ENROLLED

COMMITTEE SUBSTITUTE FOR
House Bill No. 2218

(By Mr. Speaker, Mr. Kiss and Delegate Trump)
[By Request of the Executive]

Passed April 14, 2001

in Effect from Passage
Be it enacted by the Legislature of West Virginia:
That section two, article one, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that section one, article two of said chapter be amended and reenacted; and that sections one, two and six, article one, chapter twenty-two of said code be amended and reenacted, all to read as follows:

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-2. Executive departments created; offices of secretary created.

(a) There are created, within the executive branch of the state government, the following departments:

(1) Department of administration;
(2) Department of education and the arts;
(3) Department of environmental protection;
(4) Department of health and human resources;
(5) Department of military affairs and public safety;
(6) Department of tax and revenue; and
(7) Department of transportation.

(b) Each department will be headed by a secretary appointed by the governor with the advice and consent of the Senate. Each secretary serves at the will and pleasure of the governor.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.
§5F-2-1. Transfer and incorporation of agencies and boards; funds.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of administration:

(1) Building commission provided for in article six, chapter five of this code;

(2) Public employees insurance agency and public employees insurance agency advisory board provided for in article sixteen, chapter five of this code;

(3) Governor's mansion advisory committee provided for in article five, chapter five-a of this code;

(4) Commission on uniform state laws provided for in article one-a, chapter twenty-nine of this code;

(5) Education and state employees grievance board provided for in article twenty-nine, chapter eighteen of this code and article six-a, chapter twenty-nine of this code;

(6) Board of risk and insurance management provided for in article twelve, chapter twenty-nine of this code;

(7) Boundary commission provided for in article twenty-three, chapter twenty-nine of this code;

(8) Public defender services provided for in article twenty-one, chapter twenty-nine of this code;

(9) Division of personnel provided for in article six, chapter twenty-nine of this code;
(10) The West Virginia ethics commission provided for in article two, chapter six-b of this code; and

(11) Consolidated public retirement board provided for in article ten-d, chapter five of this code.

(b) The department of commerce, labor and environmental resources and the office of secretary of the department of commerce, labor and environmental resources are abolished. For purposes of administrative support and liaison with the office of the governor, the following agencies and boards, including all allied, advisory and affiliated entities are grouped under two bureaus as follows:

(1) Bureau of commerce:

(A) Division of labor provided for in article one, chapter twenty-one of this code, which includes:

(i) Occupational safety and health review commission provided for in article three-a, chapter twenty-one of this code; and

(ii) Board of manufactured housing construction and safety provided for in article nine, chapter twenty-one of this code;

(B) Office of miners' health, safety and training provided for in article one, chapter twenty-two-a of this code. The following boards are transferred to the office of miners' health, safety and training for purposes of administrative support and liaison with the office of the governor:

(i) Board of coal mine health and safety and coal mine safety and technical review committee provided for in article six, chapter twenty-two-a of this code;

(ii) Board of miner training, education and certification provided for in article seven, chapter twenty-two-a of this code; and
(iii) Mine inspectors’ examining board provided for in article nine, chapter twenty-two-a of this code;

(C) The West Virginia development office provided for in article two, chapter five-b of this code, which includes:

(i) Economic development authority provided for in article fifteen, chapter thirty-one of this code; and

(ii) Tourism commission provided for in article two, chapter five-b of this code and the office of the tourism commissioner;

(D) Division of natural resources and natural resources commission provided for in article one, chapter twenty of this code. The Blennerhassett historical state park provided for in article eight, chapter twenty-nine of this code is under the division of natural resources;

(E) Division of forestry provided for in article one-a, chapter nineteen of this code;

(F) Geological and economic survey provided for in article two, chapter twenty-nine of this code;

(G) Water development authority and board provided for in article one, chapter twenty-two-c of this code;

(2) Bureau of employment programs provided for in article one, chapter twenty-one-a of this code.

