WEST VIRGINIA LEGISLATURE
SECOND EXTRAORDINARY SESSION, 1991

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ENROLLED
Com. Sub. C'on
HOUSE BILL No. 217

(By Delegate [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]

[Passed October 16, 1991; in effect from passage.]

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 citizens, and our government has a duty to provide and maintain a healthful environment for our citizens.

(2) The state has the primary responsibility for protecting the environment; other governmental entities, public and private organizations and our citizens have the primary responsibility of supporting the state in its role as protector of the environment.

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

(4) The dispersion of environmental protection programs across a number of state agencies, and the mixing of environmental programs with policies and programs which promote the development of industrial manufacturing and the production and utilization of natural resources have led to fragmented, duplicative and often inconsistent state policies relating to the protection of the environment.

(5) Efficiency in the wise use, enhancement, preservation, protection and conservation of the environment can best be accomplished by an integrated and interdisciplinary approach in decisionmaking, and would benefit from the coordination, consolidation and integration of state programs and agencies which are significantly concerned with the use, enhancement, preservation, protection and conservation of the environment.

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

(7) There is a need for improvement in the management and coordination of state environmental protection programs.

(8) Those functions of government which regulate the environment should be consolidated in a single state agency, in order to accomplish the purposes set forth in this article, to carry out the environmental functions of
government in the most efficient and cost effective manner, to protect human health and safety and, to the greatest degree practicable, to prevent injury to plant, animal and aquatic life, improve and maintain the quality of life of our citizens, and promote economic development consistent with environmental goals and standards.

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

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

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

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

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

(4) To supplement and complement the efforts of the state by coordinating state programs with the efforts of other governmental entities, public and private organizations, and the general public to improve the quality of the environment, the public health and public enjoyment of the environment, and the propagation and
protection of animal, aquatic and plant life, in a manner consistent with the benefits to be derived from strong agricultural, manufacturing, tourism and energy-producing industries;

(5) Insofar as federal environmental programs require state participation, to endeavor to obtain and continue state primacy in the administration of such federally-mandated environmental programs, and to endeavor to maximize federal funds which may be available to accomplish the purposes of the state and federal environmental programs and to cooperate with appropriate federal agencies to meet environmental goals;

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

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

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

(9) To increase the accountability of state environmental protection programs to the governor, the Legislature and the public generally.

§22-1-2. Definitions.

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

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

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

(3) The term “division” means the division of environmental protection;

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

(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.**

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

(b) The director shall have the power to and may designate the supervisory officers or other officers or employees of the division to substitute for him or her on any board or commission established under this chapter or to sit in his or her place in any hearings, appeals, meetings or other activities with such substitute having the same powers, duties, authority and responsibility as the director. Additionally, the director shall have the power to delegate to the supervisory officers or other officers or employees of the division his or her 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 or she considers appropriate.

(c) The director shall have responsibility for the conduct of the intergovernmental relations of the division, including assuring: (1) That the division carries out its functions in a manner which supplements and complements the environmental policies, programs and procedures of the federal government, other state governments, and other instrumentalities of this state; and (2) that appropriate officers and employees of the division consult with individuals responsible for making policy relating to environmental issues in the federal government, other state governments, and other instru-
mentalities of this state concerning differences over environmental policies, programs and procedures and concerning the impact of statutory law and rules and regulations upon the environment of this state.

(d) In addition to other powers, duties and responsibilities granted and assigned to the director by this section or by a transfer of functions or offices in accordance with the provisions of this article, the director is hereby authorized and empowered to:

(1) Sign and execute in the name of the state by the "division of environmental protection" any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals: Provided, That the powers granted to the director to enter into agreements or contracts and to make expenditures and obligations of public funds under this subdivision shall not exceed or be interpreted as authority to exceed the powers heretofore granted by the Legislature to the various commissioners, directors or board members of the various departments, agencies or boards that comprise and are incorporated into each secretary's department pursuant to the provisions of chapter five-f of this code.

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

(3) Enter private lands to make surveys and inspections for environmental protection purposes, to investigate for violations of statutes or rules which the division is charged with enforcing, to serve and execute warrants and processes, to make arrests, and to otherwise enforce the statutes or rules which the division is charged with enforcing.

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

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

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

(f) At the time of his or her initial appointment, the director shall be at least thirty years old and shall be selected with special reference and consideration given to his or her administrative experience and ability, to his or her demonstrated interest in the effective and responsible regulation of the energy industry and the conservation and wise use of natural resources. The director shall have at least a bachelor's degree in a related field and shall have at least three years of experience in a position of responsible charge in at least one discipline relating to the duties and responsibilities for which the director will be responsible upon assumption of the office of director. The director 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 or her office as director in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee.

