WEST VIRGINIA LEGISLATURE
SECOND EXTRAORDINARY SESSION, 1990

ENROLLED

Com. Sub. for
HOUSE BILL No. 202

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

Passed ......................................... June 27, 1990

In Effect ...................................... July 1, 1990
ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 202

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

[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 created is hereby continued. The authority is a governmental instrumentality of the state and a body corporate. The exercise by the authority of the powers conferred by this article and the carrying out of its purposes and duties are determined to be essential governmental functions and for a public purpose.

8 The authority shall be controlled, managed and operated by a nine member board known as the West Virginia public energy authority board which is hereby continued. The nine members of the board shall be
appointed by the governor, by and with the advice and
counsel of the Senate. Two members shall be appointed
to serve a term of two years; two members shall be
appointed to serve a term of three years; two members
shall be appointed to serve a term of four years; two
members shall be appointed to serve a term of five
years; and one member shall be appointed to serve a
term of six years. The successor of each such appointed
member shall be appointed for a term of five years,
except that any person appointed to fill a vacancy
occurring prior to the expiration of the term for which
his predecessor was appointed shall be appointed only
for the remainder of such term. Each board member
shall serve until the appointment of his successor. No
more than five of the board members shall at any one
time belong to the same political party. No more than
four members of the board shall be employed by or
associated with any industry this authority is empow-
ered to affect. Two members of the board shall be
persons who have significant experience in the advocacy
of environmental protection. Board members may be
reappointed to serve additional terms.

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

Annually the board shall elect one of its members as
chairman and another as vice chairman, and shall
appoint a secretary-treasurer, who need not be a
member of the board. Five members of the board shall
constitute a quorum and the affirmative vote of the
majority of members present at any meeting shall be
necessary for any action taken by vote of the board. No
vacancy in the membership of the board shall impair the
rights of a quorum by such vote to exercise all the rights
and perform all the duties of the board and the
authority. The person appointed as secretary-treasurer,
including a board member if he is so appointed, shall give bond in the sum of fifty thousand dollars in the manner provided in article two, chapter six of this code.

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

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

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

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

6 (1) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and rules and regulations to implement and make effective its powers
and duties, such rules and regulations to be promul-
gated in accordance with the provisions of chapter
twenty-nine-a of this code.

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

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

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

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

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

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

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

(9) Lease, lease with an option by the lessee to
purchase, sell, by installment sale or otherwise, or
otherwise dispose of, to persons other than governmental
agencies, any or all of its electric power projects or
natural gas transmission projects for such rentals or
amounts and upon such terms and conditions as the
public energy authority board may deem advisable.

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

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

(12) In the event that the electric power project or
natural gas transmission project is to be owned by a
governmental agency, apply to the economic develop-
ment authority for the issuance of bonds payable solely
from revenues as provided in article fifteen, chapter
thirty-one of this code: Provided, That the economic
development authority shall not issue any such bonds
except by an act of general law: Provided, however, That
the authority shall require that in the construction of
any such project, prevailing wages shall be paid as part
of a project specific agreement which also takes into account terms and conditions contained in the West Virginia-Ohio valley market retention and recovery agreement or a comparable agreement.

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

(14) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems proper, or by the exercise of the right of eminent domain in the manner provided in chapter fifty-four of this code, such real property or parts thereof or rights therein, rights-of-way, property, rights, easements and interests it deems necessary for carrying out the provisions of this article, and compensation shall be paid for public or private lands so taken; and the authority may sell any of the real property or parts thereof or rights therein; rights-of-way, property, rights, easements and interests acquired hereunder in such manner and upon such terms and conditions as the authority deems proper: Provided, That if the authority determines that land or an interest therein acquired by the authority through the exercise of the power of eminent domain for the purpose of this article is no longer necessary or useful for such purposes, and if the authority desires to sell such land or interest therein, the authority shall first offer to sell such land or interest to the owner or owners from whom it was acquired, at a price equal to its fair market value: Provided, however, That if the prior owner or owners shall decline to reacquire the land or interest therein, the authority shall be authorized to dispose of such property by direct sale, auction, or competitive bidding. In no case shall such land or an interest therein acquired under this subdivision be sold for less than its fair market value. This article does not authorize the authority to take or disturb property or facilities belonging to any public utility or to a common carrier, which property or facilities are required for the proper and convenient operation of such public utility or common carrier,
except for the acquisition of easements or rights-of-way which will not unreasonably interfere with the operation of the property or facilities of such public utility or common carrier, and in the event of the taking or disturbance of property or facilities of public utility or common carrier, provision shall be made for the restoration, relocation or duplication of such property or facilities elsewhere at the sole cost of the authority.