(c) Bureau of environment is abolished and the following agencies and boards, including all allied, advisory and affiliated entities, are transferred to the department of environmental protection for purposes of administrative support and liaison with the office of the governor:

(1) Air quality board provided for in article two, chapter twenty-two-b of this code;
(2) Solid waste management board provided for in article three, chapter twenty-two-c of this code;

(3) Environmental quality board, or its successor board, provided for in article three, chapter twenty-two-b of this code;

(4) Surface mine board provided for in article four, chapter twenty-two-b of this code;

(5) Oil and gas inspectors’ examining board provided for in article seven, chapter twenty-two-c of this code;

(6) Shallow gas well review board provided for in article eight, chapter twenty-two-c of this code; and

(7) Oil and gas conservation commission provided for in article nine, chapter twenty-two-c of this code.

(d) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of education and the arts:

(1) Library commission provided for in article one, chapter ten of this code:

(2) Educational broadcasting authority provided for in article five, chapter ten of this code;

(3) Joint commission for vocational-technical-occupational education provided for in article three-a, chapter eighteen-b of this code;

(4) Division of culture and history provided for in article one, chapter twenty-nine of this code; and

(5) Division of rehabilitation services provided for in section two, article ten-a, chapter eighteen of this code.
(e) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of health and human resources:

(1) Human rights commission provided for in article eleven, chapter five of this code;

(2) Division of human services provided for in article two, chapter nine of this code;

(3) Bureau for public health provided for in article one, chapter sixteen of this code;

(4) Office of emergency medical services and advisory council thereto provided for in article four-c, chapter sixteen of this code;

(5) Health care cost review authority provided for in article twenty-nine-b, chapter sixteen of this code;

(6) Commission on mental retardation provided for in article fifteen, chapter twenty-nine of this code;

(7) Women's commission provided for in article twenty, chapter twenty-nine of this code; and

(8) The child support enforcement division provided for in chapter forty-eight of this code.

(f) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of military affairs and public safety:

(1) Adjutant general's department provided for in article one-a, chapter fifteen of this code;
(2) Armory board provided for in article six, chapter fifteen of this code;

(3) Military awards board provided for in article one-g, chapter fifteen of this code;

(4) West Virginia state police provided for in article two, chapter fifteen of this code;

(5) Office of emergency services and disaster recovery board provided for in article five, chapter fifteen of this code and emergency response commission provided for in article five-a of said chapter;

(6) Sheriffs’ bureau provided for in article eight, chapter fifteen of this code;

(7) Division of corrections provided for in chapter twenty-five of this code;

(8) Fire commission provided for in article three, chapter twenty-nine of this code;

(9) Regional jail and correctional facility authority provided for in article twenty, chapter thirty-one of this code;

(10) Board of probation and parole provided for in article twelve, chapter sixty-two of this code; and

(11) Division of veterans’ affairs and veterans’ council provided for in article one, chapter nine-a of this code.

(g) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of tax and revenue:
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169 (1) Tax division provided for in article one, chapter eleven of this code;

171 (2) Racing commission provided for in article twenty-three, chapter nineteen of this code;

173 (3) Lottery commission and position of lottery director provided for in article twenty-two, chapter twenty-nine of this code;

176 (4) Agency of insurance commissioner provided for in article two, chapter thirty-three of this code;

178 (5) Office of alcohol beverage control commissioner provided for in article sixteen, chapter eleven of this code and article two, chapter sixty of this code;

181 (6) Board of banking and financial institutions provided for in article three, chapter thirty-one-a of this code;

183 (7) Lending and credit rate board provided for in chapter forty-seven-a of this code; and

185 (8) Division of banking provided for in article two, chapter thirty-one-a of this code.

(h) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are transferred to and incorporated in and administered as a part of the department of transportation:

192 (1) Division of highways provided for in article two-a, chapter seventeen of this code;

194 (2) Parkways, economic development and tourism authority provided for in article sixteen-a, chapter seventeen of this code;
(3) Division of motor vehicles provided for in article two, chapter seventeen-a of this code;

(4) Driver's licensing advisory board provided for in article two, chapter seventeen-b of this code;

(5) Aeronautics commission provided for in article two-a, chapter twenty-nine of this code;

(6) State rail authority provided for in article eighteen, chapter twenty-nine of this code; and

(7) Port authority provided for in article sixteen-b, chapter seventeen of this code.