(g) The director shall receive an annual salary of sixty-five thousand dollars and shall be allowed and paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of the duties
of his or her office, the director shall take and subscribe
to the oath required of public officers prescribed by
section five, article four 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 division funds.

§22-1-6. Supervisory officers.

(a) There shall be in the division such number of
supervisory officers as the director may determine is
necessary to administer the functions and offices
transferred to the division in accordance with the
provisions of this article. Such supervisory officers shall
be deemed to be "administrators" as such term is
defined in section two, article six, chapter twenty-nine
of this code, notwithstanding the fact that the positions
filled by such persons are not statutorily created. Any
such supervisory officer may be designated by the
director as a deputy director, assistant director, chief,
administrator, or other administrative title or designa-
tion. Such supervisory officers may supervise the
general subject areas of administration, mines and
minerals, oil and gas, and abandoned mine lands and
reclamation, as such functions and offices are trans-
ferred to the division in accordance with the provisions
of sections seven and eight of this article, and such other
functions and offices as may be transferred to the
division by executive order in accordance with the
provisions of section nine of this article. The governor
may, at any time prior to the first day of January, one
thousand nine hundred ninety-three, by executive order,
redefine the subject areas to be administered by any
such supervisory officers, stating in such executive
order or orders the title or designation to be assigned
to the positions of supervisory officers and the particular
functions and offices transferred by this article which
are subject to administration by such designated
supervisory officers. Each of the supervisory officers
shall be appointed by the director and serve at the will
and pleasure of the director. The compensation of such
supervisory officers shall be fixed by the director. A single individual may be appointed to serve simultaneously in two distinct supervisory positions, but in a case where such dual appointment is made, such supervisory officer shall not receive additional compensation above that which would be paid for serving in one supervisory position.

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

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

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

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

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

(c) There are hereby transferred to the director all
functions of the director of the division of abandoned
mine lands and reclamation of the department of energy
as set forth in the prior enactment of section ten-a of
this article. The director may delegate to a supervisory
officer the authority and duty to execute and carry out,
administer and enforce the provisions of article three of
this chapter related to abandoned mine lands and
reclamation.

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

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

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

There are hereby transferred to the division the
following offices:

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

(2) All offices in the division of abandoned mine lands
and reclamation of the department of energy;
§22-1-9. Transfer of functions and offices by executive order.

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

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

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

§22-1-10. Effect of transfers.

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

(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
1 protection.
2 (a) The secretary is authorized to allocate or reallocate
3 functions among the officers of the division, and to
4 establish, consolidate, alter or discontinue such offices
5 within the division as may be necessary or appropriate:
6 Provided, That the authority of the secretary under the
7 provisions of this subsection does not extend to: (1) Any
8 office or other entity transferred to the division and
9 established by statute; (2) the abolition of any office or
10 other entity established by this article; or (3) the
11 alteration of the delegation of functions to any specific
12 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,
one thousand nine hundred ninety-two, the director shall
report in writing to the joint committee on government
and finance of the Legislature or its designated subcom-
mittee as to the disposition by the division of permit
applications and actions pending before the division
during the preceding ninety day period.


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

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

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

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

ment and administer the general powers, duties and responsibilities of the division of environmental prote-

Provided, That federal funds required by law to be expended for a specific purpose may not be expended for any purpose contrary to the laws, rules or regula-


(a) With respect to employees effected by the provi-
sions of this article or article seven of chapter twenty-
two-a of the code, the layoff and recall rights of such employees within the classified service of the state as provided in subsections five and six, section ten, article six, chapter twenty-nine of this code shall be limited to the department of commerce, labor and environmental resources and further limited to an occupational group substantially similar to the occupational group established by the classification and compensation plan for the classified service of the agency or board in which the employee was employed: Provided, That the em-
ployee shall possess the qualifications established for the job class. The duration of recall rights provided in this subsection shall be limited to two years or the length of tenure, whichever is less. Except as provided in this subsection, nothing contained in this section shall be construed to abridge the rights of employees within the classified service of the state as provided in sections ten and ten-a, article six, chapter twenty-nine of this code.

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

§22-1-16. Savings provisions.

