WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED
Committee Substitute for
SENATE BILL NO. 287

(By Senators Love and Fanning)

PASSED April 4, 2005

In Effect July 1, 2005
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 287

(BY SENATORS LOVE AND FANNING, original sponsors)

[Passed April 4, 2005; to take effect July 1, 2005.]

AN ACT to repeal §22B-3-4 of the Code of West Virginia, 1931, as amended; to amend and reenact §22-11-7b of said code; to amend and reenact §22-12-4 of said code; and to amend and reenact §22B-3-2 of said code, all relating to water quality standards generally; transferring authority to propose rules relating to water quality standards from the Environmental Quality Board to the Department of Environmental Protection; providing that the current rule remains in force and effect until amended by the Department of Environmental Protection; establishing some requirements for water protection; providing that meetings to develop water quality standards be open with certain exceptions; authorizing the Department of Environmental Protection to consider remining variances; authorizing the Secretary to promulgate standards of purity and quality for groundwater; establishing the maximum containment levels permitted for groundwater;
providing that the current groundwater standard remains in effect until modified by the Secretary.

Be it enacted by the Legislature of West Virginia:

That §22B-3-4 of the Code of West Virginia, 1931, as amended, be repealed; that §22-11-7b of said code be amended and reenacted; that §22-12-4 of said code be amended and reenacted; and that §22B-3-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7b. Water quality standards; implementation of antidegradation procedures.

(a) All authority to promulgate rules and implement water quality standards vested in the Environmental Quality Board is hereby transferred from the Environmental Quality Board to the Secretary of the Department of Environmental Protection as of the effective date of the amendment and reenactment of this section during the two thousand five regular session of the Legislature: Provided, That the legislative rule containing the state's water quality standards shall remain in force and effect as if promulgated by the Department of Environmental Protection until the Secretary amends the rule in accordance with the provisions of article three, chapter twenty-nine-a of this code. Any proceedings, including notices of proposed rulemaking pending before the Environmental Quality Board, and any other functions, actions or authority transferred to the Secretary shall continue in effect as actions of the Secretary.

(b) All meetings with the Secretary or any employee of the Department and any interested party which are convened for the purpose of making a decision or deliberating toward a decision as to the form and substance of the rule governing water quality standards or variances
thereto shall be held in accordance with the provisions of
article nine-a, chapter six of this code. When the Secre-
tary is considering the form and substance of the rule
governing water quality standards, the following are not
meetings pursuant to article nine-a, chapter six of this
code: (i) Consultations between the Department's employ-
ees or its consultants, contractors or agents; (ii) consulta-
tions with other state or federal agencies and the Depart-
ment's employees or its consultants, contractors or agents;
or (iii) consultations between the Secretary, the Depart-
ment's employees or its consultants, contractors or agents
with any interested party for the purpose of collecting
facts and explaining state and federal requirements
relating to a site specific change or variance.

(c) In order to carry out the purposes of this chapter, the
Secretary shall promulgate legislative rules in accordance
with the provisions of article three, chapter twenty-nine-a
of this code setting standards of water quality applicable
to both the surface waters and groundwaters of this state.
Standards of quality with respect to surface waters shall
protect the public health and welfare, wildlife, fish and
aquatic life and the present and prospective future uses of
the water for domestic, agricultural, industrial, recre-
ational, scenic and other legitimate beneficial uses thereof.
The water quality standards of the Secretary may not
specify the design of equipment, type of construction or
particular method which a person shall use to reduce the
discharge of a pollutant.

(d) The Secretary shall establish the antidegradation
implementation procedures as required by 40 C. F. R.
131.12(a) which apply to regulated activities that have the
potential to affect water quality. The Secretary shall
propose for legislative approval, pursuant to article three,
chapter twenty-nine-a of the code, legislative rules to
establish implementation procedures which include
specifics of the review depending upon the existing uses of
the water body segment that would be affected, the level
of protection or "tier" assigned to the applicable water
body segment, the nature of the activity and the extent to
which existing water quality would be degraded.

(e) All remining variances shall be applied for and
considered by the Secretary and any variance granted
shall be consistent with 33 U. S. C. Section 1311(p) of the
Federal Water Control Act. At a minimum, when consid-
ering an application for a remining variance the Secretary
shall consider the data and information submitted by the
applicant for the variance; and comments received at a
public comment period and public hearing. The Secretary
may not grant a variance without requiring the applicant
to improve the instream water quality as much as is
reasonably possible by applying best available technology
economically achievable using best professional judgment.
Any such requirement will be included as a permit condi-
tion. The Secretary may not grant a variance without a
demonstration by the applicant that the coal remining
operation will result in the potential for improved
instream water quality as a result of the remining opera-
tion. The Secretary may not grant a variance where he or
she determines that degradation of the instream water
quality will result from the remining operation.

ARTICLE 12. GROUNDWATER PROTECTION ACT.

§22-12-4. Authority of Secretary to promulgate standards of
purity and quality.

(a) The Secretary has the sole and exclusive authority to
promulgate standards of purity and quality for groundwa-
ter of the state.

(b) These standards shall establish the maximum con-
taminant levels permitted for groundwater, but in no event
shall the standards allow contaminant levels in groundwa-
ter to exceed the maximum contaminant levels adopted by
the United States Environmental Protection Agency
pursuant to the federal Safe Drinking Water Act. The
Secretary may set standards more restrictive than the
maximum contaminant levels where it finds that such standards are necessary to protect drinking water use where scientifically supportable evidence reflects factors unique to West Virginia or some area thereof, or to protect other beneficial uses of the groundwater. For contaminants not regulated by the federal Safe Drinking Water Act, standards for such contaminants shall be established by the Secretary to be no less stringent than may be reasonable and prudent to protect drinking water or any other beneficial use. Where the concentration of a certain constituent exceeds such standards due to natural conditions, the natural concentration is the standard for that constituent. Where the concentration of a certain constituent exceeds such standard due to human-induced contamination, no further contamination by that constituent is allowed and every reasonable effort shall be made to identify, remove or mitigate the source of such contamination and to strive where practical to reduce the level of contamination over time to support drinking water use.

(c) The standards of purity and quality for groundwater promulgated by the Secretary shall recognize the degree to which groundwater is hydrologically connected with surface water and other groundwater and such standards shall provide protection for such surface water and other groundwater.

(d) In the promulgation of such standards the Secretary shall consult with the Department of Agriculture and the Bureau for Public Health, as appropriate.

(e) Any groundwater standard that is in effect on the effective date of this article shall remain in effect until modified by the Secretary. Notwithstanding any other provisions of this code to the contrary, the authority of the Secretary to adopt standards of purity and quality for groundwater granted by the provisions of this article is exclusive, and to the extent that any other provisions of this code grant such authority to any person, body, agency
or entity other than the Secretary, those other provisions are void.

CHAPTER 22B. ENVIRONMENTAL BOARDS.

ARTICLE 3. ENVIRONMENTAL QUALITY BOARD.

§22B-3-2. Authority of board; additional definitions.

1 (a) In addition to all other powers and duties of the Environmental Quality Board, as prescribed in this chapter or elsewhere by law, the Board may receive any money as a result of the resolution of any case on appeal which shall be deposited in the State Treasury to the credit of the Water Quality Management Fund created pursuant to section ten, article eleven, chapter twenty-two of this code.

9 (b) All the terms defined in section three, article eleven, chapter twenty-two of this code are applicable to this article and have the meanings ascribed to them therein.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 2005.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the

Day of April

2005.

Governor
PRESENTED TO THE
GOVERNOR

Date ___4/13/05___
Time ___10:50 A.M._-_