

WEST VIRGINIA LEGISLATURE

SECOND EXTRAORDINARY SESSION, 1990

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ENROLLED

Com. Sub. for
HOUSE BILL NO. 202

(By Mr. Speaker, Mr. Chambers, & Del. R. Burk)
[By Request of the Executive]

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Passed *June 27,* 1990

In Effect *July 1, 1990* ~~Passage~~

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COMMITTEE SUBSTITUTE
FOR
H. B. 202

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE R. BURK)
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[Passed June 27, 1990; in effect July, 1, 1990]

AN ACT to amend and reenact sections four, five and nine, article one, chapter five-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to further amend said article one by adding thereto two new sections, designated sections five-a and five-b; to amend and reenact sections two and five, article one, chapter twenty-two of said code; to further amend said article one by adding thereto a new section, designated section seven-a; and to amend and reenact section one, article four of said chapter twenty-two, relating to transferring and vesting in the public energy authority certain duties and responsibilities of the division of energy to foster, encourage and promote the mineral development industry; continuing the public energy authority; continuing the public energy board; requiring certain members on board be experienced in environmental protection; changing the compensation of members of the board; powers, duties and responsibilities of authority generally; requiring environmental impact statement or assessment under certain circumstances; requiring certain types of notice of certain meetings; requiring public hearing before certain actions of board with respect to project; expenses of

authority; division of energy; declaration of legislative findings and policy; qualifications of commissioner; creating advisory board; reclamation board of review; adding two members to board; conflicts of interest affecting eligibility for board or participation in certain matters; and changing the compensation of members of the board.

Be it enacted by the Legislature of West Virginia:

That sections four, five and nine, article one, chapter five-d of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that said article one be further amended by adding thereto two new sections, designated sections five-a and five-b; that sections two and five, article one, chapter twenty-two of said code be amended and reenacted; that said article one be further amended by adding thereto a new section, designated section seven-a; and that section one, article four of said chapter twenty-two be amended and reenacted, all to read as follows:

**CHAPTER 5D. PUBLIC ENERGY
AUTHORITY ACT.**

**ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF
WEST VIRGINIA.**

§5D-1-4. West Virginia public energy authority continued; West Virginia public energy board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.

1 The West Virginia public energy authority heretofore
2 created is hereby continued. The authority is a govern-
3 mental instrumentality of the state and a body corpo-
4 rate. The exercise by the authority of the powers
5 conferred by this article and the carrying out of its
6 purposes and duties are determined to be essential
7 governmental functions and for a public purpose.

8 The authority shall be controlled, managed and
9 operated by a nine member board known as the West
10 Virginia public energy authority board which is hereby
11 continued. The nine members of the board shall be

12 appointed by the governor, by and with the advice and
13 consent of the Senate. Two members shall be appointed
14 to serve a term of two years; two members shall be
15 appointed to serve a term of three years; two members
16 shall be appointed to serve a term of four years; two
17 members shall be appointed to serve a term of five
18 years; and one member shall be appointed to serve a
19 term of six years. The successor of each such appointed
20 member shall be appointed for a term of five years,
21 except that any person appointed to fill a vacancy
22 occurring prior to the expiration of the term for which
23 his predecessor was appointed shall be appointed only
24 for the remainder of such term. Each board member
25 shall serve until the appointment of his successor. No
26 more than five of the board members shall at any one
27 time belong to the same political party. No more than
28 four members of the board shall be employed by or
29 associated with any industry this authority is empow-
30 ered to affect. Two members of the board shall be
31 persons who have significant experience in the advocacy
32 of environmental protection. Board members may be
33 reappointed to serve additional terms.

34 All members of the board shall be citizens of the state.
35 Before entering upon his or her duties, each member of
36 the board shall comply with the requirements of article
37 one, chapter six of this code and give bond in the sum
38 of twenty-five thousand dollars in the manner provided
39 in article two, chapter six of this code. The governor
40 may remove any board member for cause as provided
41 in article six, chapter six of this code.

