

H.B. 2218

FILED

2001 MAY -1 P 2: 16

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

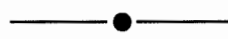
FIRST REGULAR SESSION, 2001



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

FILED

2001 MAY -1 P 2:16

OFFICE WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2218

(BY MR. SPEAKER, MR. KISS AND DELEGATE TRUMP)

[BY REQUEST OF THE EXECUTIVE]

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

AN ACT to amend and reenact section two, article one, chapter five-f of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section one, article two of said chapter; and to amend and reenact sections one, two and six, article one, chapter twenty-two of said code, all relating to redesignating the division of environmental protection; redesignation of division of environmental protection as department of environmental protection; transfer of all agencies and boards previously under bureau of environment to department of environmental protection; and increase of salary of secretary of department of environmental protection.

Be it enacted by the Legislature of West Virginia:

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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.**

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

3 (1) Department of administration;

4 (2) Department of education and the arts;

5 (3) Department of environmental protection;

6 (4) Department of health and human resources;

7 (5) Department of military affairs and public safety;

8 (6) Department of tax and revenue; and

9 (7) Department of transportation.

10 (b) Each department will be headed by a secretary ap-
11 pointed by the governor with the advice and consent of the
12 Senate. Each secretary serves at the will and pleasure of the
13 governor.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

**§5F-2-1. Transfer and incorporation of agencies and boards;
funds.**

1 (a) The following agencies and boards, including all of the
2 allied, advisory, affiliated or related entities and funds associ-
3 ated with any agency or board, are transferred to and incorpo-
4 rated in and administered as a part of the department of
5 administration:

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

8 (2) Public employees insurance agency and public employ-
9 ees insurance agency advisory board provided for in article
10 sixteen, chapter five of this code;

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

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

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

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

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

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

24 (9) Division of personnel provided for in article six, chapter
25 twenty-nine of this code;

26 (10) The West Virginia ethics commission provided for in
27 article two, chapter six-b of this code; and

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

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

37 (1) Bureau of commerce:

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

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

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

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

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

53 (ii) Board of miner training, education and certification
54 provided for in article seven, chapter twenty-two-a of this code;
55 and

56 (iii) Mine inspectors' examining board provided for in
57 article nine, chapter twenty-two-a of this code;

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

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

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

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

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

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

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

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

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

83 (1) Air quality board provided for in article two, chapter
84 twenty-two-b of this code;

85 (2) Solid waste management board provided for in article
86 three, chapter twenty-two-c of this code;

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

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

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

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

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

97 (d) The following agencies and boards, including all of the
98 allied, advisory, affiliated or related entities and funds associ-
99 ated with any agency or board, are transferred to and incorpo-
100 rated in and administered as a part of the department of
101 education and the arts:

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

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

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

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

111 (5) Division of rehabilitation services provided for in
112 section two, article ten-a, chapter eighteen of this code.

113 (e) The following agencies and boards, including all of the
114 allied, advisory, affiliated or related entities and funds associ-
115 ated with any agency or board, are transferred to and incorpo-
116 rated in and administered as a part of the department of health
117 and human resources:

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

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

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

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

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

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

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

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

135 (f) The following agencies and boards, including all of the
136 allied, advisory, affiliated or related entities and funds associ-
137 ated with any agency or board, are transferred to and incorpo-
138 rated in and administered as a part of the department of military
139 affairs and public safety:

140 (1) Adjutant general's department provided for in article
141 one-a, chapter fifteen of this code;

142 (2) Armory board provided for in article six, chapter fifteen
143 of this code;

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

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

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

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

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

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

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

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

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

164 (g) The following agencies and boards, including all of the
165 allied, advisory, affiliated or related entities and funds associ-
166 ated with any agency or board, are transferred to and incorpo-
167 rated in and administered as a part of the department of tax and
168 revenue:

169 (1) Tax division provided for in article one, chapter eleven
170 of this code;

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

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

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

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

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

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

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

187 (h) The following agencies and boards, including all of the
188 allied, advisory, affiliated or related entities and funds associ-
189 ated with any agency or board, are transferred to and incorpo-
190 rated in and administered as a part of the department of
191 transportation:

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

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

196 (3) Division of motor vehicles provided for in article two,
197 chapter seventeen-a of this code;

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

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

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

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

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

212 (j) Except for powers, authority and duties that have been
213 delegated to the secretaries of the departments by the provisions
214 of section two of this article, the existence, powers, authority
215 and duties of boards and the membership, terms and qualifica-
216 tions of members of such boards are not affected by the
217 enactment of this chapter and all boards which are appellate
218 bodies or were otherwise established to be independent decision
219 makers will not have their appellate or independent deci-
220 sion-making status affected by the enactment of this chapter.

221 (k) Any department previously transferred to and incorpo-
222 rated in a department created in section two, article one of this
223 chapter by prior enactment of this section in chapter three, acts
224 of the Legislature, first extraordinary session, one thousand nine
225 hundred eighty-nine, and subsequent amendments, means a

226 division of the appropriate department. Wherever reference is
227 made to any department transferred to and incorporated in a
228 department created in section two, article one of this chapter,
229 the reference means a division of the appropriate department,
230 and any reference to a division of a department so transferred
231 and incorporated means a section of the appropriate division of
232 the department.