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

For the purposes of this section “fair market value” shall be determined by an appraisal made by an independent person or firm chosen by the authority. The appraisal shall be performed using the principles contained in the “Uniform Appraisal Standards for Federal Land Acquisitions” published under the auspices of the Interagency Land Acquisition Conference, United States Government Printing Office, 1972.

(15) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers: Provided, That if any electric power project or natural gas transmission project is to be constructed by a person other than a governmental agency, and with whom the authority has contracted to lease, sell or finance such project upon its completion, then the authority shall not be required to comply with the provisions of article twenty-two, chapter five of this code requiring the solicitation of competitive bids for the construction of such a project.
(16) Employ managers, superintendents and other employees, and retain or contract with consulting engineers, financial consultants, accountants, architects, attorneys, and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article, and fix the compensation or fees thereof. All expenses thereof shall be payable solely from the proceeds of bonds issued by the economic development authority, from the proceeds of bonds issued by or loan payments, lease payments or other payments received by the authority, from revenues and from funds appropriated for such purpose by the Legislature.

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

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

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

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

(21) When the electric power project is owned and operated by the authority, charge reasonable fees in connection with the making and providing of electric
power and the sale thereof to corporations, states, municipalities or other entities in the furtherance of the purposes of this article.

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

(23) Enter into wheeling contracts for the transmission of electric power over the authority's or another party's lines.

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

(25) Make and enter into joint ownership agreements.

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

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

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

(29) Enter upon any lands, waters and premises in the state for the purpose of making surveys and examinations as it may deem necessary or convenient for the purpose of this article, and such entry shall not be deemed a trespass, nor shall an entry for such purposes be deemed an entry under any condemnation proceed-
ings which may be then pending, and the authority shall
make reimbursement for any actual damages resulting
to such lands, waters and premises as a result of such
activities.

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

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

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

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

(34) The authority shall, after consultation with other
agencies of state government having environmental
regulatory functions, promulgate legislative rules
pursuant to chapter twenty-nine-a of this code, to
establish standards and principles to be applied to all
projects in assessing the effects of projects on the
environment: Provided, That when a proposed project
requires an environmental impact statement pursuant to the National Environmental Policy Act of 1969, a copy of the environmental impact statement shall be filed with the authority and be made available prior to any final decision or final approval of any project and prior to the conducting of any public hearings regarding the project, and in any such case, no assessment pursuant to the legislative rule need be made.

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

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

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

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

1 (1) Prepare and reduce to writing the nature of the proposed project, a summary of the data supporting the board's determination and a description and location identification of the proposed real property, right of way, or easement to be acquired. The written statement under this section and the environmental impact statement or assessment required pursuant to section five of this article shall be available for public inspection at the office of the county clerk at the county courthouse.
of each county in which the project is located during the
two successive weeks before the date of the public
hearing required by this section;

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

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

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

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

(6) Appoint a representative of the authority who shall
conduct the required public hearing. The representative
of the authority shall make a report of the public
hearing available for inspection by the public or, upon
written request of any interested person, provide a
written copy thereof and to all individuals previously
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.