42 Annually the board shall elect one of its members as
43 chairman and another as vice chairman, and shall
44 appoint a secretary-treasurer, who need not be a
45 member of the board. Five members of the board shall
46 constitute a quorum and the affirmative vote of the
47 majority of members present at any meeting shall be
48 necessary for any action taken by vote of the board. No
49 vacancy in the membership of the board shall impair the
50 rights of a quorum by such vote to exercise all the rights
51 and perform all the duties of the board and the
52 authority. The person appointed as secretary-treasurer,

53 including a board member if he is so appointed, shall
54 give bond in the sum of fifty thousand dollars in the
55 manner provided in article two, chapter six of this code.

56 Each member of the board appointed prior to the first
57 day of July, one thousand nine hundred ninety, shall
58 receive an annual salary of six thousand dollars. Each
59 member appointed thereafter shall receive two hundred
60 dollars per diem for each day or portion thereof spent
61 in the discharge of his or her official duties, not to
62 exceed six thousand dollars in any fiscal year. Each
63 member of the board shall be reimbursed for all
64 reasonable and necessary expenses actually incurred in
65 the performance of his or her duty as a member of such
66 board. All such expenses incurred by the board shall be
67 payable solely from funds of the authority or from funds
68 appropriated to the authority for such purpose by the
69 Legislature and no liability or obligation shall be
70 incurred by the authority beyond the extent to which
71 moneys are available from funds of the authority or
72 from such appropriations.

73 There shall also be a director of the authority
74 appointed by the governor, with the advice and consent
75 of the senate, who will serve at the governor's will and
76 pleasure, who shall be responsible for managing and
77 administering the daily functions of the authority and
78 for performing any and all other functions necessary or
79 helpful to the effective functioning of the authority,
80 together with all other functions and powers as may be
81 delegated by the board.

**§5D-1-5. Powers, duties and responsibilities of authority
generally.**

1 The West Virginia public energy authority is hereby
2 granted, has and may exercise all powers necessary or
3 appropriate to carry out and effectuate its corporate
4 purpose. The authority shall have the power and
5 capacity to:

6 (1) Adopt, and from time to time, amend and repeal
7 bylaws necessary and proper for the regulation of its
8 affairs and the conduct of its business and rules and
9 regulations to implement and make effective its powers

10 and duties, such rules and regulations to be promul-
11 gated in accordance with the provisions of chapter
12 twenty-nine-a of this code.

13 (2) Adopt and use an official seal and alter the same
14 at pleasure.

15 (3) Maintain a principal office and, if necessary,
16 regional suboffices at locations properly designated or
17 provided.

18 (4) Sue and be sued in its own name and plead and
19 be impleaded in its own name, and particularly to
20 enforce the obligations and covenants made under this
21 article. Any actions against the authority shall be
22 brought in the circuit court of Kanawha County.

23 (5) Foster, encourage and promote the mineral
24 development industry.

25 (6) Represent the state with respect to national
26 initiatives concerning the mineral development indus-
27 try, and international marketing activities affecting the
28 mineral development industry.

29 (7) Engage in strategic planning to enable the state
30 to cope with changes affecting or which may affect the
31 mineral development industry.

32 (8) Acquire, whether by purchase, construction, gift,
33 lease, lease-purchase or otherwise, any electric power
34 project or natural gas transmission project. In the event
35 that an electric power project to be constructed pursu-
36 ant to this article is designed to utilize coal wastes for
37 the generation of electricity or the production of other
38 energy, such project shall also be capable of using coal
39 as its primary energy input: *Provided*, That it shall be
40 demonstrated to the authority's satisfaction that quan-
41 tities of coal wastes exist in amounts sufficient to
42 provide energy input for such project for the term of the
43 bonds or notes issued by the authority to finance the
44 project and are accessible to the project.

45 (9) Lease, lease with an option by the lessee to
46 purchase, sell, by installment sale or otherwise, or
47 otherwise dispose of, to persons other than governmental

48 agencies, any or all of its electric power projects or
49 natural gas transmission projects for such rentals or
50 amounts and upon such terms and conditions as the
51 public energy authority board may deem advisable.

52 (10) Finance one or more electric power projects or
53 natural gas transmission projects by making secured
54 loans to persons other than governmental agencies to
55 provide funds for the acquisition, by purchase, construc-
56 tion or otherwise, of any such project or projects.

