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# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



# ENROLLED

## House Bill No. 4693

(By Delegates Staton, Amores, Hunt, Pino,  
Tomblin, Riggs and L. White)



Passed March 13, 1998

In Effect Ninety Days from Passage

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SENATE OF WEST VIRGINIA

**ENROLLED**

**H. B. 4693**

(BY DELEGATES STATON, AMORES, HUNT, PINO, TOMBLIN,  
RIGGS AND L. WHITE)

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[Passed March 13, 1998; in effect ninety days from passage.]

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AN ACT to amend and reenact sections one and six, article one, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating generally to allowing the department of environmental protection to promote pollution reduction and elimination; providing for findings, policy and purpose; allowing the director to establish a program to assist businesses with pollution reduction and elimination activities; providing duties and powers of the director; requiring release of information when human health or the environment are at risk; granting the director authority to propose legislative rules to implement the pollution reduction and elimination program; and deleting provisions relating to governor's discretion in appointing director or requiring secretary to act as director.

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

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

**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 entities,  
8 public and private organizations and our citizens have the  
9 primary responsibility of supporting the state in its role as  
10 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) Efficiency in the wise use, enhancement,  
16 preservation, protection and conservation of the  
17 environment can best be accomplished by an integrated  
18 and interdisciplinary approach in decision making and  
19 would benefit from the coordination, consolidation and  
20 integration of state programs and agencies which are  
21 significantly concerned with the use, enhancement,  
22 preservation, protection and conservation of the  
23 environment.

24           (5) Those functions of government which regulate the  
25 environment should be consolidated in order to  
26 accomplish the purposes set forth in this article, to carry  
27 out the environmental functions of government in the  
28 most efficient and cost effective manner, to protect human  
29 health and safety and, to the greatest degree practicable, to  
30 prevent injury to plant, animal and aquatic life, improve  
31 and maintain the quality of life of our citizens, and  
32 promote economic development consistent with  
33 environmental goals and standards.

34           (b) The Legislature declares that the establishment of  
35 a division of environmental protection is in the public  
36 interest and will promote the general welfare of the state of  
37 West Virginia without sacrificing social and economic  
38 development. It is the policy of the state of West Virginia,

39 in cooperation with other governmental agencies, public  
40 and private organizations, and the citizens of this state, to  
41 use all practicable means and measures to prevent or  
42 eliminate harm to the environment and biosphere, to  
43 create and maintain conditions under which man and  
44 nature can exist in productive harmony, and fulfill the  
45 social, economic and other requirements of present and  
46 future generations. The purposes of this chapter are:

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

49 (2) To consolidate environmental regulatory  
50 programs in a single state agency;

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

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

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

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

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

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

81 (9) To increase the accountability of state  
82 environmental protection programs to the governor, the  
83 Legislature and the public generally; and

84 (10) To promote pollution prevention by encouraging  
85 reduction or elimination of pollutants at the source  
86 through process modification, material substitutions, in-  
87 process recycling, reduction of raw material use or other  
88 source reduction opportunities.

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

1 (a) The director is the chief executive officer of the  
2 division. Subject to section seven of this article and other  
3 provisions of law, the director shall organize the division  
4 into such offices, sections, agencies and other units of  
5 activity as may be found by the director to be desirable  
6 for the orderly, efficient and economical administration of  
7 the division and for the accomplishment of its objects and  
8 purposes. The director may appoint assistants, hearing  
9 officers, clerks, stenographers and other officers, technical  
10 personnel and employees needed for the operation of the  
11 division and may prescribe their powers and duties and fix  
12 their compensation within amounts appropriated  
13 therefore.

14 (b) The director has the power to and may designate  
15 supervisory officers or other officers or employees of the  
16 division to substitute for him or her on any board or  
17 commission established under this code or to sit in his or  
18 her place in any hearings, appeals, meetings or other  
19 activities with such substitute having the same powers,  
20 duties, authority and responsibility as the director.  
21 Additionally, the director has the power to delegate, as he  
22 or she considers appropriate, to supervisory officers or  
23 other officers or employees of the division his or her  
24 powers, duties, authority and responsibility relating to

25 issuing permits, hiring and training inspectors and other  
26 employees of the division, conducting hearings and  
27 appeals and such other duties and functions set forth in  
28 this chapter or elsewhere in this code.

29 (c) The director has responsibility for the conduct of  
30 the intergovernmental relations of the division, including  
31 assuring: (1) That the division carries out its functions in a  
32 manner which supplements and complements the  
33 environmental policies, programs and procedures of the  
34 federal government, other state governments and other  
35 instrumentalities of this state; and (2) that appropriate  
36 officers and employees of the division consult with  
37 individuals responsible for making policy relating to  
38 environmental issues in the federal government, other state  
39 governments and other instrumentalities of this state  
40 concerning differences over environmental policies,  
41 programs and procedures and concerning the impact of  
42 statutory law and rules upon the environment of this state.

