WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

ENROLLED

House Bill No. 2735
(By Delegates Amores, Rowe and Buchanan)

Passed March 1a, 1998
In Effect from Passage
ENROLLED

H. B. 2735

(By Delegates Amores, Rowe and Buchanan)

[Passed March 18, 1998; in effect from passage.]

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 clarifying status of division of environmental protection in-house 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
specialized instruction of any employee. Approved
educational programs, training and instruction time may
be compensated for as a part of regular employment. The
director is further authorized to pay out of federal or state
funds, or both, as such funds are available, fees and
expenses incidental to such educational programs,
training, and instruction. Eligibility for participation by
employees will be in accordance with guidelines
established by the director;

(6) Issue certifications required under 33 U.S.C.
§1341. Prior to issuing any such certification the director shall solicit from the division of natural resources reports and comments concerning the possible certification. The reports and comments shall be directed from the division of natural resources to the director for consideration; and

(7) Notwithstanding any provisions of this code to the contrary, employ in-house counsel to perform all legal services for the director and the division, including, but not limited to, representing the director, any chief, the division or any office thereof in any administrative proceeding or in any proceeding in any state or federal court, said counsel to be classified-exempt. Additionally, the director may call upon the attorney general for legal assistance and representation as provided by law.

(e) The director shall be appointed by the governor, by and with the advice and consent of the Senate, and serves 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 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 from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

The within approved this the 6th day of April, 1998.

Governor
PRESENTED TO THE

GOVERNOR

Date 3/26/98

Time 10:15 AM