57 (11) Issue bonds for the purpose of financing the cost
58 of acquisition and construction of one or more electric
59 power projects or natural gas transmission projects or
60 any additions, extensions or improvements thereto
61 which will be sold, leased with an option by the lessee
62 to purchase, leased or otherwise disposed of to persons
63 other than governmental agencies or for the purpose of
64 loaning the proceeds thereof to persons other than
65 governmental agencies for the acquisition and construc-
66 tion of said projects or both. Such bonds shall be issued
67 and the payment of such bonds secured in the manner
68 provided by the applicable provisions of sections seven,
69 eight, nine, ten, eleven, twelve, thirteen and seventeen,
70 article two-c, chapter thirteen of this code: *Provided,*
71 That the principal and interest on such bonds shall be
72 payable out of the revenues derived from the lease, lease
73 with an option by the lessee to purchase, sale or other
74 disposition of or from loan payments in connection with
75 the electric power project or natural gas transmission
76 project for which the bonds are issued, or any other
77 revenue derived from such electric power project or
78 natural gas transmission project.

79 (12) In the event that the electric power project or
80 natural gas transmission project is to be owned by a
81 governmental agency, apply to the economic develop-
82 ment authority for the issuance of bonds payable solely
83 from revenues as provided in article fifteen, chapter
84 thirty-one of this code: *Provided,* That the economic
85 development authority shall not issue any such bonds
86 except by an act of general law: *Provided, however,* That
87 the authority shall require that in the construction of
88 any such project, prevailing wages shall be paid as part

89 of a project specific agreement which also takes into
90 account terms and conditions contained in the West
91 Virginia-Ohio valley market retention and recovery
92 agreement or a comparable agreement.

93 (13) Acquire by gift or purchase, hold and dispose of
94 real and personal property in the exercise of its powers
95 and the performance of its duties as set forth in this
96 article.

97 (14) Acquire in the name of the state, by purchase or
98 otherwise, on such terms and in such manner as it
99 deems proper, or by the exercise of the right of eminent
100 domain in the manner provided in chapter fifty-four of
101 this code, such real property or parts thereof or rights
102 therein, rights-of-way, property, rights, easements and
103 interests it deems necessary for carrying out the
104 provisions of this article, and compensation shall be paid
105 for public or private lands so taken; and the authority
106 may sell any of the real property or parts thereof or
107 rights therein; rights-of-way, property, rights, ease-
108 ments and interests acquired hereunder in such manner
109 and upon such terms and conditions as the authority
110 deems proper: *Provided*, That if the authority deter-
111 mines that land or an interest therein acquired by the
112 authority through the exercise of the power of eminent
113 domain for the purpose of this article is no longer
114 necessary or useful for such purposes, and if the
115 authority desires to sell such land or interest therein, the
116 authority shall first offer to sell such land or interest to
117 the owner or owners from whom it was acquired, at a
118 price equal to its fair market value: *Provided, however*,
119 That if the prior owner or owners shall decline to
120 reacquire the land or interest therein, the authority
121 shall be authorized to dispose of such property by direct
122 sale, auction, or competitive bidding. In no case shall
123 such land or an interest therein acquired under this
124 subdivision be sold for less than its fair market value.
125 This article does not authorize the authority to take or
126 disturb property or facilities belonging to any public
127 utility or to a common carrier, which property or
128 facilities are required for the proper and convenient
129 operation of such public utility or common carrier,

130 except for the acquisition of easements or rights-of-way
131 which will not unreasonably interfere with the operation
132 of the property or facilities of such public utility or
133 common carrier, and in the event of the taking or
134 disturbance of property or facilities of public utility or
135 common carrier, provision shall be made for the
136 restoration, relocation or duplication of such property or
137 facilities elsewhere at the sole cost of the authority.

138 The term "real property" as used in this article is
139 defined to include lands, structures, franchises and
140 interests in land, including lands under water and
141 riparian rights, and any and all other things and rights
142 usually included within the said term, and includes also
143 any and all interests in such property less than full title,
144 such as easements, rights-of-way, uses, leases, licenses
145 and all other incorporeal hereditaments and every
146 estate, interest or right, legal or equitable, including
147 terms for years and liens thereon by way of judgments,
148 mortgages or otherwise, and also all claims for damages
149 for such real estate.