(i) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence of the position of administrator and of the agency and the powers, authority and duties of each administrator and agency are not affected by the enactment of this chapter.

(j) Except for powers, authority and duties that have been delegated to the secretaries of the departments by the provisions of section two of this article, the existence, powers, authority and duties of boards and the membership, terms and qualifications of members of such boards are not affected by the enactment of this chapter and all boards which are appellate bodies or were otherwise established to be independent decision makers will not have their appellate or independent decision-making status affected by the enactment of this chapter.

(k) Any department previously transferred to and incorporated in a department created in section two, article one of this chapter by prior enactment of this section in chapter three, acts of the Legislature, first extraordinary session, one thousand nine hundred eighty-nine, and subsequent amendments, means a
division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in section two, article one of this chapter, the reference means a division of the appropriate department, and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.

(1) When an agency, board or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the office of the governor, a department secretary or a bureau. The bureaus created by the Legislature upon the abolishment of the department of commerce, labor and environmental resources in the year one thousand nine hundred ninety-four will be headed by a commissioner or other statutory officer of an agency within that bureau. Nothing in this section extends the powers of department secretaries under section two of this article to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-1. Legislative findings; legislative statement of policy and purpose.

(a) The Legislature finds that:

(1) Restoring and protecting the environment is 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) Efficiency in the wise use, enhancement, preservation, protection and conservation of the environment can best be accomplished by an integrated and interdisciplinary approach in decision making 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.

(5) Those functions of government which regulate the environment should be consolidated 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.

(b) The Legislature declares that the establishment of a department 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 chapter are:

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

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

(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;

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

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

§22-1-2. Definitions.

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

(1) “Department” means the department of environmental protection.

(2) “Director” means the secretary of the department of environmental protection.

(3) “Division” means the department of environmental protection.

(4) “Function” includes any duty, obligation, power, authority, responsibility, right, privilege, activity or program.

(5) “Office” includes any office, board, agency, unit, organizational entity, or component thereof.

(6) “Secretary” means the secretary of the department of environmental protection.
§22-1-6. Secretary of the department of environmental protection.

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

(b) The secretary has the power to and may designate supervisory officers or other officers or employees of the department 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 secretary. The secretary has the power to delegate, as he or she considers appropriate, to supervisory officers or other officers or employees of the department his or her powers, duties, authority and responsibility relating to issuing permits, hiring and training inspectors and other employees of the department, conducting hearings and appeals and such other duties and functions set forth in this chapter or elsewhere in this code.

(c) The secretary has responsibility for the conduct of the intergovernmental relations of the department, including assuring:

(1) That the department 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 secretary by this chapter, the secretary is hereby authorized and empowered to:

(1) Sign and execute in the name of the state by the “department 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 secretary to enter into agreements or contracts and to make expenditures and obligations of public funds under this subdivision may not exceed or be interpreted as authority to exceed the powers 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 "department of environmental protection" by purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the department of environmental protection, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in 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 department. The secretary may 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 secretary is 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 secretary;

(6) Issue certifications required under 33 U.S.C. §1341 of the federal Clean Water Act and enter into agreements in accordance with the provisions of section seven-a, article eleven of this chapter. Prior to issuing any certification the secretary shall solicit from the division of natural resources reports and comments concerning the possible certification. The division of natural resources shall direct the reports and comments to the secretary for consideration; and

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

(e) The secretary 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.

(f) At the time of his or her initial appointment, the secre-
tary must be at least thirty years old and must be selected with
special reference and consideration given to his or her adminis-
trative 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 secretary must have at least a bachelor’s degree in a related
field and 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 secretary will be
responsible upon assumption of the office. The secretary may
not be a candidate for or hold any other public office, may not
be a member of any political party committee and shall
immediately forfeit and vacate his or her office as secretary in
the event he or she becomes a candidate for or accepts appoint-
ment to any other public office or political party committee.

(g) The secretary will receive an annual salary of eighty-
five thousand dollars and will 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 secretary 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 will be filed in the office of the secretary of state. Premiums on the bond will be paid from the department funds.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

In 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 30th day of April 2001.

Governor