233 (l) When an agency, board or commission is transferred
234 under a bureau or agency other than a department headed by a
235 secretary pursuant to this section, that transfer is solely for
236 purposes of administrative support and liaison with the office
237 of the governor, a department secretary or a bureau. The
238 bureaus created by the Legislature upon the abolishment of the
239 department of commerce, labor and environmental resources in
240 the year one thousand nine hundred ninety-four will be headed
241 by a commissioner or other statutory officer of an agency
242 within that bureau. Nothing in this section extends the powers
243 of department secretaries under section two of this article to any
244 person other than a department secretary and nothing limits or
245 abridges the statutory powers and duties of statutory commis-
246 sioners 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.

1 (a) The Legislature finds that:

2 (1) Restoring and protecting the environment is fundamen-
3 tal to the health and welfare of individual citizens, and our
4 government has a duty to provide and maintain a healthful
5 environment for our citizens.

6 (2) The state has the primary responsibility for protecting
7 the environment; other governmental entities, public and
8 private organizations and our citizens have the primary respon-
9 sibility of supporting the state in its role as protector of the
10 environment.

11 (3) Governmental decisions on matters which relate to the
12 use, enhancement, preservation, protection and conservation of
13 the environment should be made after public participation and
14 public hearings.

15 (4) Efficiency in the wise use, enhancement, preservation,
16 protection and conservation of the environment can best be
17 accomplished by an integrated and interdisciplinary approach
18 in decision making and would benefit from the coordination,
19 consolidation and integration of state programs and agencies
20 which are significantly concerned with the use, enhancement,
21 preservation, protection and conservation of the environment.

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

31 (b) The Legislature declares that the establishment of a
32 department of environmental protection is in the public interest
33 and will promote the general welfare of the state of West
34 Virginia without sacrificing social and economic development.
35 It is the policy of the state of West Virginia, in cooperation with
36 other governmental agencies, public and private organizations,
37 and the citizens of this state, to use all practicable means and

38 measures to prevent or eliminate harm to the environment and
39 biosphere, to create and maintain conditions under which man
40 and nature can exist in productive harmony, and fulfill the
41 social, economic and other requirements of present and future
42 generations. The purposes of this chapter are:

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

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

47 (3) To provide a comprehensive program for the conserva-
48 tion, protection, exploration, development, enjoyment and use
49 of the natural resources of the state of West Virginia;

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

59 (5) Insofar as federal environmental programs require state
60 participation, to endeavor to obtain and continue state primacy
61 in the administration of such federally-mandated environmental
62 programs, and to endeavor to maximize federal funds which
63 may be available to accomplish the purposes of the state and
64 federal environmental programs and to cooperate with appropri-
65 ate federal agencies to meet environmental goals;

66 (6) To encourage the increased involvement of all citizens
67 in the development and execution of state environmental
68 programs;

69 (7) To promote improvements in the quality of the environ-
70 ment through research, evaluation and sharing of information;

71 (8) To improve the management and effectiveness of state
72 environmental protection programs;

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

76 (10) To promote pollution prevention by encouraging
77 reduction or elimination of pollutants at the source through
78 process modification, material substitutions, in-process recy-
79 cling, reduction of raw material use or other source reduction
80 opportunities.

§22-1-2. Definitions.

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

3 (1) "Department" means the department of environmental
4 protection.

5 (2) "Director" means the secretary of the department of
6 environmental protection.

7 (3) "Division" means the department of environmental
8 protection.

9 (4) "Function" includes any duty, obligation, power,
10 authority, responsibility, right, privilege, activity or program.

11 (5) "Office" includes any office, board, agency, unit,
12 organizational entity, or component thereof.

13 (6) "Secretary" means the secretary of the department of
14 environmental protection.

§22-1-6. Secretary of the department of environmental protection.

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

13 (b) The secretary has the power to and may designate
14 supervisory officers or other officers or employees of the
15 department to substitute for him or her on any board or com-
16 mission established under this code or to sit in his or her place
17 in any hearings, appeals, meetings or other activities with such
18 substitute having the same powers, duties, authority and
19 responsibility as the secretary. The secretary has the power to
20 delegate, as he or she considers appropriate, to supervisory
21 officers or other officers or employees of the department his or
22 her powers, duties, authority and responsibility relating to
23 issuing permits, hiring and training inspectors and other
24 employees of the department, conducting hearings and appeals
25 and such other duties and functions set forth in this chapter or
26 elsewhere in this code.

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

30 (1) That the department carries out its functions in a manner
31 which supplements and complements the environmental

32 policies, programs and procedures of the federal government,
33 other state governments and other instrumentalities of this state;
34 and

35 (2) That appropriate officers and employees of the division
36 consult with individuals responsible for making policy relating
37 to environmental issues in the federal government, other state
38 governments and other instrumentalities of this state concerning
39 differences over environmental policies, programs and proce-
40 dures and concerning the impact of statutory law and rules upon
41 the environment of this state.