150 For the purposes of this section "fair market value"
151 shall be determined by an appraisal made by an
152 independent person or firm chosen by the authority. The
153 appraisal shall be performed using the principles
154 contained in the "Uniform Appraisal Standards for
155 Federal Land Acquisitions" published under the auspi-
156 ces of the Interagency Land Acquisition Conference,
157 United States Government Printing Office, 1972.

158 (15) Make and enter into all contracts and agreements
159 and execute all instruments necessary or incidental to
160 the performance of its duties and the execution of its
161 powers: *Provided*, That if any electric power project or
162 natural gas transmission project is to be constructed by
163 a person other than a governmental agency, and with
164 whom the authority has contracted to lease, sell or
165 finance such project upon its completion, then the
166 authority shall not be required to comply with the
167 provisions of article twenty-two, chapter five of this code
168 requiring the solicitation of competitive bids for the
169 construction of such a project.

170 (16) Employ managers, superintendents and other
171 employees, and retain or contract with consulting
172 engineers, financial consultants, accountants, architects,
173 attorneys, and such other consultants and independent
174 contractors as are necessary in its judgment to carry out
175 the provisions of this article, and fix the compensation
176 or fees thereof. All expenses thereof shall be payable
177 solely from the proceeds of bonds issued by the economic
178 development authority, from the proceeds of bonds
179 issued by or loan payments, lease payments or other
180 payments received by the authority, from revenues and
181 from funds appropriated for such purpose by the
182 Legislature.

183 (17) Receive and accept from any federal agency, or
184 any other source, grants for or in aid of the construction
185 of any project or for research and development with
186 respect to electric power projects, natural gas transmis-
187 sion projects or other energy projects, and receive and
188 accept aid or contribution from any source of money,
189 property, labor or other things of value to be held, used
190 and applied only for the purpose for which such grants
191 and contributions are made.

192 (18) Purchase property coverage and liability insu-
193 rance for any electric power project or natural gas
194 transmission project or other energy project and for the
195 principal office and suboffices of the authority, insu-
196 rance protecting the authority and its officers and
197 employees against liability, if any, for damage to
198 property or injury to or death of persons arising from
199 its operations and any other insurance which may be
200 provided for under a resolution authorizing the issuance
201 of bonds or in any trust agreement securing the same.

202 (19) Charge, alter and collect transportation fees and
203 other charges for the use or services of any natural gas
204 transmission project as provided in this article.

205 (20) Charge and collect fees or other charges from any
206 energy project undertaken as a result of this article.

207 (21) When the electric power project is owned and
208 operated by the authority, charge reasonable fees in
209 connection with the making and providing of electric

210 power and the sale thereof to corporations, states,
211 municipalities or other entities in the furtherance of the
212 purposes of this article.

213 (22) Purchase and sell electricity or other energy
214 produced by an electric power project in and out of the
215 state of West Virginia.

216 (23) Enter into wheeling contracts for the transmis-
217 sion of electric power over the authority's or another
218 party's lines.

219 (24) Make and enter into contracts for the construction
220 of a project facility and joint ownership with another
221 utility, and the provisions of this article shall not
222 constrain the authority from participating as a joint
223 partner therein.

224 (25) Make and enter into joint ownership agreements.

225 (26) Establish or increase reserves from moneys
226 received or to be received by the authority to secure or
227 to pay the principal of and interest on the bonds issued
228 by the economic development authority pursuant to the
229 provisions of article fifteen, chapter thirty-one of this
230 code or bonds issued by the authority.

231 (27) Broker the purchase of natural gas for resale to
232 end-users: *Provided*, That whenever there are local
233 distribution company pipelines already in place the
234 authority shall arrange to transport the gas through
235 such pipelines at the rates approved by the public
236 service commission of West Virginia.

237 (28) Engage in market research, feasibility studies,
238 commercial research, and other studies and research
239 pertaining to electric power projects and natural gas
240 transmission projects or any other functions of the
241 authority pursuant to this article.

242 (29) Enter upon any lands, waters and premises in the
243 state for the purpose of making surveys and examina-
244 tions as it may deem necessary or convenient for the
245 purpose of this article, and such entry shall not be
246 deemed a trespass, nor shall an entry for such purposes
247 be deemed an entry under any condemnation proceed-

248 ings which may be then pending, and the authority shall
249 make reimbursement for any actual damages resulting
250 to such lands, waters and premises as a result of such
251 activities.