43 (d) The director has the authority to designate  
44 employees in established programs within the division of  
45 environmental protection to engage in bona fide pollution  
46 prevention and compliance assistance activities as  
47 designated by the director within the state. Disclosure to  
48 the enforcement or other division personnel is not  
49 required unless an imminent hazard to human health or  
50 the environment exists. Pollution prevention and  
51 compliance assistance may not interfere with current or  
52 future enforcement actions by state or federal regulatory  
53 agencies even if such assistance may result in compliance  
54 although the director may modify agency enforcement  
55 actions in light of a facility's implementation of pollution  
56 prevention and waste minimization practices. The director  
57 shall propose for legislative promulgation, legislative rules  
58 pursuant to article three, chapter twenty-nine-a of this  
59 code to implement the provisions of this subsection.

60 (e) In addition to other powers, duties and  
61 responsibilities granted and assigned to the director by this  
62 chapter, the director is hereby authorized and empowered  
63 to:

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

78 (2) Conduct research in improved environmental  
79 protection methods and disseminate information to the  
80 citizens of this state;

81 (3) Enter private lands to make surveys and  
82 inspections for environmental protection purposes; to  
83 investigate for violations of statutes or rules which the  
84 division is charged with enforcing; to serve and execute  
85 warrants and processes; to make arrest; issue orders, which  
86 for the purposes of this chapter include consent  
87 agreements; and to otherwise enforce the statutes or rules  
88 which the division is charged with enforcing;

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

96 (5) Provide for workshops, training programs and  
97 other educational programs, apart from or in cooperation  
98 with other governmental agencies, necessary to insure  
99 adequate standards of public service in the division. The  
100 director may also provide for technical training and  
101 specialized instruction of any employee. Approved  
102 educational programs, training and instruction time may  
103 be compensated for as a part of regular employment. The

104 director is further authorized to pay out of federal or state  
105 funds, or both, as such funds are available, fees and  
106 expenses incidental to such educational programs,  
107 training, and instruction. Eligibility for participation by  
108 employees will be in accordance with guidelines  
109 established by the director;

110 (6) Issue certifications required under 33 U.S.C.  
111 §1341. Prior to issuing any such certification the director  
112 shall solicit from the division of natural resources reports  
113 and comments concerning the possible certification. The  
114 reports and comments shall be directed from the division  
115 of natural resources to the director for consideration; and

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

125 (f) The director shall be appointed by the governor,  
126 by and with the advice and consent of the Senate, and  
127 serves at the will and pleasure of the governor.

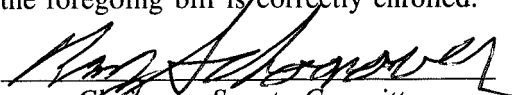
128 (g) At the time of his or her initial appointment, the  
129 director shall be at least thirty years old and shall be  
130 selected with special reference and consideration given to  
131 his or her administrative experience and ability, to his or  
132 her demonstrated interest in the effective and responsible  
133 regulation of the energy industry and the conservation  
134 and wise use of natural resources. The director shall have  
135 at least a bachelor's degree in a related field and shall  
136 have at least three years of experience in a position of  
137 responsible charge in at least one discipline relating to the  
138 duties and responsibilities for which the director will be  
139 responsible upon assumption of the office of director.  
140 The director shall not be a candidate for or hold any other  
141 public office, shall not be a member of any political party  
142 committee and shall immediately forfeit and vacate his or  
143 her office as director in the event he or she becomes a



144 candidate for or accepts appointment to any other public  
145 office or political party committee.

146 (h) The director shall receive an annual salary of  
147 sixty-five thousand dollars and shall be allowed and paid  
148 necessary expenses incident to the performance of his or  
149 her official duties. Prior to the assumption of the duties of  
150 his or her office, the director shall take and subscribe to  
151 the oath required of public officers prescribed by section  
152 five, article IV of the constitution of West Virginia and  
153 shall execute a bond, with surety approved by the  
154 governor, in the penal sum of ten thousand dollars, which  
155 executed oath and bond shall be filed in the office of the  
156 secretary of state. Premiums on the bond shall be paid  
157 from the division funds.

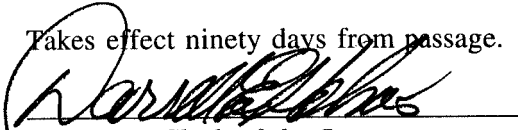
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman Senate Committee

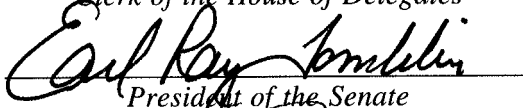
  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

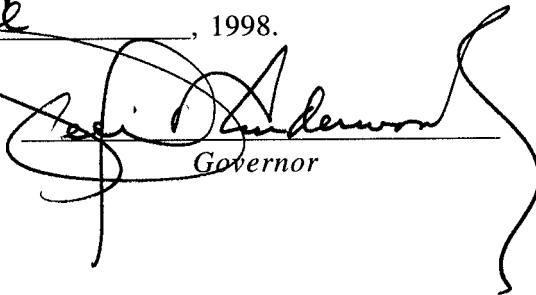
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

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

  
Governor

PRESENTED TO THE

GOVERNOR,

Date 3/20/98

Time 12:30 pm

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