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SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

SECOND EXTRAORDINARY SESSION, 1991

— ● —

# ENROLLED

Com. Sub. for  
HOUSE BILL No. 217

(By Delegate *Mr. Speake, Mr. Chambers*  
[By Request of the Executive])

— ● —

Passed *October 16,* 1991

In Effect *From* Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 217**

(By MR. SPEAKER, MR. CHAMBERS)  
[By Request of the Executive]

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AN ACT to amend and reenact article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article three, chapter twenty-two-a of said code by adding thereto a new section, designated section eleven-a; and to further amend said chapter twenty-two-a by adding thereto a new article, designated article seven, relating generally to establishing the division of environmental protection; setting forth legislative findings and a declaration of policy and purpose; defining certain terms; creating a division of environmental protection; describing the jurisdiction of the division; establishing a director as chief executive officer of the division, and prescribing his or her powers and duties, qualifications and salary; providing for the appointment of supervisory officers; transferring certain functions from the department of energy to the division of environmental protection; transferring certain offices from the department of energy to the division of environmental protection; providing for the transfer of offices and functions within the department of commerce, labor and environmental resources; describing the effect of transfers of functions and offices; authorizing reorganization of the division of

environmental protection; providing for legislative oversight; authorizing the promulgation of legislative rules; transferring and allocating appropriations and personnel; describing the effect of transfers upon personnel; setting forth savings provisions; establishing advisory boards; creating a special tax on coal production, effective on the first day of October, one thousand nine hundred ninety-one, to be paid into a special revenue fund for appropriation by the Legislature; providing for the applicability of the "West Virginia Tax Crimes and Penalties Act" to establish certain offenses and the penalties therefor; hearings before division; authorizing a system of site-specific bonding to be established by legislative rule; redesignating the division of health, safety and training as the office of miners' health, safety and training; establishing a director as chief executive officer of the office, and prescribing his or her powers and duties, qualifications and salary; transferring certain functions from the department of energy to the office of miners' health, safety and training; transferring certain offices from the department of energy to the office of miners' health, safety and training; transferring and allocating appropriations and personnel; authorizing the promulgation of legislative rules; and setting forth savings provisions.

*Be it enacted by the Legislature of West Virginia:*

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

## **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

### **ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.**

#### **§22-1-1. Legislative findings; legislative statement of policy and purpose.**

- 1 (a) The Legislature finds that:
- 2 (1) Restoring and protecting the environment is

3 fundamental to the health and welfare of individual  
4 citizens, and our government has a duty to provide and  
5 maintain a healthful environment for our citizens.

6 (2) The state has the primary responsibility for  
7 protecting the environment; other governmental enti-  
8 ties, public and private organizations and our citizens  
9 have the primary responsibility of supporting the state  
10 in its role as protector of the environment.

11 (3) Governmental decisions on matters which relate to  
12 the use, enhancement, preservation, protection and  
13 conservation of the environment should be made after  
14 public participation and public hearings.

15 (4) The dispersion of environmental protection pro-  
16 grams across a number of state agencies, and the  
17 mixing of environmental programs with policies and  
18 programs which promote the development of industrial  
19 manufacturing and the production and utilization of  
20 natural resources have led to fragmented, duplicative  
21 and often inconsistent state policies relating to the  
22 protection of the environment.

23 (5) Efficiency in the wise use, enhancement, preser-  
24 vation, protection and conservation of the environment  
25 can best be accomplished by an integrated and interdis-  
26 ciplinary approach in decisionmaking, and would  
27 benefit from the coordination, consolidation and integra-  
28 tion of state programs and agencies which are signifi-  
29 cantly concerned with the use, enhancement, preserva-  
30 tion, protection and conservation of the environment.

31 (6) Governmental and public consideration of issues  
32 relating to environmental programs is hindered by the  
33 present organizational structure of environmental  
34 programs in the executive branch of state government.

35 (7) There is a need for improvement in the manage-  
36 ment and coordination of state environmental protection  
37 programs.

38 (8) Those functions of government which regulate the  
39 environment should be consolidated in a single state  
40 agency, in order to accomplish the purposes set forth in  
41 this article, to carry out the environmental functions of

42 government in the most efficient and cost effective  
43 manner, to protect human health and safety and, to the  
44 greatest degree practicable, to prevent injury to plant,  
45 animal and aquatic life, improve and maintain the  
46 quality of life of our citizens, and promote economic  
47 development consistent with environmental goals and  
48 standards.

49 (9) Such consolidation, in a phased approach, is best  
50 accomplished by action of the executive.

51 (b) The Legislature declares that the establishment of  
52 a division of environmental protection is in the public  
53 interest, and will promote the general welfare of the  
54 state of West Virginia, without sacrificing social and  
55 economic development. It is the policy of the state of  
56 West Virginia, in cooperation with other governmental  
57 agencies, public and private organizations, and the  
58 citizens of this state, to use all practicable means and  
59 measures to prevent or eliminate harm to the environ-  
60 ment and biosphere, to create and maintain conditions  
61 under which man and nature can exist in productive  
62 harmony, and fulfill the social, economic and other  
63 requirements of present and future generations. The  
64 purposes of this article are:

65 (1) To strengthen the commitment of this state to  
66 restore, maintain and protect the environment;

67 (2) To authorize the consolidation of environmental  
68 regulatory programs in a single state agency, in  
69 consultation with and subject to oversight and review by  
70 the Legislature;

71 (3) To provide a comprehensive program for the  
72 conservation, protection, exploration, development,  
73 enjoyment and use of the natural resources of the state  
74 of West Virginia;

75 (4) To supplement and complement the efforts of the  
76 state by coordinating state programs with the efforts of  
77 other governmental entities, public and private organ-  
78 izations, and the general public to improve the quality  
79 of the environment, the public health and public  
80 enjoyment of the environment, and the propagation and

81 protection of animal, aquatic and plant life, in a manner  
82 consistent with the benefits to be derived from strong  
83 agricultural, manufacturing, tourism and energy-  
84 producing industries;

85 (5) Insofar as federal environmental programs require  
86 state participation, to endeavor to obtain and continue  
87 state primacy in the administration of such federally-  
88 mandated environmental programs, and to endeavor to  
89 maximize federal funds which may be available to  
90 accomplish the purposes of the state and federal  
91 environmental programs and to cooperate with approp-  
92 riate federal agencies to meet environmental goals;

93 (6) To encourage the increased involvement of all  
94 citizens in the development and execution of state  
95 environmental programs;

96 (7) To promote improvements in the quality of the  
97 environment through research, evaluation and sharing  
98 of information;

99 (8) To improve the management and effectiveness of  
100 state environmental protection programs; and

101 (9) To increase the accountability of state environmen-  
102 tal protection programs to the governor, the Legislature  
103 and the public generally.

