

SB 177 S

FILED

WEST VIRGINIA LEGISLATURE

2007 APR 4 PM 3: 57

SEVENTY-EIGHTH LEGISLATURE  
REGULAR SESSION, 2007

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

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# ENROLLED

COMMITTEE SUBSTITUTE  
FOR  
COMMITTEE SUBSTITUTE  
FOR

## Senate Bill No. 177

(Senator Unger, *original sponsor*)

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[Passed March 10, 2007; to take effect ninety days from passage.]

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AN ACT to amend and reenact §5B-1-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §5B-2A-1, §5B-2A-3, §5B-2A-4, §5B-2A-5 and §5B-2A-12 of said code; to amend said code by adding thereto a new article, designated §5B-2F-1 and §5B-2F-2; to amend and reenact

§5D-1-4 of said code; to amend and reenact §5F-2-1 of said code; and to amend and reenact §22-3A-7 of said code, all relating to the creation of the Division of Energy within the Department of Commerce; charging the Division of Energy to develop energy policies; placing the Office of Coalfield Community Development within the Division of Energy; creating the position of Director of the Division of Energy; continuing and reconstituting the West Virginia Public Energy Authority; charging Director of the Division of Energy to chair and administer the functions of the Public Energy Authority; providing the director acts under the authority of the Secretary of Commerce; providing the director has authority over the Office of Coalfield Community Development and the Energy Efficiency Program of the West Virginia Development Office; providing the Public Energy Authority, the Office of Coalfield Community Development, director and other public agencies develop an energy policy and development plan and seek public input thereof; requiring submission of an energy policy and development plan to the Governor and Joint Committee on Government and Finance; setting forth matters to be addressed in the energy policy and development plan; providing that the division shall prepare an energy use database; providing that the division shall promote initiatives to enhance the nation's energy security; providing that the division shall encourage the development of energy infrastructure and strategic resources that will ensure the continuity of governmental operations in situations of emergency, inoperativeness or disaster; providing funding for the Division of Energy; and establishing a performance audit to be performed during the Department of Commerce's review.

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

That §5B-1-2 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §5B-2A-1, §5B-2A-3, §5B-2A-4, §5B-2A-5 and §5B-2A-12 of said code be amended and reenacted; that said code be amended by adding thereto a new article, designated §5B-2F-1 and §5B-2F-2; that §5D-1-4 of said code be amended and reenacted; that §5F-2-1 of said code be amended and reenacted; and that §22-3A-7 of said code be amended and reenacted, all to read as follows:

**CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.**

**ARTICLE 1. DEPARTMENT OF COMMERCE.**

**§5B-1-2. Agencies, boards, commissions, divisions and offices comprising the Department of Commerce.**

1       The Department of Commerce consists of the  
2 following agencies, boards, commissions, divisions and  
3 offices, including all of the allied, advisory, affiliated or  
4 related entities, which are incorporated in and  
5 administered as part of the Department of Commerce:

6       (1) Division of Labor provided in article one, chapter  
7 twenty-one of this code, which includes:

8       (A) Occupational Safety and Health Review  
9 Commission provided in article three-a, chapter twenty-  
10 one of this code; and

11       (B) Board of Manufactured Housing Construction and  
12 Safety provided in article nine, chapter twenty-one of  
13 this code;

14       (2) Office of Miners' Health, Safety and Training  
15 provided in article one, chapter twenty-two-a of this  
16 code. The following boards are transferred to the Office

17 of Miners' Health, Safety and Training for purposes of  
18 administrative support and liaison with the office of the  
19 Governor:

20 (A) Board of Coal Mine Health and Safety and Coal  
21 Mine Safety and Technical Review Committee provided  
22 in article six, chapter twenty-two-a of this code;

23 (B) Board of Miner Training, Education and  
24 Certification provided in article seven, chapter twenty-  
25 two-a of this code; and

26 (C) Mine Inspectors' Examining Board provided in  
27 article nine, chapter twenty-two-a of this code;

28 (3) The West Virginia Development Office, which  
29 includes the Division of Tourism and the Tourism  
30 Commission, provided in article two, chapter five-b of  
31 this code;