252 (30) Participate in any reorganization proceeding
253 pending pursuant to the United States Code (being the
254 act of Congress establishing a uniform system of
255 bankruptcy throughout the United States, as
256 amended) or any receivership proceeding in a state or
257 federal court for the reorganization or liquidation of a
258 responsible buyer or responsible tenant. The authority
259 may file its claim against any such responsible buyer or
260 responsible tenant in any of the foregoing proceedings,
261 vote upon any question pending therein, which requires
262 the approval of the creditors participating in any
263 reorganization proceeding or receivership, exchange
264 any evidence of such indebtedness for any property,
265 security or evidence of indebtedness offered as a part of
266 the reorganization of such responsible buyer or respon-
267 sible tenant or of any entity formed to acquire the assets
268 thereof and may compromise or reduce the amount of
269 any indebtedness owing to it as a part of any such
270 reorganization.

271 (31) Make or enter into management contracts with
272 a second party or parties to operate any electric power
273 project or any gas transmission project and associated
274 facilities, or other related energy project, either during
275 construction or permanent operation.

276 (32) Do all acts necessary and proper to carry out the
277 powers expressly granted to the authority in this article.

278 (33) Nothing herein shall be construed to permit the
279 transportation of gas produced outside of this state
280 through a natural gas transmission project.

281 (34) The authority shall, after consultation with other
282 agencies of state government having environmental
283 regulatory functions, promulgate legislative rules
284 pursuant to chapter twenty-nine-a of this code, to
285 establish standards and principles to be applied to all
286 projects in assessing the effects of projects on the
287 environment: *Provided*, That when a proposed project

288 requires an environmental impact statement pursuant
289 to the National Environmental Policy Act of 1969, a
290 copy of the environmental impact statement shall be
291 filed with the authority and be made available prior to
292 any final decision or final approval of any project and
293 prior to the conducting of any public hearings regarding
294 the project, and in any such case, no assessment
295 pursuant to the legislative rule need be made.

§5D-1-5a. Publication of notice of certain meetings.

1 For all meetings of the board at which a bond issue
2 of the authority will be finally considered, and for all
3 meetings of the board at which the exercise of the right
4 of eminent domain will be finally considered, whether
5 such meeting be a regular or special meeting, the
6 chairman shall cause a notice of said meeting to be
7 published as a class II legal advertisement in com-
8 pliance with the provisions of article three, chapter fifty-
9 nine of this code and the publication area shall be each
10 county in which the project is located. In addition, notice
11 in writing of such meeting shall be given, by regular
12 United States mail, to any person who shall have
13 previously made a request, in writing, to be so notified
14 with regard to a particular project.

**§5D-1-5b. Public hearing before final consideration of
bond issue or exercise of right of eminent
domain.**

1 (a) Prior to any final decision of the board to take
2 action with respect to the issuance of revenue bonds or
3 to authorize the exercise of the right of eminent domain
4 with respect to any electric power or natural gas
5 transmission project, the authority shall:

6 (1) Prepare and reduce to writing the nature of the
7 proposed project, a summary of the data supporting the
8 board's determination and a description and location
9 identification of the proposed real property, right of
10 way, or easement to be acquired. The written statement
11 under this section and the environmental impact
12 statement or assessment required pursuant to section
13 five of this article shall be available for public inspection
14 at the office of the county clerk at the county courthouse

15 of each county in which the project is located during the
16 two successive weeks before the date of the public
17 hearing required by this section;

18 (2) Provide for a public hearing to be held at a
19 reasonable time and place within at least one county in
20 which the project is located to allow interested members
21 of the public to attend the hearing without undue
22 hardship. Members of the public may be present, submit
23 statements and testimony and question the authority's
24 representative appointed pursuant to this section;

25 (3) Not less than thirty days prior to such public
26 hearing, provide notice to all members of the Legisla-
27 ture, unless otherwise notified by a member that such
28 member does not desire such notice, to the county
29 commission of each county within which the project is
30 located and to the municipal council of each municipal-
31 ity in said county;

32 (4) Cause to be published a notice of the required
33 public hearing. The notice shall be published as a class
34 II legal advertisement in compliance with the provisions
35 of article three, chapter fifty-nine of this code and the
36 publication area shall be each county in which the
37 project is located. The public hearing shall be held no
38 earlier than the fourteenth successive day and no later
39 than the twenty-first successive day following the first
40 publication of the notice. The notice shall contain the
41 time and place of the public hearing along with a brief
42 description of the project and its proposed location;