(a) All orders, determinations, rules, permits, grants, contracts, certificates, licenses, waivers, bonds, author-
izations and privileges which have been issued, made, granted, or allowed to become effective by the governor, any state department or agency or official thereof, or by a court of competent jurisdiction, in the performance of
functions which are transferred under this article to the
secretary, to the director or to the division, and which
are in effect on the date such transfer occurs, shall
continue in effect according to their terms until
modified, terminated, superseded, set aside, or revoked
in accordance with the law by the governor, the
secretary, the director, or other authorized official, a
court of competent jurisdiction, or by operation of law.

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

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

(d) No suit, action, or other proceeding commenced by
or against any officer in the official capacity of such
individual as an officer of any department, division or
other office, functions of which are transferred pursuant
to the provisions of this article, shall abate by reason of
the enactment of this article. No cause of action by or
against any department, division or other office,
functions of which are transferred pursuant to the
provisions of this article, or by or against any officer
thereof in the official capacity of such officer shall abate
by reason of the enactment of this article.

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

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

§22-1-17. Advisory boards.

(a) The division of energy advisory board heretofore
created under the provisions of the prior enactment of
section seven-a of this article is hereby continued and
is redesignated the division of environmental protection
energy advisory board. Members of the board serving
on the effective date of this section shall continue as
members of the redesignated board. The energy advi-
sory board shall consist of nine members appointed by
the governor, for terms of two years, who shall serve
without compensation. Each member shall be reim-
bursed for all reasonable and necessary expenses
actually incurred in the performance of his or her
duties, in accordance with the reimbursement rates
applied to employees of the division. Three members of
the board shall have significant experience in the energy
industry, three members shall have significant expe-
rience 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 of
Delegates, and one member shall be a member of the
Senate recommended by the president of the Senate.
The director shall serve as an ex officio member and
chairman of the board. The energy advisory board shall
meet at least every two months, or upon the call of four
members, to discuss all aspects of the division's envir-
onmental protection and environmental regulatory
functions, collection of penalties and fines, and
responsibilities.

(b) The division of environmental protection reorgan-
ization advisory board is hereby created. The reorgan-
ization advisory board shall consist of fourteen members
appointed by the governor, for terms ending on the
thirtieth day of March, one thousand nine hundred
ninety-three, at which time the reorganization advisory
board shall cease to exist. Members shall serve without
compensation. Each member shall be reimbursed for all
reasonable and necessary expenses actually incurred in
the performance of his or her duties, in accordance with
the reimbursement rates applied to employees of the
division. Four members of the board shall have signif-
icant experience in an industry regulated or proposed
to be regulated by the division, four members shall have
significant experience in the advocacy of environmental
protection, two members shall have significant expe-
rience in the teaching of public administration, two
members shall be members of the House of Delegates
recommended by the speaker of the House of Delegates,
and two members shall be members of the Senate
recommended by the president of the Senate. The
secretary shall serve as an ex officio member and chairman of the board. The reorganization advisory board shall meet at least every two months, or upon the call of six members, to discuss all aspects of the division's reorganization of functions and offices relating to environmental protection and environmental regulatory functions pursuant to this article.

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

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

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

(b) Payment and collection of tax. — The tax imposed by this section shall be collected by the tax commissioner in the same manner, at the same time, and upon the same tonnage as the minimum severance tax imposed by article twelve-b, chapter eleven of this code is collected: Provided, That under no circumstance shall this tax be construed to be an increase in either the minimum severance tax imposed by said article twelve-
b or the severance tax imposed by article thirteen of said chapter eleven. Every person liable for payment of this special tax shall pay the amount due without notice or demand for payment. The tax commissioner shall provide to the director of the division of environmental protection a quarterly listing of all persons known to be delinquent in payment of the special tax. The director of the division of environmental protection may take such delinquencies into account in making determinations on the issuance, renewal or revision of any permit.

(c) Mines and minerals operations fund. — There is hereby created in the state treasury a special fund known as the “Mines and Minerals Operations Fund” into which the tax commissioner shall, at least quarterly, deposit the net amount of tax collected by him or her under this section, including any additions to tax, penalties and interest collected with respect thereto. The treasurer shall deposit all moneys deposited in or credited to this fund in an interest-bearing account, with the amount of interest earned being credited to this fund as it is earned. The moneys in this special fund shall be expended solely for the purposes of carrying out those statutory duties relating to the enforcement of environmental regulatory programs for the coal industry as imposed by this chapter and chapter twenty-two-a of this code and the Federal Surface Mining Control and Reclamation Act of 1977 and any amendments thereto. Expenditures from the “Mines and Minerals Operations Fund” are not authorized from collections but are to be made only in accordance with appropriations by the Legislature and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code.

