WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1995

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ENROLLED

Com. Sub. For

HOUSE BILL No. 2523.

(By Delegate S. Stablin (by Request), Ashley, Rowe and Riggs)

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Passed March 11, 1995

In Effect Ninety Days From Passage

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AN ACT to amend and reenact section six, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to authorizing the director of the division of environmental protection to employ legal counsel.

Be it enacted by the Legislature of West Virginia:

That section six, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 1. DIVISION OF ENVIRONMENTAL PROTECTION.

§22-1-6. Director of the division of environmental protection.

(a) The director is the chief executive officer of the division. Subject to section seven of this article and other provisions of law, the director 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 has the power to and may designate
supervisory officers or other officers or employees of the
division to substitute for him or her on any board or
commission established under this code 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 has the power to delegate, as he
or she considers appropriate, to 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 elsewhere in this code.

(c) The director has 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 instrumentalities of this state
concerning differences over environmental policies,
programs and procedures and concerning the impact of
statutory law and rules upon the environment of this state.

(d) In addition to other powers, duties and
responsibilities granted and assigned to the director by this
chapter, 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; issue orders, which for the purposes of this chapter include consent agreements; 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) Provide for workshops, training programs and other educational programs, apart from or in cooperation with other governmental agencies, necessary to insure adequate standards of public service in the division. The director may also provide for technical training and
83 specialized instruction of any employee. Approved
84 educational programs, training and instruction time may
85 be compensated for as a part of regular employment. The
86 director is further authorized to pay out of federal or state
87 funds, or both, as such funds are available, fees and
88 expenses incidental to such educational programs,
89 training, and instruction. Eligibility for participation by
90 employees will be in accordance with guidelines
91 established by the director;
92
93 (6) Issue certifications required under 33 U.S.C.
94 §1341. Prior to issuing any such certification the director
95 shall solicit from the division of natural resources reports
96 and comments concerning the possible certification. The
97 reports and comments shall be directed from the division
98 of natural resources to the director for consideration; and
99
100 (7) Notwithstanding any provisions of this code to the
101 contrary, employ in-house counsel to perform all legal
102 services for the director and the division, including, but
103 not limited to, representing the director, any chief, the
104 division or any office thereof in any administrative
105 proceeding or in any proceeding in any state or federal
106 court. Additionally, the director may call upon the
107 attorney general for legal assistance and representation as
108 provided by law.
109
110 (e) The director shall be appointed by the governor,
111 by and with the advice and consent of the Senate, and
112 serves at the will and pleasure of the governor: Provided,
113 That in lieu of appointing a director, the governor may
114 order the secretary to directly exercise the powers of the
115 director. The secretary shall designate the order in which
116 other officials of the division shall act for and perform the
117 functions of the secretary or the director during the
118 absence or disability of both the secretary and the director
119 or in the event of vacancies in both of those offices.
120
121 (f) At the time of his or her initial appointment, the
122 director shall be at least thirty years old and shall be
123 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 IV of the constitution of West Virginia and
shall execute a bond, with surety approved by the
governor, in the penal sum of ten thousand dollars, which
executed oath and bond shall be filed in the office of the
secretary of state. Premiums on the bond shall be paid
from the division funds.
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 ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within was passed this the ___ day of ___ 1995, Governor