43 (5) Cause a copy of the required notice to be posted
44 at the county seat of each county within which the
45 project is located for members of the public to observe.
46 Such notice shall remain posted for two successive
47 weeks prior to the date of the public hearing;

48 (6) Appoint a representative of the authority who shall
49 conduct the required public hearing. The representative
50 of the authority shall make a report of the public
51 hearing available for inspection by the public or, upon
52 written request of any interested person, provide a
53 written copy thereof and to all individuals previously
54 receiving written notice of the hearing within thirty

55 days following the public hearing; and

56 (7) The representative of the authority conducting the
57 public hearing shall make the results of the hearing
58 available to the board for its consideration prior to the
59 board making decisions regarding the proposed project.

60 (b) No final action of the board with respect to the
61 issuance of revenue bonds or authorizing the exercise of
62 the right of eminent domain with respect to a proposed
63 project may be made before the thirtieth successive day
64 following the public hearing required by this section,
65 but in no event shall final action of the board be made
66 prior to fifteen days after the report of the public
67 hearings are made available to the public in general.

§5D-1-9. Expenses of authority.

1 From time to time the legislature may appropriate
2 funds to be used for the purposes of this article. All
3 expenses incurred in carrying out the provisions of this
4 article shall be payable solely from funds of the
5 authority or from funds appropriated to the authority
6 for such purpose by the Legislature. Such article does
7 not authorize the authority to incur indebtedness or
8 liability on behalf of or payable by the state.

CHAPTER 22. ENERGY.

ARTICLE 1. COMMISSIONER OF ENERGY.

§22-1-2. Declaration of legislative findings and policy.

1 The Legislature hereby finds and declares that the
2 mineral development industry is vital to the state's
3 economy and the employment of many of its citizens;
4 that the division of energy and sections of such division
5 have heretofore been charged with the dual responsibil-
6 ity of fostering, encouraging and promoting the mineral
7 development industry, while at the same time issuing
8 permits to and regulating the mineral development
9 industry, and that these roles should not be vested in the
10 same agency of state government; that the responsibility
11 for fostering, encouraging and promoting this industry
12 should be vested in the public energy authority of this

13 state; that there exists a need to focus upon the
14 comprehensive regulation of this industry by the
15 division of energy so as to protect the environment and
16 promote health and safety within the mineral develop-
17 ment industry, and a need for the consolidation of
18 regulatory power and statutes in a single act and under
19 a single agency of state government with related boards
20 and commissions; that such consolidation will result in
21 more efficient administration, avoid unnecessary delays
22 in permitting and other matters, provide better and
23 more expeditious enforcement and application of
24 environmental and safety laws as herein provided, result
25 in better cooperation between agencies, provide for
26 uniform policies and consistent treatment of entities
27 engaged in mineral development; and that such efficient
28 and uniform administration and regulation will make
29 this state's industry more competitive with that in other
30 energy-producing states.

31 Accordingly, it is hereby declared the public policy of
32 this state and the purpose of this act:

33 (a) To effectively regulate the exploration for and the
34 development, production, utilization and conservation of
35 coal, oil and gas and other mineral resources of the state
36 through the fullest practical means, and at the same
37 time promote economic development in the state, protect
38 the environment and enhance safety and health in these
39 vital industries;

40 (b) To provide a comprehensive program for the
41 exploration, conservation, development, protection,
42 enjoyment, recovery and use of coal, oil and gas, and
43 other mineral resources in this state;

44 (c) To aid in such a comprehensive program by
45 creating a single department, designated the depart-
46 ment of energy, to have the regulatory powers with
47 respect to this industry and to have the general duties
48 and responsibilities heretofore existing in the depart-
49 ment of natural resources and department of mines, and
50 that the department will perform such duties and
51 functions in conjunction with the respective boards and
52 commissions which are herein continued in effect;

53 (d) To expedite and facilitate, consistent with appli-
54 cable environmental standards, the issuance of permits
55 for mines, surface mining operations, oil and gas wells
56 and other well work; to avoid conflicting permitting
57 requirements and regulations in this state or with
58 federal agencies; and to provide uniform policies with
59 respect to this industry;

60 (e) To provide for a single agency of this state to
61 implement requirements and programs of federal law
62 affecting the exploration, development, production,
63 recovery and utilization of coal, oil and gas, and other
64 mineral resources in this state;

65 (f) To provide for an agency of this state which can
66 be consulted with by other agencies of this state prior
67 to the adoption or implementation of rules, regulations,
68 standards, programs or requirements affecting the
69 exploration, development, production, recovery and
70 utilization of coal, oil and gas, and other mineral
71 resources in this state.