**§22-1-2. Definitions.**

1 As used in this article, unless otherwise provided or  
2 indicated by the context:

3 (1) The term “department” means the department of  
4 commerce, labor and environmental resources;

5 (2) The term “secretary” means the secretary of the  
6 department of commerce, labor and environmental  
7 resources;

8 (3) The term “division” means the division of environ-  
9 mental protection;

10 (4) The term “director” means the director of the  
11 division of environmental protection;

12 (5) The term “function” includes any duty, obligation,

13 power, authority, responsibility, right, privilege, activity  
14 or program;

15 (6) The term "office" includes any office, board,  
16 agency, unit, organizational entity, or component  
17 thereof.

**§22-1-3. Creation of division of environmental protection;  
appointment of director.**

1 There is hereby created within the department of  
2 commerce, labor and environmental resources an  
3 executive agency to be known as the division of  
4 environmental protection. The division shall be admin-  
5 istered, in accordance with the provisions of this article,  
6 under the supervision and direction of the director of the  
7 division of environmental protection.

**§22-1-4. Jurisdiction vested in division.**

1 (a) Except as otherwise expressly provided in this  
2 chapter or in chapter twenty-two-a or twenty-two-b of  
3 this code, jurisdiction over the issuance of regulations,  
4 or any and all permits and other governmental author-  
5 izations required or to be required in all matters  
6 pertaining to the exploration, development, production,  
7 storage and recovery of coal, oil and gas, and other  
8 mineral resources in this state including all conserva-  
9 tion, land, water, waste disposal, reclamation and  
10 environmental regulations, permits and authorizations  
11 of such activities called for pursuant to articles five,  
12 five-a, five-d and five-f, chapter twenty of this code, and  
13 the enforcement and implementation thereof is vested  
14 exclusively in the division. The division is hereby  
15 designated as the lead regulatory agency for this state  
16 for all purposes of federal legislation relating to such  
17 activities.

18 (b) The division shall exercise all power and duties  
19 vested in the director of the division of natural resources  
20 pursuant to subsection (f), section seven, article five-e,  
21 chapter twenty of this code, and in the administrator of  
22 the office of oil and gas and shallow gas well review  
23 board pursuant to subsection (g), section seven, article  
24 five-e, chapter twenty of this code.

**§22-1-5. Director of the division of environmental protection.**

1 (a) The director shall be the chief executive officer of  
2 the division. Subject to provisions of law, he or she shall  
3 organize the division into such offices, sections, agencies  
4 and other units of activity as may be found by the  
5 director to be desirable for the orderly, efficient and  
6 economical administration of the division and for the  
7 accomplishment of its objects and purposes. The director  
8 may appoint assistants, hearing officers, clerks, steno-  
9 graphers, and other officers, technical personnel 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 (b) The director shall have the power to and may  
14 designate the supervisory officers or other officers or  
15 employees of the division to substitute for him or her on  
16 any board or commission established under this chapter  
17 or to sit in his or her place in any hearings, appeals,  
18 meetings or other activities with such substitute having  
19 the same powers, duties, authority and responsibility as  
20 the director. Additionally, the director shall have the  
21 power to delegate to the supervisory officers or other  
22 officers or employees of the division his or her powers,  
23 duties, authority and responsibility relating to issuing  
24 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 chapters twenty-two-a and twenty-two-  
28 b as he or she considers appropriate.

29 (c) The director shall have responsibility for the  
30 conduct of the intergovernmental relations of the  
31 division, including assuring: (1) That the division carries  
32 out its functions in a manner which supplements and  
33 complements the environmental policies, programs and  
34 procedures of the federal government, other state  
35 governments, and other instrumentalities of this state;  
36 and (2) that appropriate officers and employees of the  
37 division consult with individuals responsible for making  
38 policy relating to environmental issues in the federal  
39 government, other state governments, and other instru-



40 mentalities of this state concerning differences over  
41 environmental policies, programs and procedures and  
42 concerning the impact of statutory law and rules and  
43 regulations upon the environment of this state.

44 (d) In addition to other powers, duties and responsi-  
45 bilities granted and assigned to the director by this  
46 section or by a transfer of functions or offices in  
47 accordance with the provisions of this article, the  
48 director is hereby authorized and empowered to:

49 (1) Sign and execute in the name of the state by the  
50 "division of environmental protection" any contract or  
51 agreement with the federal government or its depart-  
52 ments or agencies, subdivisions of the state, corpora-  
53 tions, associations, partnerships or individuals:  
54 *Provided*, That the powers granted to the director to  
55 enter into agreements or contracts and to make expen-  
56 ditures and obligations of public funds under this  
57 subdivision shall not exceed or be interpreted as  
58 authority to exceed the powers heretofore granted by the  
59 Legislature to the various commissioners, directors or  
60 board members of the various departments, agencies or  
61 boards that comprise and are incorporated into each  
62 secretary's department pursuant to the provisions of  
63 chapter five-f of this code.

64 (2) Conduct research in improved environmental  
65 protection methods and disseminate information to the  
66 citizens of this state.

67 (3) Enter private lands to make surveys and inspec-  
68 tions for environmental protection purposes, to investi-  
69 gate for violations of statutes or rules which the division  
70 is charged with enforcing, to serve and execute war-  
71 rants and processes, to make arrests, and to otherwise  
72 enforce the statutes or rules which the division is  
73 charged with enforcing.

74 (4) Acquire for the state in the name of the "division  
75 of environmental protection" by purchase, condemna-  
76 tion, lease or agreement, or accept or reject for the state,  
77 in the name of the division of environmental protection,  
78 gifts, donations, contributions, bequests or devises of  
79 money, security or property, both real and personal, and

80 any interest in such property.

81 (5) Conduct schools, institutions and other educational  
82 programs, apart from or in cooperation with other  
83 governmental agencies, for instruction and training in  
84 all phases of environmental protection programs in this  
85 state.

86 (e) The director shall be appointed by the governor,  
87 by and with the advice and consent of the Senate, and  
88 shall serve at the will and pleasure of the governor:  
89 *Provided*, That in lieu of appointing a director, the  
90 governor may order the secretary to directly exercise  
91 the powers of the director. The secretary shall designate  
92 the order in which other officials of the division shall  
93 act for and perform the functions of the secretary or the  
94 director during the absence or disability of both the  
95 secretary and the director or in the event of vacancies  
96 in both of those offices.

97 (f) At the time of his or her initial appointment, the  
98 director shall be at least thirty years old and shall be  
99 selected with special reference and consideration given  
100 to his or her administrative experience and ability, to  
101 his or her demonstrated interest in the effective and  
102 responsible regulation of the energy industry and the  
103 conservation and wise use of natural resources. The  
104 director shall have at least a bachelor's degree in a  
105 related field and shall have at least three years of  
106 experience in a position of responsible charge in at least  
107 one discipline relating to the duties and responsibilities  
108 for which the director will be responsible upon assump-  
109 tion of the office of director. The director shall not be  
110 a candidate for or hold any other public office, shall not  
111 be a member of any political party committee and shall  
112 immediately forfeit and vacate his or her office as  
113 director in the event he or she becomes a candidate for  
114 or accepts appointment to any other public office or  
115 political party committee.

