WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2006

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ENROLLED

House Bill No. 4550
(By Delegates Amores and Mahan)

Passed March 10, 2006

In Effect Ninety Days from Passage
ENROLLED

H. B. 4550

(By Delegates Amores and Mahan)

[Passed March 10, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §22-11-7b of the Code of West Virginia, 1931, as amended, relating to designation of streams as waters of special concern; and clarifying current law requiring legislative approval of final designation of streams of special concern.

Be it enacted by the Legislature of West Virginia:

That §22-11-7b of the Code of West Virginia, 1931, as amended, be amended and reenacted, to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7b. Water quality standards; implementation of anti-degradation 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
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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 Secretary 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 employees or its consultants, contractors or agents; (ii) consultations with other state or federal agencies and the Department’s employees or its consultants, contractors or agents; or (iii) consultations between the Secretary, the Department’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, recreational, 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. Any final classification determination of a water as a Tier 2.5 water (Water of Special Concern) does not become effective until that determination is approved by the Legislature through the legislative rulemaking process as provided for in article three, chapter twenty-nine-a of the code.

(e) All remaining 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 considering an application for a remaining 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
condition. 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 operation. 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chandy White
Chairman Senate Committee

W. Ray
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Darrell Miller
Clerk of the Senate

R. B. Blythe
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Boehm
Speaker of the House of Delegates

The within is approved this the 28th day of March, 2006.

Governor