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2001 MAY -1 P 7:02

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

# **WEST VIRGINIA LEGISLATURE**

FIRST REGULAR SESSION, 2001

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**ENROLLED**

## **House Bill No. 3240**

(By Delegates Mahan, Manuel, Amores,  
Wills, Smirl, Givens and Hrutkay)

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Passed April 14, 2001

In Effect from Passage

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**H. B. 3240**

(BY DELEGATES MAHAN, MANUEL, AMORES,  
WILLS, SMIRL, GIVENS AND HRUTKAY)

[Passed April 14, 2001; in effect from passage.]

AN ACT to amend article eleven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-b; and to amend and reenact section four, article three, chapter twenty-two-b of said code, all relating to moving rulemaking authority for the antidegradation implementation procedures from the environmental quality board to the director of the bureau of environment; and granting emergency and legislative rulemaking authority.

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

That article eleven, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seven-b; and that section four, article three, chapter twenty-two-b of said code be amended and reenacted, all to read as follows:

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Enr. H. B. 3240]

**CHAPTER 22. ENVIRONMENTAL RESOURCES.**  
**ARTICLE 11. WATER POLLUTION CONTROL ACT.**

**§22-11-7b. Implementation of antidegradation procedures.**

1 (a) The director of the bureau of the environment shall  
2 establish the antidegradation implementation procedures as  
3 required by 40 C.F.R. 131.12(a) which apply to regulated  
4 activities that have the potential to affect water quality. The  
5 director shall propose for legislative approval pursuant to article  
6 three, chapter twenty-nine-a of the code, emergency and  
7 legislative rules to establish implementation procedures which  
8 include specifics of the review depending upon the existing  
9 uses of the water body segment that would be affected, the level  
10 of protection "tier" assigned to the applicable water body  
11 segment, the nature of the activity, and the extent to which  
12 existing water quality would be degraded.

13 (b) The legislative rule filed by the environmental quality  
14 board as 46 CSR 1 in the state register on the first day of  
15 September, two thousand, authorized under the authority of  
16 section four, article three, chapter twenty-two-b, of this code, as  
17 amended by the legislature during the two thousand one  
18 legislative session, establishes standards of water quality for  
19 waters of the state. Appendices F, F-1, F-2 and F-3 of the rule  
20 contain the antidegradation implementation procedures for the  
21 State. The authority and responsibility to develop and imple-  
22 ment antidegradation procedures for West Virginia is, effective  
23 the first day of July, two thousand one, transferred from the  
24 environmental quality board to the director. The provisions of  
25 Appendices F, F-1, F-2 and F-3 shall remain in full force and  
26 effect as if promulgated by the director until such time as the  
27 director files the rules authorized herein. The initial rule filed  
28 by the director shall contain the same provisions as Appendices  
29 F, F-1, F-2 and F-3, 46 CSR 1 approved by the legislature  
30 during the two thousand one regular session. Notwithstanding  
31 any provision of the code to the contrary, the initial rule filed by  
32 the director shall be effective from filing.

## CHAPTER 22B. ENVIRONMENTAL BOARDS.

### ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.

#### §22B-3-4. Environmental quality board rule-making authority

1 (a) In order to carry out the purposes of this chapter and  
2 chapter twenty-two of this code, the board shall promulgate  
3 legislative rules setting standards of water quality applicable to  
4 both the surface waters and groundwaters of this state. Stan-  
5 dards of quality with respect to surface waters shall be such as  
6 to protect the public health and welfare, wildlife, fish and  
7 aquatic life, and the present and prospective future uses of such  
8 water for domestic, agricultural, industrial, recreational, scenic  
9 and other legitimate beneficial uses thereof: *Provided*, That the  
10 director of the bureau of environment shall establish the  
11 antidegradation implementation procedures which apply to  
12 regulated activities that have the potential to affect water  
13 quality, pursuant to section seven-b, article eleven of chapter  
14 twenty two of this code.

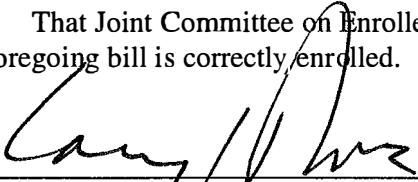
15 (b) Except for the alternate procedures provided for in  
16 subsection (c) of this section, the board shall promulgate  
17 legislative rules setting water quality standards in accordance  
18 with the provisions of article three, chapter twenty-nine-a of  
19 this code and the declaration of policy set forth in section two,  
20 article eleven, chapter twenty-two of this code.

21 (c) The board may grant site specific variance only for  
22 remined areas of coal remining operation from the standards of  
23 water quality set forth in legislative rule 46-CSR-1, et seq.,  
24 setting standards for iron manganese and pH prior to the  
25 issuance of a national pollutant discharge elimination system  
26 (NPDES) permit by the division of environmental protection in  
27 accordance with 33 USC Section 1311(p) of the federal Water  
28 Pollution Control Act. The standards established in the variance  
29 will exist for the term of the NPDES permit. The board will

30 promulgate procedural rules on granting site specific coal  
31 remining variances in accordance with the provisions of article  
32 three, chapter twenty-nine-a of this code on or before the first  
33 day of July, one thousand nine hundred ninety-five. At a  
34 minimum, the procedures for granting or denying a remining  
35 variance will include the following: A description of the data  
36 and information to be submitted to the board by the applicant  
37 for such variance; the criteria to be employed by the board in its  
38 decision; and provisions for a public comment period and  
39 public hearing prior to the board's decision. The board may not  
40 grant a variance without requiring the applicant to improve the  
41 instream water quality as much as is reasonably possible by  
42 applying best available technology economically achievable  
43 using best professional judgment which requirement will be  
44 included as a permit condition. The board may not grant a  
45 variance without a demonstration by the applicant that the coal  
46 remining operation will result in the potential for improved  
47 instream water quality as a result of the remining operation. The  
48 board may not grant a variance where the board determines that  
49 degradation of the instream water quality will result from the  
50 remining operation.

51 (d) No rule of the board may specify the design of equip-  
52 ment, type of construction or particular method which a person  
53 shall use to reduce the discharge of a pollutant.

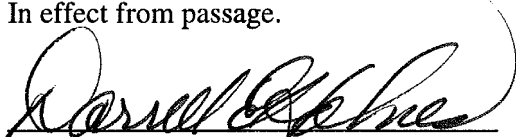
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


  
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Chairman Senate Committee

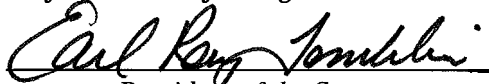
  
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Chairman House Committee

Originating in the House.

In effect from passage.

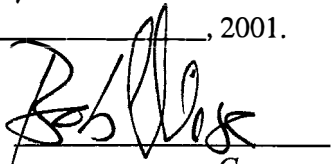
  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker of the House of Delegates

The within is approved this the 1st day of May, 2001.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/27/01

Time 4:40pm