116 (g) The director shall receive an annual salary of  
117 sixty-five thousand dollars and shall be allowed and paid  
118 necessary expenses incident to the performance of his or  
119 her official duties. Prior to the assumption of the duties

120 of his or her office, the director shall take and subscribe  
121 to the oath required of public officers prescribed by  
122 section five, article four of the constitution of West  
123 Virginia and shall execute a bond, with surety approved  
124 by the governor, in the penal sum of ten thousand  
125 dollars, which executed oath and bond shall be filed in  
126 the office of the secretary of state. Premiums on the  
127 bond shall be paid from the division funds.

**§22-1-6. Supervisory officers.**

1 (a) There shall be in the division such number of  
2 supervisory officers as the director may determine is  
3 necessary to administer the functions and offices  
4 transferred to the division in accordance with the  
5 provisions of this article. Such supervisory officers shall  
6 be deemed to be "administrators" as such term is  
7 defined in section two, article six, chapter twenty-nine  
8 of this code, notwithstanding the fact that the positions  
9 filled by such persons are not statutorily created. Any  
10 such supervisory officer may be designated by the  
11 director as a deputy director, assistant director, chief,  
12 administrator, or other administrative title or designa-  
13 tion. Such supervisory officers may supervise the  
14 general subject areas of administration, mines and  
15 minerals, oil and gas, and abandoned mine lands and  
16 reclamation, as such functions and offices are trans-  
17 ferred to the division in accordance with the provisions  
18 of sections seven and eight of this article, and such other  
19 functions and offices as may be transferred to the  
20 division by executive order in accordance with the  
21 provisions of section nine of this article. The governor  
22 may, at any time prior to the first day of January, one  
23 thousand nine hundred ninety-three, by executive order,  
24 redefine the subject areas to be administered by any  
25 such supervisory officers, stating in such executive  
26 order or orders the title or designation to be assigned  
27 to the positions of supervisory officers and the particular  
28 functions and offices transferred by this article which  
29 are subject to administration by such designated  
30 supervisory officers. Each of the supervisory officers  
31 shall be appointed by the director and serve at the will  
32 and pleasure of the director. The compensation of such

33 supervisory officers shall be fixed by the director. A  
34 single individual may be appointed to serve simultane-  
35 ously in two distinct supervisory positions, but in a case  
36 where such dual appointment is made, such supervisory  
37 officer shall not receive additional compensation above  
38 that which would be paid for serving in one supervisory  
39 position.

40 (b) A supervisory officer appointed pursuant to the  
41 provisions of this section shall report directly to the  
42 director and shall, in addition to any functions vested  
43 in or required to be delegated to such officer, perform  
44 such additional functions as the director may prescribe.

45 (c) The supervisory officers of the division shall, before  
46 entering upon the discharge of their duties, take the  
47 oath of office prescribed by section five, article four of  
48 the constitution of West Virginia, and shall execute a  
49 bond in the penalty of two thousand dollars, with  
50 security to be approved by the governor, conditioned  
51 upon the faithful discharge of their duties, a certificate  
52 of which oath and which bond shall be filed in the office  
53 of the secretary of state. Premiums on such bond shall  
54 be paid from the division funds.

**§22-1-7. Functions transferred to the director of the  
division of environmental protection.**

1 (a) All powers vested in the commissioner of the  
2 division of energy prior to the effective date of this  
3 section, shall upon the effective date of this section be  
4 vested in the director.

5 (b) There are hereby transferred to the director all  
6 functions of the director of the division of mines and  
7 minerals of the department of energy as set forth in the  
8 prior enactment of section eight-a of this article. The  
9 director may delegate to a supervisory officer the  
10 authority and duty to execute and carry out, administer  
11 and enforce the provisions of this chapter and chapter  
12 twenty-two-a of this code relating to surface and  
13 underground mining permits and coal mine reclamation  
14 inspections.

15 (c) There are hereby transferred to the director all

16 functions of the director of the division of abandoned  
17 mine lands and reclamation of the department of energy  
18 as set forth in the prior enactment of section ten-a of  
19 this article. The director may delegate to a supervisory  
20 officer the authority and duty to execute and carry out,  
21 administer and enforce the provisions of article three of  
22 this chapter related to abandoned mine lands and  
23 reclamation.

24 (d) Except for the authority of the shallow gas well  
25 review board under article seven of this chapter and of  
26 the oil and gas conservation commission under article  
27 eight of this chapter and of the oil and gas inspectors  
28 examining board under article thirteen of this chapter  
29 there are hereby transferred to the director all functions  
30 of the director of the division of oil and gas of the  
31 department of energy as set forth in the prior enactment  
32 of section twelve of this article. The director may  
33 delegate to a supervisory officer the authority and duty  
34 to execute and carry out, administer and enforce the  
35 provisions of chapter twenty-two-b of this code as they  
36 relate to oil and gas.

37 (e) Nothing in the provisions of this section or in the  
38 provisions of this chapter shall authorize the transfer to  
39 the director of functions of the director of the division  
40 of health, safety and training of the department of  
41 energy as set forth in the prior enactment of section  
42 nine-a of this article. Furthermore, nothing in the  
43 provisions of this section will vest the powers of the  
44 commissioner of the division of energy, as those powers  
45 relate to health, safety and training functions, in the  
46 director.

**§22-1-8. Offices transferred to the division of environmental protection.**

1 There are hereby transferred to the division the  
2 following offices:

3 (1) All offices in the division of mines and minerals  
4 of the department of energy;

5 (2) All offices in the division of abandoned mine lands  
6 and reclamation of the department of energy;

7 (3) All offices in the division of oil and gas of the  
8 department of energy.

**§22-1-9. Transfer of functions and offices by executive order.**

1 (a) The governor may, by executive order, transfer to  
2 the division all or any part of the functions and all or  
3 any part of the offices of the division of natural  
4 resources relating to restoration, maintenance and  
5 protection of the environment. The authority to make  
6 transfers as provided in this subsection shall expire on  
7 the thirtieth day of June, one thousand nine hundred  
8 ninety-two.

9 (b) The governor may, by executive order, transfer to  
10 or from the division all or any part of the functions and  
11 all or any part of the offices of the department not  
12 provided for in subsection (a) of this section. The  
13 authority to make transfers as provided in this section  
14 shall expire on the thirty-first day of December, one  
15 thousand nine hundred ninety-two.

16 (c) The authority granted in this article shall not  
17 extend to the transfer of offices, functions, property,  
18 personnel or funds of the division of natural resources  
19 as provided in, or pursuant to, articles one, one-a, two,  
20 two-a, two-b, two-c, three, three-b, four-a, seven or  
21 seven-a, chapter twenty of this code, or as provided in,  
22 or pursuant to, section nineteen-a, article five-a, chapter  
23 twenty of this code. In addition, the division shall solicit  
24 from the division of natural resources reports and  
25 comments concerning all state certifications required  
26 under 33 U.S.C. §1341. Such reports and comments shall  
27 be directed from the division of natural resources to the  
28 division for consideration.