32 (4) Division of Natural Resources and Natural  
33 Resources Commission provided in article one, chapter  
34 twenty of this code;

35 (5) Division of Forestry provided in article one-a,  
36 chapter nineteen of this code;

37 (6) Geological and Economic Survey provided in  
38 article two, chapter twenty-nine of this code;

39 (7) Workforce West Virginia provided in chapter  
40 twenty-one-a of this code, which includes:

41 (A) Division of Unemployment Compensation;

42 (B) Division of Employment Service;

43 (C) Division of Workforce Development; and

44 (D) Division of Research, Information and Analysis;  
45 and

46 (8) Division of Energy provided in article two-f,  
47 chapter five-b of this code.

**ARTICLE 2A. OFFICE OF COALFIELD COMMUNITY DEVELOPMENT.**

**§5B-2A-1. Legislative findings and declaration.**

1 The Legislature hereby finds and declares the  
2 following:

3 (a) Coal mining has made and continues to make  
4 significant contributions to the economy of West  
5 Virginia. These contributions include the creation of  
6 quality jobs that pay high wages and provide good  
7 benefits; the consequent stimulation and support of  
8 mining contractors, suppliers of mining equipment and  
9 services, other mining-related industries and numerous  
10 providers of goods and services that are indirectly  
11 related to coal mining and dependent upon its existence  
12 and prosperity; the generation of significant severance  
13 and other tax revenues that support important  
14 economic development, infrastructure and education  
15 initiatives in mining communities and throughout the  
16 state; the support of civic, education and service groups  
17 in mining communities; and, in the case of surface  
18 mining operations, including mountaintop mining, the  
19 creation of much-needed flat land for economic  
20 development and recreational uses.

21 (b) The development and increasing prominence of  
22 surface mining operations, including mountaintop  
23 mining, has brought increasingly high levels of  
24 productivity, safety and efficiency to the state's mining  
25 industry, enabling the recovery of coal that could not  
26 otherwise be mined and marketed profitably, increasing  
27 the severance tax revenues and other economic benefits  
28 described in subsection (a) of this section and ensuring  
29 the competitiveness of the state's coal industry from a  
30 national and international perspective.

31 (c) Where implemented, surface mining operations,  
32 particularly mountaintop mining, tend to extract most,  
33 if not all, of the recoverable coal reserves in an  
34 accelerated fashion. For a state long dependent on the  
35 employment and revenue coal mining provides, this  
36 reality should be sobering and there is no place in which  
37 the comprehension of this reality is more crucial than  
38 the coalfields of West Virginia. Long dependent  
39 primarily on mining, this area must plan for a future  
40 without coal. The state and its subdivisions have a  
41 legitimate interest in securing that future.

42 (d) The coal industry and those related to the  
43 extraction of mineral resources benefit from the mining  
44 of our state's coal through mining practices which  
45 impact its citizens — some in a negative way — and  
46 through practices which will extract significant  
47 portions of coal reserves in an accelerated fashion.  
48 Those industries must therefore accept a greater  
49 responsibility to help address the long-term needs of the  
50 communities and citizens impacted by their activities.

51 (e) Once it becomes public knowledge that a permit is  
52 being sought, the marketability of property may change

53 and the relative bargaining power of the parties may  
54 change with it. The potential for negative impact on  
55 those living in communities near surface mining  
56 operations may limit the options and bargaining power  
57 of the property owners.

58 (f) Surface mining operations, including mountaintop  
59 mining, present unique challenges to the coal mining  
60 industry and the state and its citizens, especially those  
61 living and working in communities that rely heavily  
62 upon these methods of mining. This requires that these  
63 communities, in conjunction with county commissions,  
64 state, local, county and regional development  
65 authorities, landowners and civic, community and  
66 business groups and interested citizens, develop plans  
67 related to the communities' long-term economic  
68 viability.

69 (g) The Division of Energy, as the state agency  
70 charged with energy policy and development activities,  
71 shall take a more active role in the long-term economic  
72 development of communities in which these mining  
73 methods are prevalent and shall establish a formal  
74 process to assist property owners in the determination  
75 of the fair market value where the property owner and  
76 the coal company voluntarily enter into an agreement  
77 relating to the purchase and sale of such property.

