public
134 office or political party committee.

135 (g) The director shall receive an annual salary of
136 sixty-five thousand dollars and shall be allowed and paid
137 necessary expenses incident to the performance of his or
138 her official duties. Prior to the assumption of the duties of
139 his or her office, the director shall take and subscribe to
140 the oath required of public officers prescribed by section
141 five, article IV of the constitution of West Virginia and
142 shall execute a bond, with surety approved by the
143 governor, in the penal sum of ten thousand dollars, which
144 executed oath and bond shall be filed in the office of the
145 secretary of state. Premiums on the bond shall be paid
146 from the division funds.

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

Harry Ashmore
Chairman Senate Committee

Nick Tentasia
Chairman House Committee

Originating in the House.

Takes effect from passage.

Wassell Adams
Clerk of the Senate

Bryant A. Bay
Clerk of the House of Delegates

Carl Roy Tomblin
President of the Senate

Robert L. Taylor
Speaker of the House of Delegates

The within *approved* this the *6th*
day of *April*, 1998.

Earl K. Rayburn
Governor

PRESENTED TO THE

GOVERNOR

Date 3/26/98

Time 10:15 am