**§22-1-10. Effect of transfers.**

1 (a) The transfer of a function or office in accordance  
2 with the provisions of this article from an officer or  
3 agency to the director or to the division includes any  
4 aspects of such function or office vested in a subordinate  
5 of such officer or in a component of such agency.

6 (b) Except for such functions or offices as are

7 transferred pursuant to the provisions of this article, the  
8 functions and offices of the department shall not be  
9 affected by the enactment of this article or the promul-  
10 gation of an executive order pursuant to the provisions  
11 of section nine of this article.

**§22-1-11. Reorganization of the division of environmental protection.**

1 (a) The secretary is authorized to allocate or reallocate  
2 functions among the officers of the division, and to  
3 establish, consolidate, alter or discontinue such offices  
4 within the division as may be necessary or appropriate:  
5 *Provided*, That the authority of the secretary under the  
6 provisions of this subsection does not extend to: (1) Any  
7 office or other entity transferred to the division and  
8 established by statute; (2) the abolition of any office or  
9 other entity established by this article; or (3) the  
10 alteration of the delegation of functions to any specific  
11 office or other entity required by this article.

**§22-1-12. Legislative oversight.**

1 (a) Upon the execution of an executive order pursuant  
2 to section six or nine of this article, or upon the  
3 allocation or reallocation of functions or the alteration,  
4 consolidation or discontinuance of offices by the secre-  
5 tary pursuant to section eleven of this article, the  
6 governor or the secretary shall cause a copy of the  
7 executive order of the governor or notice of the  
8 secretary, as the case may be, to be delivered to the  
9 president of the Senate and the speaker of the House of  
10 Delegates. The secretary and any executive officers or  
11 employees affected by a transfer or reorganization, or  
12 a proposed transfer or reorganization, when requested  
13 by either the president of the Senate or the speaker of  
14 the House of Delegates, shall appear before the joint  
15 committee on government and finance of the Legislature  
16 and be heard with respect to a transfer or reorganiza-  
17 tion, or a proposed transfer or reorganization, and to  
18 answer inquiries relative thereto.

19 (b) On or before the thirty-first day of December, one  
20 thousand nine hundred ninety-one, and every ninety  
21 days thereafter, until the thirty-first day of December,

22 one thousand nine hundred ninety-two, the director shall  
 23 report in writing to the joint committee on government  
 24 and finance of the Legislature or its designated subcom-  
 25 mittee as to the disposition by the division of permit  
 26 applications and actions pending before the division  
 27 during the preceding ninety day period.

**§22-1-13. Rules and regulations.**

1 The director has the power and authority to propose  
 2 legislative rules for promulgation in accordance with  
 3 the provisions of article three, chapter twenty-nine-a of  
 4 this code, for the orderly transfer of functions and  
 5 offices and the reorganization of the division, and to  
 6 carry out and implement the provisions of this chapter,  
 7 and chapters twenty-two-a and twenty-two-b of this code  
 8 or to carry out and implement any other provision of law  
 9 relating to offices or functions transferred pursuant to  
 10 this article.

**§22-1-14. Transfer and allocation of appropriations and  
 personnel.**

1 (a) Except as otherwise provided in this article, the  
 2 personnel employed in connection with, and the assets,  
 3 liabilities, contracts, property, records, and unexpended  
 4 balance of appropriations, authorizations, allocations,  
 5 and other funds employed, held, used, arising from,  
 6 available to, or to be made available in connection with  
 7 the functions and offices transferred by this article, may  
 8 be transferred by the secretary to the division for  
 9 appropriate allocation. Unexpended funds transferred  
 10 pursuant to this subsection shall be used only for the  
 11 purposes for which the funds were originally authorized  
 12 and appropriated.

13 (b) Except as herein exempted and notwithstanding  
 14 any other provisions in this code to the contrary, the  
 15 director may, with the exception of the special reclama-  
 16 tion fund established in section eleven, article three,  
 17 chapter twenty-two-a of this code, expend, in accordance  
 18 with the provisions of chapter five-a of this code, from  
 19 special revenue accounts, and funds established pursu-  
 20 ant to this chapter and chapters twenty-two-a and  
 21 twenty-two-b of this code, amounts necessary to imple-



22 ment and administer the general powers, duties and  
23 responsibilities of the division of environmental protec-  
24 tion: *Provided*, That federal funds required by law to be  
25 expended for a specific purpose may not be expended  
26 for any purpose contrary to the laws, rules or regula-  
27 tions of the federal government.

**§22-1-15. Effect on personnel.**

1 (a) With respect to employees effected by the provi-  
2 sions of this article or article seven of chapter twenty-  
3 two-a of the code, the layoff and recall rights of such  
4 employees within the classified service of the state as  
5 provided in subsections five and six, section ten, article  
6 six, chapter twenty-nine of this code shall be limited to  
7 the department of commerce, labor and environmental  
8 resources and further limited to an occupational group  
9 substantially similar to the occupational group estab-  
10 lished by the classification and compensation plan for  
11 the classified service of the agency or board in which  
12 the employee was employed: *Provided*, That the em-  
13 ployee shall possess the qualifications established for the  
14 job class. The duration of recall rights provided in this  
15 subsection shall be limited to two years or the length of  
16 tenure, whichever is less. Except as provided in this  
17 subsection, nothing contained in this section shall be  
18 construed to abridge the rights of employees within the  
19 classified service of the state as provided in sections ten  
20 and ten-a, article six, chapter twenty-nine of this code.

21 (b) The director is empowered to authorize the  
22 payment of all or any part of the reasonable expenses  
23 of an employee of the division in moving his household  
24 furniture and effects as a result of a reassignment of  
25 such employee caused by a transfer of functions or  
26 offices pursuant to this article.

**§22-1-16. Savings provisions.**

1 (a) All orders, determinations, rules, permits, grants,  
2 contracts, certificates, licenses, waivers, bonds, author-  
3 izations and privileges which have been issued, made,  
4 granted, or allowed to become effective by the governor,  
5 any state department or agency or official thereof, or by  
6 a court of competent jurisdiction, in the performance of

7 functions which are transferred under this article to the  
8 secretary, to the director or to the division, and which  
9 are in effect on the date such transfer occurs, shall  
10 continue in effect according to their terms until  
11 modified, terminated, superseded, set aside, or revoked  
12 in accordance with the law by the governor, the  
13 secretary, the director, or other authorized official, a  
14 court of competent jurisdiction, or by operation of law.