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

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

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

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

(c) To aid in such a comprehensive program by creating a single department, designated the department of energy, to have the regulatory powers with respect to this industry and to have the general duties and responsibilities heretofore existing in the department of natural resources and department of mines, and that the department will perform such duties and functions in conjunction with the respective boards and commissions which are herein continued in effect;
(d) To expedite and facilitate, consistent with applicable environmental standards, the issuance of permits for mines, surface mining operations, oil and gas wells and other well work; to avoid conflicting permitting requirements and regulations in this state or with federal agencies; and to provide uniform policies with respect to this industry;

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

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

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

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

The commissioner shall have the power to and may designate the deputy commissioner or other officers or employees of the division to substitute for him on any board or commission established under this chapter or to sit in his place in any hearings, appeals, meetings or other activities with such substitute having the same
powers, duties, authority and responsibility as the 
commissioner. Additionally, the commissioner shall 
have the power to delegate to the deputy commissioner, 
division directors, section deputies or other personnel, 
his powers, duties, authority and responsibility relating 
to issuing permits, hiring and training inspectors and 
other employees of the division, conducting hearings and 
appeals and such other duties and functions set forth in 
this chapter or chapters twenty-two-a and twenty-two-b as he considers appropriate.

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

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

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

§22-1-7a. Advisory board.

On or before the first day of November, one thousand
nine hundred ninety, the commissioner shall convene a division of energy advisory board consisting of nine members appointed by the governor, for terms of two years and who shall serve without compensation. Three members of the board shall have significant experience in the energy industry, three members shall have significant experience in the advocacy of environmental protection, one member shall be a representative of organized labor, one member shall be a member of the house of delegates recommended by the speaker of the house, and one member shall be a member of the senate recommended by the president of the senate. The commissioner shall serve as an ex officio member and chairman of the board. The advisory board shall meet at least every two months, or upon the call of four members, to discuss all aspects of the division of energy's environmental protection and environmental regulatory functions, collection of penalties and fines, 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.

(a) There is hereby continued a reclamation board of review consisting of seven members to be appointed by the governor with the advice and consent of the Senate. Two members shall be appointed to serve a term of two years. Two members shall be appointed to serve a term of three years. Two members shall be appointed to serve a term of four years. One member shall be appointed to serve a term of five years. The successor of each such appointed member shall be appointed for a term of five years, except that any person appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Any vacancy in the office of a member of said board shall be filled by appointment by the governor for the unexpired term of the member whose office is vacant. Each vacancy occurring on said board shall be filled by appointment within sixty days after such vacancy occurs. One of the
appointees to such board shall be a person who, by reason of his previous vocation, employment or affiliations, can be classed as one capable and experienced in coal mining. One of the appointees to such board shall be a person who, by reason of his training and experience, can be classed as one capable and experienced in the practice of agriculture. One of the appointees to such board shall be a person who, by reason of his training and experience, can be classed as one capable and experienced in modern forestry practices. One of the appointees to such board shall be a person who, by reason of his training and experience, can be classed as one capable and experienced in water pollution control or water conservation problems. One of the appointees to such board shall be a person who represents the general public interest. Not more than four members shall be members of the same political party. During his tenure on the board, no member shall receive significant direct or indirect financial compensation from or exercise any control over any person or entity which holds or has held, within the two years next preceding the member's appointment, a permit to conduct activity regulated by the division of energy, or any similar agency of any other state or of the federal government: Provided, That the member classed as experienced in coal mining, the member classed as experienced in engineering, and the member classed as experienced in water pollution control or water conservation problems may receive significant financial compensation from regulated entities for professional services or regular employment so long as the professional or employment relationship is disclosed to the board. No member shall participate in any matter before the board related to a regulated entity from which the member receives or has received within the preceding two years direct or indirect financial compensation. For purposes of this section, "significant direct
or indirect financial compensation” means twenty
percent of gross income for a calendar year received by
the member, any member of his or her immediate
family, or the member's primary employer.

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

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

(d) Annually, one member shall be elected as chair-
man and another member shall be elected as vice
chairman. Such officers shall serve for terms of one
year. The governor may remove any member of the
board from office for inefficiency, neglect of duty,
malfeasance or nonfeasance, after delivery to such
member the charges against him in writing, together
with at least ten days' written notice of the time and
place at which the governor will publicly hear such
member, either in person or by counsel, in defense of
the charges against him, and affording the member
such hearing. If such member is removed from office,
the governor shall file in the office of the secretary of
state a complete statement of the charges made against
such member and a complete report of the proceedings
thereon. In such case the action of the governor
removing such member from office shall be final.
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 July 1, 1990.

The within ......... approved the ...... this the ...... day of .........., 1990.

Governor