42 (d) In addition to other powers, duties and responsibilities
43 granted and assigned to the secretary by this chapter, the
44 secretary is hereby authorized and empowered to:

45 (1) Sign and execute in the name of the state by the
46 "department of environmental protection" any contract or
47 agreement with the federal government or its departments or
48 agencies, subdivisions of the state, corporations, associations,
49 partnerships or individuals: *Provided*, That the powers granted
50 to the secretary to enter into agreements or contracts and to
51 make expenditures and obligations of public funds under this
52 subdivision may not exceed or be interpreted as authority to
53 exceed the powers granted by the Legislature to the various
54 commissioners, directors or board members of the various
55 departments, agencies or boards that comprise and are incorpo-
56 rated into each secretary's department pursuant to the provi-
57 sions of chapter five-f of this code;

58 (2) Conduct research in improved environmental protection
59 methods and disseminate information to the citizens of this
60 state;

61 (3) Enter private lands to make surveys and inspections for
62 environmental protection purposes; to investigate for violations
63 of statutes or rules which the division is charged with enforcing;

64 to serve and execute warrants and processes; to make arrests;
65 issue orders, which for the purposes of this chapter include
66 consent agreements; and to otherwise enforce the statutes or
67 rules which the division is charged with enforcing;

68 (4) Acquire for the state in the name of the “department of
69 environmental protection” by purchase, condemnation, lease or
70 agreement, or accept or reject for the state, in the name of the
71 department of environmental protection, gifts, donations,
72 contributions, bequests or devises of money, security or
73 property, both real and personal, and any interest in property;

74 (5) Provide for workshops, training programs and other
75 educational programs, apart from or in cooperation with other
76 governmental agencies, necessary to insure adequate standards
77 of public service in the department. The secretary may provide
78 for technical training and specialized instruction of any
79 employee. Approved educational programs, training and
80 instruction time may be compensated for as a part of regular
81 employment. The secretary is authorized to pay out of federal
82 or state funds, or both, as such funds are available, fees and
83 expenses incidental to such educational programs, training, and
84 instruction. Eligibility for participation by employees will be in
85 accordance with guidelines established by the secretary;

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

94 (7) Notwithstanding any provisions of this code to the
95 contrary, employ in-house counsel to perform all legal services

96 for the secretary and the department, including, but not limited
97 to, representing the secretary, any chief, the department or any
98 office thereof in any administrative proceeding or in any
99 proceeding in any state or federal court. Additionally, the
100 secretary may call upon the attorney general for legal assistance
101 and representation as provided by law.

102 (e) The secretary shall be appointed by the governor, by and
103 with the advice and consent of the Senate, and serves at the will
104 and pleasure of the governor.

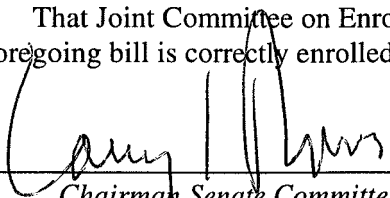
105 (f) At the time of his or her initial appointment, the secre-
106 tary must be at least thirty years old and must be selected with
107 special reference and consideration given to his or her adminis-
108 trative experience and ability, to his or her demonstrated
109 interest in the effective and responsible regulation of the energy
110 industry and the conservation and wise use of natural resources.
111 The secretary must have at least a bachelor's degree in a related
112 field and at least three years of experience in a position of
113 responsible charge in at least one discipline relating to the
114 duties and responsibilities for which the secretary will be
115 responsible upon assumption of the office. The secretary may
116 not be a candidate for or hold any other public office, may not
117 be a member of any political party committee and shall
118 immediately forfeit and vacate his or her office as secretary in
119 the event he or she becomes a candidate for or accepts appoint-
120 ment to any other public office or political party committee.

121 (g) The secretary will receive an annual salary of eighty-
122 five thousand dollars and will be allowed and paid necessary
123 expenses incident to the performance of his or her official
124 duties. Prior to the assumption of the duties of his or her office,
125 the secretary shall take and subscribe to the oath required of
126 public officers prescribed by section five, article IV of the
127 constitution of West Virginia and shall execute a bond, with
128 surety approved by the governor, in the penal sum of ten


129 thousand dollars, which executed oath and bond will be filed in
130 the office of the secretary of state. Premiums on the bond will
131 be paid from the department funds.

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



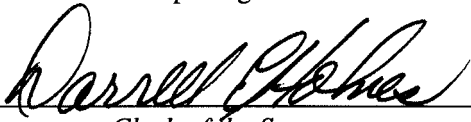
Chairman Senate Committee



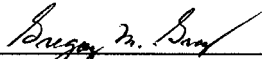
Chairman House Committee

Originating in the House.

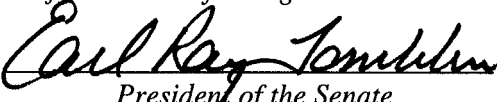
In effect from passage.



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

PRESENTED TO THE

GOVERNOR

Date 4/24/01

Time 4:35pm