15 (b) The provisions of this article shall not affect any  
16 proceedings, including notices of proposed rulemaking,  
17 or any application for any license, permit, certificate, or  
18 financial assistance pending before any department,  
19 division or other office, functions of which are trans-  
20 ferred by this article or article seven, chapter twenty-  
21 two-a of this code. Orders shall be issued in such  
22 proceedings, appeals shall be taken therefrom, and  
23 payments shall be made pursuant to such orders, as if  
24 this article had not been enacted; and orders issued in  
25 any such proceedings shall continue in effect until  
26 modified, terminated, superseded, or revoked by the  
27 governor, the secretary, the director, by a court of  
28 competent jurisdiction, or by operation of law. Nothing  
29 in this subsection shall be deemed to prohibit the  
30 discontinuance or modification of any such proceeding  
31 under the same terms and conditions and to the same  
32 extent that such proceeding could have been discon-  
33 tinued or modified if this article had not been enacted.  
34 The director is authorized to propose legislative rules in  
35 accordance with the provisions of chapter twenty-nine-  
36 a of this code for the orderly transfer of proceedings  
37 continued under the provisions of this subsection.

38 (c) Except as provided in subsection (e) of this section,  
39 the provisions of this article shall not affect suits  
40 commenced prior to the effective date of any transfer  
41 of functions or offices made pursuant to the provisions  
42 of this article, and in all such suits, proceedings shall  
43 be had, appeals taken, and judgments rendered in the  
44 same manner and with like effect as if this article had  
45 not been enacted.

46 (d) No suit, action, or other proceeding commenced by  
47 or against any officer in the official capacity of such

48 individual as an officer of any department, division or  
49 other office, functions of which are transferred pursuant  
50 to the provisions of this article, shall abate by reason of  
51 the enactment of this article. No cause of action by or  
52 against any department, division or other office,  
53 functions of which are transferred pursuant to the  
54 provisions of this article, or by or against any officer  
55 thereof in the official capacity of such officer shall abate  
56 by reason of the enactment of this article.

57 (e) If, before the transfer of any function or office  
58 pursuant to the provisions of this article, any depart-  
59 ment, division or other office, or officer thereof in the  
60 official capacity of such officer, is a party to a suit, and  
61 under this article any function of such department,  
62 division or other office, or officer is transferred to the  
63 secretary, the director or other officer of the division,  
64 then such suit shall be continued with the secretary, the  
65 director or other appropriate officer substituted or  
66 added as a party.

67 (f) Orders and actions of the secretary or the director  
68 in the exercise of functions transferred under this  
69 article shall be subject to judicial review to the same  
70 extent and in the same manner as if such orders and  
71 actions had been by such department, division or other  
72 office, or part thereof, exercising such functions  
73 immediately preceding their transfer. Any statutory  
74 requirements relating to notice, hearings, action upon  
75 the record, or administrative review that apply to any  
76 function transferred pursuant to the provisions of this  
77 article shall apply to the exercise of such function by the  
78 secretary, the director or other officer.

**§22-1-17. Advisory boards.**

1 (a) The division of energy advisory board heretofore  
2 created under the provisions of the prior enactment of  
3 section seven-a of this article is hereby continued and  
4 is redesignated the division of environmental protection  
5 energy advisory board. Members of the board serving  
6 on the effective date of this section shall continue as  
7 members of the redesignated board. The energy advi-  
8 sory board shall consist of nine members appointed by

9 the governor, for terms of two years, who shall serve  
10 without compensation. Each member shall be reim-  
11 bursed for all reasonable and necessary expenses  
12 actually incurred in the performance of his or her  
13 duties, in accordance with the reimbursement rates  
14 applied to employees of the division. Three members of  
15 the board shall have significant experience in the energy  
16 industry, three members shall have significant expe-  
17 rience in the advocacy of environmental protection, one  
18 member shall be a representative of organized labor,  
19 one member shall be a member of the House of  
20 Delegates recommended by the speaker of the House of  
21 Delegates, and one member shall be a member of the  
22 Senate recommended by the president of the Senate.  
23 The director shall serve as an ex officio member and  
24 chairman of the board. The energy advisory board shall  
25 meet at least every two months, or upon the call of four  
26 members, to discuss all aspects of the division's enviro-  
27 nmental protection and environmental regulatory  
28 functions, collection of penalties and fines, and  
29 responsibilities.

30 (b) The division of environmental protection reorgan-  
31 ization advisory board is hereby created. The reorgan-  
32 ization advisory board shall consist of fourteen members  
33 appointed by the governor, for terms ending on the  
34 thirtieth day of March, one thousand nine hundred  
35 ninety-three, at which time the reorganization advisory  
36 board shall cease to exist. Members shall serve without  
37 compensation. Each member shall be reimbursed for all  
38 reasonable and necessary expenses actually incurred in  
39 the performance of his or her duties, in accordance with  
40 the reimbursement rates applied to employees of the  
41 division. Four members of the board shall have signif-  
42 icant experience in an industry regulated or proposed  
43 to be regulated by the division, four members shall have  
44 significant experience in the advocacy of environmental  
45 protection, two members shall have significant expe-  
46 rience in the teaching of public administration, two  
47 members shall be members of the House of Delegates  
48 recommended by the speaker of the House of Delegates,  
49 and two members shall be members of the Senate  
50 recommended by the president of the Senate. The

51 secretary shall serve as an ex officio member and  
52 chairman of the board. The reorganization advisory  
53 board shall meet at least every two months, or upon the  
54 call of six members, to discuss all aspects of the  
55 division's reorganization of functions and offices relating  
56 to environmental protection and environmental regula-  
57 tory functions pursuant to this article.

58 (c) The division of energy task force, heretofore  
59 constituted and appointed by the joint committee on  
60 government and finance of the Legislature, shall, on or  
61 before the fifteenth day of December, one thousand nine  
62 hundred ninety-one, deliver to the secretary a report  
63 containing its findings of facts and recommendations  
64 concerning its investigations and deliberations with  
65 regard to the environmental regulatory functions of the  
66 department of energy as created by a prior enactment  
67 of this article. On or before the fifteenth day of January,  
68 one thousand nine hundred ninety-two, the secretary  
69 shall deliver a responsive report to the joint committee  
70 on government and finance.

**§22-1-18. Special tax on coal production; mines and  
minerals operations fund created.**

1 (a) *Imposition of tax.* — Upon every person in this  
2 state engaging in the privilege of severing, extracting,  
3 reducing to possession or producing coal for sale, profit  
4 or commercial use there is hereby imposed an annual  
5 tax equal to two cents per ton of coal produced by such  
6 person for sale, profit or commercial use during such  
7 person's taxable year. The special tax imposed by this  
8 section is in addition to all other taxes levied by law.  
9 In no event may a ton of coal be taxed more than once  
10 under the provisions of this section.

11 (b) *Payment and collection of tax.* — The tax imposed  
12 by this section shall be collected by the tax commis-  
13 sioner in the same manner, at the same time, and upon  
14 the same tonnage as the minimum severance tax  
15 imposed by article twelve-b, chapter eleven of this code  
16 is collected: *Provided*, That under no circumstance shall  
17 this tax be construed to be an increase in either the  
18 minimum severance tax imposed by said article twelve-

19 b or the severance tax imposed by article thirteen of said  
20 chapter eleven. Every person liable for payment of this  
21 special tax shall pay the amount due without notice or  
22 demand for payment. The tax commissioner shall  
23 provide to the director of the division of environmental  
24 protection a quarterly listing of all persons known to be  
25 delinquent in payment of the special tax. The director  
26 of the division of environmental protection may take  
27 such delinquencies into account in making determina-  
28 tions on the issuance, renewal or revision of any permit.

