WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1992

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ENROLLED
Com. Sub. for
HOUSE BILL No. 4579

(By Delegates J. Martin and Hannoura)

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Passed March 7, 1992

In Effect July 1, 1992

Passage
AN ACT to amend chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article three-b, relating to establishing an on-site consultation program within the division of labor to assist employers in complying with federal, state, county and city environmental and hazardous waste requirements; legislative purpose; duties of division of labor and commissioner of labor; creating an environmental assistance resource board; and establishing procedures.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article three-b, to read as follows:

ARTICLE 3B. EMPLOYER ASSISTANCE FOR ENVIRONMENTAL PROTECTION.

§21-3B-1. Title and purpose.

1 This article shall be known and may be cited as the "Employer Assistance For Environmental Protection Act."

4 It is the purpose of this article to make available to employers in this state assistance in identifying envir-
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§21-3B-2. Duties and responsibilities of division of labor and the commissioner of labor.

(a) The division of labor shall:

(1) Encourage employers and employees to reduce existing environmental and hazardous waste hazards and to implement new or improved existing safety and health programs;

(2) Provide technical advice and information relating to environmental hazards and waste hazards;

(3) Develop and implement training programs to increase the employer and employee competence in managing and correcting environmental hazards and waste hazards;

(4) Develop and coordinate an information network relating to applicable environmental and hazardous waste law affecting the business community in West Virginia;

(5) Offer a program of on-site consultation to assist businesses in identifying environmental hazards and waste hazards; and

(6) Offer to businesses an off-site program by telephone or correspondence for information and assistance in complying with environmental regulation.

(b) The commissioner of labor shall develop and implement rules, regulations and administrative guidelines required to effectuate the purposes of this article.

(c) In carrying out the duties and responsibilities imposed by the provisions of subsection (a) of this section, or in developing and implementing rules, regulations and administrative guidelines in accordance
with the provisions of subsection (b) of this section, the
division of labor and the commissioner shall not expend
any state funds or utilize any personnel of the division
for the training of any permanent replacement em-
ployee, unless and until such permanent replacement
employee has been determined by the commissioner to
have been legally employed.

§21-3B-3. Environmental assistance resource board.

There is hereby created within the division of labor
an environmental assistance resource board to advise
and assist the commissioner of labor in developing the
technical resources necessary to administer the provi-
sions of this article. The board is composed of the
commissioner of labor, who shall serve as chair; the
director of the air pollution control commission; the
chief of the division of water resources of the division
of natural resources; the chief of the division of waste
management of the division of natural resources; the
commissioner of the division of environmental protec-
tion; one member of the House of Delegates appointed
by the speaker of the House; and one member of the
Senate appointed by the president of the Senate. Terms
of legislative members of the board shall run concurrent
with the member's legislative term of office.

The board shall meet within thirty days of the
effective date of this article and thereafter at the call
of the chair. The board shall establish an information
network wherein the commissioner of labor and any
consultant advising employers, in order to provide
accurate information regarding compliance with envir-
onmental and hazardous waste regulations, may access
written materials or staff having technical expertise
within the agencies represented on the board. At the
request of the board, the secretary of the department of
commerce, labor and environmental resources is author-
ized to direct the assignment of staff, on a temporary
or permanent basis, from any agency represented on the
board to the division of labor to assist in the implemen-
tation of the employer assistance program set forth in
this article.
§21-3B-4. Procedures.

(a) Any employer within the state may request the commissioner of labor in writing to provide advice and assistance in identifying and eliminating environmental hazards in compliance with applicable state, federal and local law. The employer may specify a limited scope for consultation by indicating hazards or situations on which consultation will be focused. No consultation services may be provided when an agency charged with enforcing federal, state or local environmental or hazardous waste regulations has issued a citation or ordered that a condition be abated or corrected.

(b) The commissioner shall provide on-site consultation services in identifying and eliminating environmental hazards. However, since employee contact by a consultant is needed for proper identification of environmental hazards in the workplace, employers must agree to such contact before a consultation may proceed. Employers must agree to correct all hazards noted by the consultant as a condition of the providing of consultation services. Employers are encouraged to permit employees to participate in the walk-around portion of a consultation visit.

(c) Prior to visiting a worksite, the consultant may request specific information concerning the worksite. Requested information must be provided before a consultation may proceed.

(d) If, in the course of an inspection, the consultant observes environmental hazards violating federal, state or local law which are outside the scope of a consultation request, the consultant shall treat such hazards as if they were within the scope of the consultation request.

(e) During the on-site consultation, the consultant shall point out hazards and violations observed, suggest approaches or options for corrective action, and provide additional information related to complying with applicable laws. The consultant shall prepare a written report, which shall be furnished to the employer, of all hazards observed and methods of abatement and may suggest where additional assistance may be secured.
The consultant may follow through after the on-site consultation to assist in implementing recommendations and to assure that required corrective action is taken.

(f) Information obtained by a consultant related to environmental hazards and violations may not be disclosed to enforcement officials, except when an employer fails or refuses to take corrective action to eliminate imminent danger or serious hazards.

(g) No fees, penalties or costs may be assessed against the employer.

(h) The use of the consultation services contemplated by this article by any employer shall raise no presumption, inference, or defense to any action, order, citation, charge, rule to show cause, or any other enforcement effort brought against such employer by any agency of the state of West Virginia.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Herman H. Beece
Chairman Senate Committee

Ernest C. Moore
Chairman House Committee

Originating in the House.

Takes effect July 1, 1992.

Barbara E. Collins
Clerk of the Senate

Donald J. Hoff
Clerk of the House of Delegates

Neil B. Gardner
President of the Senate

MOC
Speaker of the House of Delegates

The within is approved this the 18th day of April, 1992.

Yostor Caperton
Governor
PRESENTED TO THE
GOVERNOR

Date 3/26/92
Time 2:40