(d) General procedure and administration. — Each and every provision of the “West Virginia Tax Procedure and Administration Act” set forth in article ten, chapter eleven of the code, shall also apply to the special tax imposed by this section with like effect as if such act were applicable only to the special tax imposed by this section and were set forth in extenso in this article,
notwithstanding the provisions of section three of said article ten.

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

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

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

Any hearing or proceeding before the division on any matter other than rulemaking, shall be conducted and heard by the director or a representative designated by the director and shall be in accordance with the provisions of article five, chapter twenty-nine-a of this code, except where such provisions are inconsistent with this chapter or chapters twenty-two-a or twenty-two-b 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; contents of legislative rule; legislative intent; expiration of rule; reporting.

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

(b) Such site-specific bonding system shall be established by a legislative rule proposed by the director. The rule shall be proposed for promulgation in accordance
with the provisions of article three, chapter twenty-nine-a of this code, except as the provisions of this section otherwise direct. The notice of the proposed promulgation and the text of the proposed rule shall be filed in the state register in compliance with the requirements of section five, article three, chapter twenty-nine-a of this code: Provided, That such filing shall be made on or before the thirtieth day of June, one thousand nine hundred ninety-two: Provided, however, That a period for receiving public comment on the merits of such rule shall be afforded, which period shall extend for not less than sixty days next following the filing of the proposed rule in the state register. The notice establishing the period for public comment shall also fix a date, time and place for a hearing for public comment at which both written and oral presentations may be made, and such hearing shall be held after the thirtieth day of the public comment period but before the forty-sixth day of such comment period. The provisions of section nine, article three, chapter twenty-nine-a of this code to the contrary notwithstanding, after the close of the public comment period, the director shall proceed to agency approval and final adoption of the rule, including any amendments made by the director prior to such final adoption, without further hearing or public comment. No such amendment may change the main purpose of the rule. Such final adoption shall occur on or before the first day of November, one thousand nine hundred ninety-two, and such rule shall become effective, and have the full force and effect of law on and after the first day of December, one thousand nine hundred ninety-two, without submission to the Legislature. Such rule shall continue in effect until the first day of May, one thousand nine hundred ninety-three, or until sooner modified, codified or abrogated by the Legislature. Such rule shall not be promulgated as an emergency legislative rule.

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

(1) The amount of a performance bond shall be not less
than one thousand dollars nor more than five thousand
dollars per acre or fraction thereof.

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

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

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

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

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

(3) An analysis of various factors related to the
specific permit applicant, including, but not limited to:
(A) The prior mining experience of the applicant with
the activities sought to be permitted; and (B) the history
of the applicant as it relates to prior compliance with
(e) It is the intent of the Legislature that a legislative rule proposed or promulgated pursuant to the provisions of this section shall be constructed so that when the findings of fact by the division of environmental protection with respect to the proposed mining activity and the particular permit applicant coincide with the particular factors or criteria to be considered and analyzed under the rule, the rule will direct a conclusion as to the amount of the bond to be required, subject to rebuttal and refutation of the findings by the applicant. To the extent practicable, the rule shall limit subjectivity and discretion by the director and the division in fixing the amount of the bond.

(f) On or before the thirty-first day of December, one thousand nine hundred ninety-one, and every ninety days thereafter, the director shall report in writing to the joint committee on government and finance of the Legislature or its designated subcommittee as to the progress of the division in developing or implementing, 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.

The division of health, safety and training of the department of energy is hereby redesignated the office of miners' health, safety and training. The office of miners' health, safety and training shall be a separate office within the department of commerce, labor and environmental resources. The office shall be administered, in accordance with the provisions of this article, under the supervision and direction of the director of the office of miners' health, safety and training.

§22A-7-2. Definitions.

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

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

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

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

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

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

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

(a) The director of the office of miners' health, safety and training shall be responsible for surface and underground safety inspections of coal mines, the administration of the office of miners' health, safety and training and of such other matters as are delegated or assigned to the director by the secretary of the department of commerce, labor and environmental resources.

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

(c) The director shall be appointed by the governor, by and with the advice and consent of the Senate and shall serve at the will and pleasure of the governor:
Provided, That, in lieu of appointing an director, the
governor may order the secretary to directly exercise
the powers of the director. The secretary shall designate
the order in which other officials of the office shall act
for and perform the functions of the secretary or the
director during the absence or disability of both the
secretary or the director or in the event of vacancies in
both of those offices.