29 (c) *Mines and minerals operations fund.* — There is  
30 hereby created in the state treasury a special fund  
31 known as the “Mines and Minerals Operations Fund”  
32 into which the tax commissioner shall, at least quar-  
33 terly, deposit the net amount of tax collected by him or  
34 her under this section, including any additions to tax,  
35 penalties and interest collected with respect thereto. The  
36 treasurer shall deposit all moneys deposited in or  
37 credited to this fund in an interest-bearing account, with  
38 the amount of interest earned being credited to this fund  
39 as it is earned. The moneys in this special fund shall be  
40 expended solely for the purposes of carrying out those  
41 statutory duties relating to the enforcement of environ-  
42 mental regulatory programs for the coal industry as  
43 imposed by this chapter and chapter twenty-two-a of  
44 this code and the Federal Surface Mining Control and  
45 Reclamation Act of 1977 and any amendments thereto.  
46 Expenditures from the “Mines and Minerals Operations  
47 Fund” are not authorized from collections but are to be  
48 made only in accordance with appropriations by the  
49 Legislature and in accordance with the provisions of  
50 article three, chapter twelve of this code and upon  
51 fulfillment of the provisions set forth in article two,  
52 chapter five-a of this code.

53 (d) *General procedure and administration.* — Each  
54 and every provision of the “West Virginia Tax Proce-  
55 dure and Administration Act” set forth in article ten,  
56 chapter eleven of the code, shall also apply to the special  
57 tax imposed by this section with like effect as if such  
58 act were applicable only to the special tax imposed by  
59 this section and were set forth in extenso in this article,

60 notwithstanding the provisions of section three of said  
61 article ten.

62 (e) *Crimes and penalties.* — Each and every provision  
63 of the “West Virginia Tax Crimes and Penalties Act” set  
64 forth in article nine of said chapter eleven shall apply  
65 to the special tax imposed by this section with like effect  
66 as if such act were applicable only to the special tax  
67 imposed by this section and set forth in extenso in this  
68 article, notwithstanding the provisions of section two of  
69 said article nine.

70 (f) *Effective date.* — The special tax imposed by this  
71 section shall apply to all coal produced in this state after  
72 the thirtieth day of September, one thousand nine  
73 hundred ninety-one.

**§22-1-19. Hearings before division of environmental  
protection.**

1 Any hearing or proceeding before the division on any  
2 matter other than rulemaking, shall be conducted and  
3 heard by the director or a representative designated by  
4 the director and shall be in accordance with the  
5 provisions of article five, chapter twenty-nine-a of this  
6 code, except where such provisions are inconsistent with  
7 this chapter or chapters twenty-two-a or twenty-two-b  
8 of this code.

**CHAPTER 22A. MINES AND MINERALS.**

**ARTICLE 3. WEST VIRGINIA SURFACE COAL MINING AND  
RECLAMATION ACT.**

**§22A-3-11a. Site-specific bonding; legislative rule; con-  
tents of legislative rule; legislative intent;  
expiration of rule; reporting.**

1 (a) Notwithstanding the provisions of section eleven of  
2 this article, the director of the division of environmental  
3 protection may establish and implement a site-specific  
4 bonding system in accordance with the provisions of this  
5 section.

6 (b) Such site-specific bonding system shall be estab-  
7 lished by a legislative rule proposed by the director. The  
8 rule shall be proposed for promulgation in accordance

9 with the provisions of article three, chapter twenty-nine-  
10 a of this code, except as the provisions of this section  
11 otherwise direct. The notice of the proposed promulga-  
12 tion and the text of the proposed rule shall be filed in  
13 the state register in compliance with the requirements  
14 of section five, article three, chapter twenty-nine-a of  
15 this code: *Provided*, That such filing shall be made on  
16 or before the thirtieth day of June, one thousand nine  
17 hundred ninety-two: *Provided, however*, That a period  
18 for receiving public comment on the merits of such rule  
19 shall be afforded, which period shall extend for not less  
20 than sixty days next following the filing of the proposed  
21 rule in the state register. The notice establishing the  
22 period for public comment shall also fix a date, time and  
23 place for a hearing for public comment at which both  
24 written and oral presentations may be made, and such  
25 hearing shall be held after the thirtieth day of the public  
26 comment period but before the forty-sixth day of such  
27 comment period. The provisions of section nine, article  
28 three, chapter twenty-nine-a of this code to the contrary  
29 notwithstanding, after the close of the public comment  
30 period, the director shall proceed to agency approval  
31 and final adoption of the rule, including any amend-  
32 ments made by the director prior to such final adoption,  
33 without further hearing or public comment. No such  
34 amendment may change the main purpose of the rule.  
35 Such final adoption shall occur on or before the first day  
36 of November, one thousand nine hundred ninety-two,  
37 and such rule shall become effective, and have the full  
38 force and effect of law on and after the first day of  
39 December, one thousand nine hundred ninety-two,  
40 without submission to the Legislature. Such rule shall  
41 continue in effect until the first day of May, one  
42 thousand nine hundred ninety-three, or until sooner  
43 modified, codified or abrogated by the Legislature. Such  
44 rule shall not be promulgated as an emergency legisla-  
45 tive rule.

46 (c) A legislative rule proposed or promulgated  
47 pursuant to this section must provide, at a minimum,  
48 for the following:

49 (1) The amount of a performance bond shall be not less



50 than one thousand dollars nor more than five thousand  
51 dollars per acre or fraction thereof.

52 (2) Any such bond, subject to the limitations of  
53 subdivision (1) of this subsection, shall reflect a relative  
54 potential cost of reclamation associated with the  
55 activities proposed to be permitted, which cost would not  
56 otherwise be reflected by performance bonds calculated  
57 by merely applying a specific dollar amount per acre for  
58 all permits.

59 (3) Such bond, subject to the provisions of subdivision  
60 (1) of this subsection, shall also reflect an analysis under  
61 the legislative rule of various factors, as applicable,  
62 which affect the cost of reclamation, including, but not  
63 limited to: (A) The general category of mining, whether  
64 surface or underground; (B) mining techniques and  
65 methods proposed to be utilized; (C) support facilities,  
66 fixtures, improvements and equipment; (D) topography  
67 and geology; and (E) the potential for degrading or  
68 improving water quality.