**§22-1-5. Commissioner of energy; appointment; duties;
qualifications; removal; salary; expenses; oath
and bond.**

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

13 The commissioner shall have the power to and may
14 designate the deputy commissioner or other officers or
15 employees of the division to substitute for him on any
16 board or commission established under this chapter or
17 to sit in his place in any hearings, appeals, meetings or
18 other activities with such substitute having the same

19 powers, duties, authority and responsibility as the
20 commissioner. Additionally, the commissioner shall
21 have the power to delegate to the deputy commissioner,
22 division directors, section deputies or other personnel,
23 his powers, duties, authority and responsibility relating
24 to issuing permits, hiring and training inspectors and
25 other employees of the division, conducting hearings and
26 appeals and such other duties and functions set forth in
27 this chapter or chapters twenty-two-a and twenty-two-
28 b as he considers appropriate.

29 The commissioner shall be appointed by the governor
30 with the advice and consent of the senate, and shall
31 serve at the will and pleasure of the governor.

32 At the time of his initial appointment, the commis-
33 sioner shall be at least thirty years old and shall be
34 selected with special reference and consideration given
35 to his administrative experience and ability, to his
36 demonstrated interest in the effective and responsible
37 regulation of the energy industry and the conservation
38 and wise use of natural resources. The commissioner
39 shall not be a candidate for or hold any other public
40 office, shall not be a member of any political party
41 committee and shall immediately forfeit and vacate his
42 office as commissioner in the event he becomes a
43 candidate for or accepts appointment to any other public
44 office or political party committee.

45 The commissioner shall receive an annual salary of
46 sixty-five thousand dollars and shall be allowed and paid
47 necessary expenses incident to the performance of his
48 official duties. Prior to the assumption of the duties of
49 his office, the commissioner shall take and subscribe to
50 the oath required of public officers prescribed by section
51 5, article IV of the constitution of West Virginia and
52 shall execute a bond, with surety approved by the
53 governor, in the penal sum of ten thousand dollars,
54 which executed oath and bond shall be filed in the office
55 of the secretary of state. Premiums on the bond shall be
56 paid from the department funds.

§22-1-7a. Advisory board.

1 On or before the first day of November, one thousand

2 nine hundred ninety, the commissioner shall convene a
3 division of energy advisory board consisting of nine
4 members appointed by the governor, for terms of two
5 years and who shall serve without compensation. Three
6 members of the board shall have significant experience
7 in the energy industry, three members shall have
8 significant experience in the advocacy of environmental
9 protection, one member shall be a representative of
10 organized labor, one member shall be a member of the
11 house of delegates recommended by the speaker of the
12 house, and one member shall be a member of the senate
13 recommended by the president of the senate. The
14 commissioner shall serve as an ex officio member and
15 chairman of the board. The advisory board shall meet
16 at least every two months, or upon the call of four
17 members, to discuss all aspects of the division of
18 energy's environmental protection and environmental
19 regulatory functions, collection of penalties and fines,
20 and responsibilities.

ARTICLE 4. RECLAMATION BOARD OF REVIEW.

§22-4-1. Appointment and organization of reclamation board of review; authority, compensation, expenses and removal of board members.