(d) The director of the office of miners' health, safety
and training shall be a citizen of West Virginia, shall
be a competent person of good repute and temperate
habits with a demonstrated interest and five years
experience in underground coal mining and shall have
at least three years of experience in a position of
responsible charge in at least one discipline relating to
the duties and responsibilities for which the director
will be responsible upon assumption of the office of
director. Special reference shall be given to his or her
administrative experience and ability. The director shall
devote all of his or her time to the duties of the position
of director and shall not be directly interested finan-
cially in any mine in this or any other state nor shall
the director, either directly or indirectly, be a majority
owner of, or have control of or a controlling interest in,
a mine in this or any other state. The director 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 or her office as
director in the event he or she becomes a candidate for
or accepts appointment to any other public office or
political party committee.

(e) The director shall receive an annual salary of sixty-
five thousand dollars and shall be allowed and paid
necessary expenses incident to the performance of his or
her official duties. Prior to the assumption of his or her
official duties, the director shall take the oath required
of public officials prescribed by section five, article four
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
§22A-7-4. General powers and duties of the director of the office of miners’ health, safety and training.

The director of the office of miners’ health, safety and training is hereby empowered, and it shall be his or her duty to administer and enforce such provisions of articles one-a, two, five and six of this chapter and chapter twenty-two of this code relating to health and safety inspections and enforcement and training in surface and underground coal mines, underground clay mines, open pit mines, cement manufacturing plants and underground limestone and sandstone mines. The director of the office of miners’ health, safety and training shall replace the commissioner of the division of energy and the director of the division of mines and minerals on those boards as set forth in articles nine and eleven of chapter twenty-two. The secretary, or his or her designee, shall replace the commissioner of the division of energy as chairman of the board of coal mine health and safety.

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

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

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

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

(1) The board of coal mine health and safety established pursuant to article six, chapter twenty-two of this code;

(2) The coal mine safety and technical review committee established pursuant to article six, chapter twenty-two of this code;
(3) The board of miner training, education and certification established pursuant to article nine, chapter twenty-two of this code;

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

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

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

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

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

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

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

The director shall have the power and authority to propose or promulgate rules and regulations to organize the office and to carry out and implement the provisions of this article and articles one-a, two, five and six of this chapter and chapter twenty-two of this code relating to health and safety inspections and enforcement. All rules and regulations in effect on the effective date of this act which pertain to the provisions of articles one-a, two, five and six of this chapter and chapter twenty-two of this code as they relate to health and safety inspection and enforcement, shall remain in effect until changed
or superseded by the director, or as appropriate. Except
when specifically exempted by the provisions of this
chapter, or chapter twenty-two of this code, all rules or
changes thereto shall be proposed or promulgated by the
director in accordance with the provisions of chapter
twenty-nine-a of this code.


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

(b) The provisions of this article shall not affect any
proceedings, including notices of proposed rulemaking,
or any application for any license, permit, certificate, or
financial assistance pending before any department,
division or other office, functions of which are trans-
ferred by this article. Orders shall be issued in such
proceedings, appeals shall be taken therefrom, and
payments shall be made pursuant to such orders, as if
this article had not been enacted; and orders issued in
any such proceedings shall continue in effect until
modified, terminated, superseded, or revoked by the
governor, the secretary, the director, by a court of
competent jurisdiction, or by operation of law. Nothing
in this subsection shall be deemed to prohibit the
discontinuance or modification of any such proceedings
under the same terms and conditions and to the same
extent that such proceeding could have been discon-
tinued or modified if this article had not been enacted.
The director is authorized to propose legislative rules in
accordance with the provisions of chapter twenty-nine-
a of this code for the orderly transfer of proceedings
(c) Except as provided in subsection (e) of this section, the provisions of this article shall not affect suits commenced prior to the effective date of any transfer of functions or offices made pursuant to the provisions of this article, and in all such suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner with like effect as if this article had not been enacted.

(d) No suit, action, or other proceeding commenced by or against any officer in the official capacity of such individual as an officer of any department, division or other office, functions of which are transferred pursuant to the provisions of this article, shall abate by reason of the enactment of this article. No cause of action by or against any department, division or other office, functions of which are transferred pursuant to the provisions of this article, or by or against any officer thereof in the official capacity of such officer shall abate by reason of the enactment of this article.

(e) If, before the transfer of any function or office pursuant to the provisions of this article, any department, division or other office, or officer thereof in the official capacity of such officer, is a party to a suit, and under this article any function of such department, division or other office, or officer is transferred to the secretary, the director or other officer of the office, then such suit shall be continued with the secretary, the director or other appropriate officer substituted or added as a party.

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

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 from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within is approved this the 25th day of , 1991.

Governor
PRESENTED TO THE
GOVERNOR
Date 10/23/91
Time 4:17 PM