69 (d) A legislative rule proposed or promulgated  
70 pursuant to the provisions of this section may, in  
71 addition to the requirements of subsection (c) of this  
72 section, provide for a consideration of other factors  
73 deemed relevant by the director. For example, such rule  
74 may provide for the following:

75 (1) A consideration as to whether the bond relates to  
76 a new permit application, a renewal of an existing  
77 permit, an application for an incidental boundary  
78 revision, or the reactivation of an inactive permit;

79 (2) A consideration of factors which may result in  
80 environmental enhancement, as in a case where remin-  
81 ing may improve water quality or reduce or eliminate  
82 existing highwalls, or a permitted operation may create  
83 or improve wetlands; or

84 (3) An analysis of various factors related to the  
85 specific permit applicant, including, but not limited to:  
86 (A) The prior mining experience of the applicant with  
87 the activities sought to be permitted; and (B) the history  
88 of the applicant as it relates to prior compliance with

89 statutory and regulatory requirements designed to  
 90 protect, maintain or enhance the environment in this or  
 91 any other state.

92 (e) It is the intent of the Legislature that a legislative  
 93 rule proposed or promulgated pursuant to the provisions  
 94 of this section shall be constructed so that when the  
 95 findings of fact by the division of environmental  
 96 protection with respect to the proposed mining activity  
 97 and the particular permit applicant coincide with the  
 98 particular factors or criteria to be considered and  
 99 analyzed under the rule, the rule will direct a conclusion  
 100 as to the amount of the bond to be required, subject to  
 101 rebuttal and refutation of the findings by the applicant.  
 102 To the extent practicable, the rule shall limit subjectiv-  
 103 ity and discretion by the director and the division in  
 104 fixing the amount of the bond.

105 (f) On or before the thirty-first day of December, one  
 106 thousand nine hundred ninety-one, and every ninety  
 107 days thereafter, the director shall report in writing to  
 108 the joint committee on government and finance of the  
 109 Legislature or its designated subcommittee as to the  
 110 progress of the division in developing or implementing,  
 111 as the case may be, the provisions of this section.

**ARTICLE 7. OFFICE OF MINERS' HEALTH, SAFETY AND TRAINING.**

**§22A-7-1. Redesignation of the division of health, safety and training as the office of miners' health, safety and training.**

1 The division of health, safety and training of the  
 2 department of energy is hereby redesignated the office  
 3 of miners' health, safety and training. The office of  
 4 miners' health, safety and training shall be a separate  
 5 office within the department of commerce, labor and  
 6 environmental resources. The office shall be adminis-  
 7 tered, in accordance with the provisions of this article,  
 8 under the supervision and direction of the director of the  
 9 office of miners' health, safety and training.

**§22A-7-2. Definitions.**

1 As used in this article, unless otherwise provided or

2 indicated by the context:

3 (1) The term "department" means the department of  
4 commerce, labor and environmental resources;

5 (2) The term "secretary" means the secretary of the  
6 department of commerce, labor and environmental  
7 resources;

8 (3) The term "office", when referring to a specific  
9 office, means the office of miners' health, safety and  
10 training. The term "office", when used generically,  
11 includes any office, board, agency, unit, organizational  
12 entity or component thereof;

13 (4) The term "director" means the director of the office  
14 of miners' health, safety and training;

15 (5) The term "function" includes any duty, obligation,  
16 power, authority, responsibility, right, privilege, activity  
17 or program.

**§22A-7-3. Director of the office of miners' health, safety  
and training.**

1 (a) The director of the office of miners' health, safety  
2 and training shall be responsible for surface and  
3 underground safety inspections of coal mines, the  
4 administration of the office of miners' health, safety and  
5 training and of such other matters as are delegated or  
6 assigned to the director by the secretary of the depart-  
7 ment of commerce, labor and environmental resources.

8 (b) The director shall be the chief executive officer of  
9 the office. Subject to provisions of law, he or she shall  
10 organize the office into such offices, sections, agencies  
11 and other units of activity as may be found by the  
12 director to be desirable for the orderly, efficient and  
13 economical administration of the office. The director  
14 may appoint such other employees needed for the  
15 operation of the office and may prescribe their powers  
16 and duties and fix their compensation within amounts  
17 appropriated therefor.

18 (c) The director shall be appointed by the governor,  
19 by and with the advice and consent of the Senate and  
20 shall serve at the will and pleasure of the governor:

21 *Provided*, That, in lieu of appointing an director, the  
22 governor may order the secretary to directly exercise  
23 the powers of the director. The secretary shall designate  
24 the order in which other officials of the office shall act  
25 for and perform the functions of the secretary or the  
26 director during the absence or disability of both the  
27 secretary or the director or in the event of vacancies in  
28 both of those offices.

29 (d) The director of the office of miners' health, safety  
30 and training shall be a citizen of West Virginia, shall  
31 be a competent person of good repute and temperate  
32 habits with a demonstrated interest and five years  
33 experience in underground coal mining and shall have  
34 at least three years of experience in a position of  
35 responsible charge in at least one discipline relating to  
36 the duties and responsibilities for which the director  
37 will be responsible upon assumption of the office of  
38 director. Special reference shall be given to his or her  
39 administrative experience and ability. The director shall  
40 devote all of his or her time to the duties of the position  
41 of director and shall not be directly interested finan-  
42 cially in any mine in this or any other state nor shall  
43 the director, either directly or indirectly, be a majority  
44 owner of, or have control of or a controlling interest in,  
45 a mine in this or any other state. The director shall not  
46 be a candidate for or hold any other public office, shall  
47 not be a member of any political party committee and  
48 shall immediately forfeit and vacate his or her office as  
49 director in the event he or she becomes a candidate for  
50 or accepts appointment to any other public office or  
51 political party committee.

52 (e) The director shall receive an annual salary of sixty-  
53 five thousand dollars and shall be allowed and paid  
54 necessary expenses incident to the performance of his or  
55 her official duties. Prior to the assumption of his or her  
56 official duties, the director shall take the oath required  
57 of public officials prescribed by section five, article four  
58 of the constitution of West Virginia and shall execute  
59 a bond, with surety approved by the governor, in the  
60 penal sum of ten thousand dollars, which executed oath  
61 and bond shall be filed in the office of the secretary of

62 state. Premiums on the bond shall be paid from office  
63 funds.

**§22A-7-4. General powers and duties of the director of the office of miners' health, safety and training.**

1 The director of the office of miners' health, safety and  
2 training is hereby empowered, and it shall be his or her  
3 duty to administer and enforce such provisions of  
4 articles one-a, two, five and six of this chapter and  
5 chapter twenty-two of this code relating to health and  
6 safety inspections and enforcement and training in  
7 surface and underground coal mines, underground clay  
8 mines, open pit mines, cement manufacturing plants  
9 and underground limestone and sandstone mines. The  
10 director of the office of miners' health, safety and  
11 training shall replace the commissioner of the division  
12 of energy and the director of the division of mines and  
13 minerals on those boards as set forth in articles nine and  
14 eleven of chapter twenty-two. The secretary, or his or  
15 her designee, shall replace the commissioner of the  
16 division of energy as chairman of the board of coal mine  
17 health and safety.