1 (a) There is hereby continued a reclamation board of
2 review consisting of seven members to be appointed by
3 the governor with the advice and consent of the Senate.
4 Two members shall be appointed to serve a term of two
5 years. Two members shall be appointed to serve a term
6 of three years. Two members shall be appointed to serve
7 a term of four years. One member shall be appointed
8 to serve a term of five years. The successor of each such
9 appointed member shall be appointed for a term of five
10 years, except that any person appointed to fill a vacancy
11 occurring prior to the expiration of the term for which
12 his predecessor was appointed shall be appointed only
13 for the remainder of such term. Any vacancy in the
14 office of a member of said board shall be filled by
15 appointment by the governor for the unexpired term of
16 the member whose office is vacant. Each vacancy
17 occurring on said board shall be filled by appointment
18 within sixty days after such vacancy occurs. One of the

19 appointees to such board shall be a person who, by
20 reason of his previous vocation, employment or affilia-
21 tions, can be classed as one capable and experienced in
22 coal mining. One of the appointees to such board shall
23 be a person who, by reason of his training and expe-
24 rience, can be classed as one capable and experienced
25 in the practice of agriculture. One of the appointees to
26 such board shall be a person who, by reason of his
27 training and experience, can be classed as one capable
28 and experienced in modern forestry practices. One of
29 the appointees to such board shall be a person who, by
30 reason of his training and experience, can be classed as
31 one capable and experienced in engineering. One of the
32 appointees to such board shall be a person who, by
33 reason of his training and experience, can be classed as
34 one capable and experienced in water pollution control
35 or water conservation problems. One of the appointees
36 to such board shall be a person with significant
37 experience in the advocacy of environmental protection.
38 One of the appointees to such board shall be a person
39 who represents the general public interest. Not more
40 than four members shall be members of the same
41 political party. During his tenure on the board, no
42 member shall receive significant direct or indirect
43 financial compensation from or exercise any control over
44 any person or entity which holds or has held, within the
45 two years next preceding the member's appointment, a
46 permit to conduct activity regulated by the division of
47 energy, or any similar agency of any other state or of
48 the federal government: *Provided*, That the member
49 classed as experienced in coal mining, the member
50 classed as experienced in engineering, and the member
51 classed as experienced in water pollution control or
52 water conservation problems may receive significant
53 financial compensation from regulated entities for
54 professional services or regular employment so long as
55 the professional or employment relationship is disclosed
56 to the board. No member shall participate in any matter
57 before the board related to a regulated entity from
58 which the member receives or has received within the
59 preceding two years direct or indirect financial compen-
60 sation. For purposes of this section, "significant direct

61 or indirect financial compensation” means twenty
62 percent of gross income for a calendar year received by
63 the member, any member of his or her immediate
64 family, or the member’s primary employer.

65 (b) The board may employ supporting staff including
66 hearings examiners to aid and assist in performing its
67 responsibilities under this article.

68 (c) Four members shall constitute a quorum and no
69 action of the board is valid unless it has the concurrence
70 of at least four members. The board shall keep a record
71 of its proceedings. Each member shall be paid as
72 compensation for his work as such member, from funds
73 appropriated for such purposes, one hundred dollars per
74 day when actually engaged in the performance of his
75 work as a board member. In addition to such compen-
76 sation, each member shall be reimbursed for all
77 reasonable and necessary expenses actually incurred in
78 the performance of his duties, except that in the event
79 the expenses are paid, or are to be paid, by a third party,
80 the members shall not be reimbursed by the state.

81 (d) Annually, one member shall be elected as chair-
82 man and another member shall be elected as vice
83 chairman. Such officers shall serve for terms of one
84 year. The governor may remove any member of the
85 board from office for inefficiency, neglect of duty,
86 malfeasance or nonfeasance, after delivery to such
87 member the charges against him in writing, together
88 with at least ten days’ written notice of the time and
89 place at which the governor will publicly hear such
90 member, either in person or by counsel, in defense of
91 the charges against him, and affording the member
92 such hearing. If such member is removed from office,
93 the governor shall file in the office of the secretary of
94 state a complete statement of the charges made against
95 such member and a complete report of the proceedings
96 thereon. In such case the action of the governor
97 removing such member from office shall be final.

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

Frederic L. Parker
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect July 1, 1990.

David E. Holm
Clerk of the Senate

Donald G. Kopp
Clerk of the House of Delegates

Keith S. Sandette
President of the Senate

Robert C. Ambrose
Speaker of the House of Delegates

The within *is approved* this the *11th*
day of *July*, 1990.

Morton Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 7/2/90

Time 2:14 pm

RECEIVED

1500 JUL 11 12:17:08

OFFICE OF THE GOVERNOR
SECRETARIAT