**§22A-7-5. Functions transferred to the director of the office of miners' health, safety and training.**

1 There are hereby transferred to the director all  
2 functions of the director of the division of health, safety  
3 and training of the department of energy as set forth  
4 in the prior enactment of section nine-a, article one,  
5 chapter twenty-two of this code.

**§22A-7-6. Offices transferred to the office of miners' health, safety and training.**

1 (a) There are hereby transferred to the office of  
2 miners' health, safety and training the following offices:

3 (1) The board of coal mine health and safety estab-  
4 lished pursuant to article six, chapter twenty-two of this  
5 code;

6 (2) The coal mine safety and technical review commit-  
7 tee established pursuant to article six, chapter twenty-  
8 two of this code;

9 (3) The board of miner training, education and  
10 certification established pursuant to article nine,  
11 chapter twenty-two of this code;

12 (4) The mine inspector's examining board established  
13 pursuant to article eleven, chapter twenty-two of this  
14 code;

15 (5) The board of appeals provided for pursuant to the  
16 provisions of article five, chapter twenty-two of this  
17 code; and

18 (6) Any and all other offices in the division of health,  
19 safety and training of the department of energy.

20 (b) Nothing in this article may authorize the director  
21 or the secretary to alter, discontinue or abolish any  
22 office, board or commission or the functions thereof,  
23 which are established by statute and transferred  
24 pursuant to this article.

**§22A-7-7. Transfer and allocation of appropriations and  
personnel.**

1 The personnel employed in the connection with, and  
2 the assets, liabilities, contracts, property, records, and  
3 unexpended balance of appropriations, authorizations,  
4 allocations, and other funds employed, held, used,  
5 arising from, available to, or to be made available in  
6 connection with the functions and offices transferred by  
7 this article, shall be transferred to the office for  
8 appropriate allocation. Unexpended funds transferred  
9 pursuant to this section shall be used only for the  
10 purposes for which the funds were originally authorized  
11 and appropriated.

**§22A-7-8. Director's authority to promulgate rules.**

1 The director shall have the power and authority to  
2 propose or promulgate rules and regulations to organize  
3 the office and to carry out and implement the provisions  
4 of this article and articles one-a, two, five and six of this  
5 chapter and chapter twenty-two of this code relating to  
6 health and safety inspections and enforcement. All rules  
7 and regulations in effect on the effective date of this act  
8 which pertain to the provisions of articles one-a, two,  
9 five and six of this chapter and chapter twenty-two of  
10 this code as they relate to health and safety inspection  
11 and enforcement, shall remain in effect until changed

12 or superseded by the director, or as appropriate. Except  
13 when specifically exempted by the provisions of this  
14 chapter, or chapter twenty-two of this code, all rules or  
15 changes thereto shall be proposed or promulgated by the  
16 director in accordance with the provisions of chapter  
17 twenty-nine-a of this code.

**§22A-7-9. Savings provisions.**

1 (a) All orders, determinations, rules, permits, grants,  
2 contracts, certificates, licenses and privileges which  
3 have been issued, made, granted, or allowed to become  
4 effective by the governor, any state department or  
5 agency or official thereof, or by a court of competent  
6 jurisdiction, in the performance of functions which are  
7 transferred under this article to the secretary, to the  
8 director, or to the office, and which are in effect on the  
9 date such transfer occurs, shall continue in effect  
10 according to their terms until modified, terminated,  
11 superseded, set aside or revoked in accordance with law  
12 by the governor, the secretary, the director, or other  
13 authorized official, a court of competent jurisdiction or  
14 by operation of law.

15 (b) The provisions of this article shall not affect any  
16 proceedings, including notices of proposed rulemaking,  
17 or any application for any license, permit, certificate, or  
18 financial assistance pending before any department,  
19 division or other office, functions of which are trans-  
20 ferred by this article. Orders shall be issued in such  
21 proceedings, appeals shall be taken therefrom, and  
22 payments shall be made pursuant to such orders, as if  
23 this article had not been enacted; and orders issued in  
24 any such proceedings shall continue in effect until  
25 modified, terminated, superseded, or revoked by the  
26 governor, the secretary, the director, by a court of  
27 competent jurisdiction, or by operation of law. Nothing  
28 in this subsection shall be deemed to prohibit the  
29 discontinuance or modification of any such proceedings  
30 under the same terms and conditions and to the same  
31 extent that such proceeding could have been discon-  
32 tinued or modified if this article had not been enacted.  
33 The director is authorized to propose legislative rules in  
34 accordance with the provisions of chapter twenty-nine-  
35 a of this code for the orderly transfer of proceedings

36 continued under the provisions of this subsection.

37 (c) Except as provided in subsection (e) of this section,  
38 the provisions of this article shall not affect suits  
39 commenced prior to the effective date of any transfer  
40 of functions or offices made pursuant to the provisions  
41 of this article, and in all such suits, proceedings shall  
42 be had, appeals taken, and judgments rendered in the  
43 same manner with like effect as if this article had not  
44 been enacted.

45 (d) No suit, action, or other proceeding commenced by  
46 or against any officer in the official capacity of such  
47 individual as an officer of any department, division or  
48 other office, functions of which are transferred pursuant  
49 to the provisions of this article, shall abate by reason of  
50 the enactment of this article. No cause of action by or  
51 against any department, division or other office,  
52 functions of which are transferred pursuant to the  
53 provisions of this article, or by or against any officer  
54 thereof in the official capacity of such officer shall abate  
55 by reason of the enactment of this article.

56 (e) If, before the transfer of any function or office  
57 pursuant to the provisions of this article, any depart-  
58 ment, division or other office, or officer thereof in the  
59 official capacity of such officer, is a party to a suit, and  
60 under this article any function of such department,  
61 division or other office, or officer is transferred to the  
62 secretary, the director or other officer of the office, then  
63 such suit shall be continued with the secretary, the  
64 director or other appropriate officer substituted or  
65 added as a party.

66 (f) Orders and actions of the secretary or director in  
67 the exercise of functions transferred under this article  
68 shall be subject to judicial review to the same extent and  
69 in the same manner as if such orders and actions had  
70 been by such department, division or other office, or  
71 part thereof, exercising such functions immediately  
72 preceding their transfer. Any statutory requirement  
73 relating to notice, hearings, action upon the record, or  
74 administrative review that apply to any function  
75 transferred pursuant to the provisions of this article  
76 shall apply to the exercise of such function by the  
77 secretary, the director or other officer.



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

*Somer Beck*  
Chairman Senate Committee

*Ernest C. Moore*  
Chairman House Committee

Originating in the House.

Takes effect from passage.

*Harrell E. Nehmes*  
Clerk of the Senate

*Donald G. Kopp*  
Clerk of the House of Delegates

*Cathy Burdette*  
President of the Senate

*W. Allen*  
Speaker of the House of Delegates

The within *is approved* this the *25<sup>th</sup>*  
day of *October*, 1991.

*Yaston Caperton*  
Governor

PRESENTED TO THE

GOVERNOR

Date 10/23/91

Time 4:17 pm