**§5B-2A-3. Definitions.**

1 (a) For the purpose of this article, the following terms  
2 have the meanings ascribed to them:

3 (1) "Department" means the Department of  
4 Environmental Protection established in article one,



5 chapter twenty-two of this code;

6 (2) "Office" means the Office of Coalfield Community  
7 Development.

8 (b) Unless used in a context that clearly requires a  
9 different meaning or as otherwise defined herein, terms  
10 used in this article shall have the definitions set forth in  
11 this section.

**§5B-2A-4. Office of Coalfield Community Development.**

1 (a) The Office of Coalfield Community Development  
2 is hereby established within the Division of Energy.

3 (b) The director of the Division of Energy may appoint  
4 a chief to administer the office, who will serve at the  
5 will and pleasure of the Director of the Division of  
6 Energy.

**§5B-2A-5. Powers and duties.**

1 The office has and may exercise the following duties,  
2 powers and responsibilities:

3 (1) To establish a procedure for developing a  
4 community impact statement as provided in section six  
5 of this article and to administer the procedure so  
6 established;

7 (2) To establish a procedure for determining the assets  
8 that could be developed in and maintained by the  
9 community to foster its long-term viability as provided  
10 in section eight of this article and to administer the  
11 procedure so established;

12 (3) To establish a procedure for determining the land  
13 and infrastructure needs in the general area of the  
14 surface mining operations as provided in section nine of  
15 this article and to administer the procedure so  
16 established;

17 (4) To establish a procedure to develop action reports  
18 and annual updates as provided in section ten of this  
19 article and to administer the procedure so established;

20 (5) To determine the need for meetings to be held  
21 among the various interested parties in the communities  
22 impacted by surface mining operations and, when  
23 appropriate, to facilitate the meetings;

24 (6) To establish a procedure to assist property owners  
25 in the sale of their property as provided in section  
26 eleven of this article and to administer the procedure so  
27 established;

28 (7) In conjunction with the department, to maintain  
29 and operate a system to receive and address questions,  
30 concerns and complaints relating to surface mining; and

31 (8) On its own initiative or at the request of a  
32 community in close proximity to a mining operation, or  
33 a mining operation, offer assistance to facilitate the  
34 development of economic or community assets. Such  
35 assistance may include the preparation of a master land  
36 use plan pursuant to the provisions of section nine of  
37 this article.

**§5B-2A-12. Rulemaking.**

1 The office shall propose rules for legislative approval

2 in accordance with article three, chapter twenty-nine-a  
3 of this code to establish, implement and enforce the  
4 provisions of this article, which rules shall include, but  
5 not be limited to:

6 (1) The development of standards for establishing the  
7 value of property by the office; and

8 (2) Criteria for the development of a master plan by  
9 local, county, regional or redevelopment authorities  
10 which coordinates the permitting and reclamation  
11 requirements of the Department of Environmental  
12 Protection with these authorities.

**ARTICLE 2F. DIVISION OF ENERGY.**

**§5B-2F-1. Short title.**

1 This chapter shall be known and cited as the West  
2 Virginia Energy Policy and Development Act.

**§5B-2F-2. Purpose; office of Director for Energy Development;  
director to be member of Public Energy  
Authority; division to develop energy policy and  
development plan; contents of energy policy and  
development plan; and division to promote  
energy initiatives.**

1 (a) Effective the first day of July, two thousand seven,  
2 the Division of Energy is created as a state agency  
3 under the Department of Commerce. The division may  
4 receive federal funds. The division shall be  
5 administered by a director, who shall be appointed by  
6 the Governor, by and with the advice and consent of the  
7 Senate, and shall continue to serve until his or her  
8 successor is appointed and qualified as provided. The

9 director shall be selected with special preference and  
10 consideration given to his or her training, experience,  
11 capacity and interest in energy policy and development  
12 activities.

13 (b) Creation of the division is intended to provide  
14 leadership for developing energy policies emphasizing  
15 the increased efficiency of energy use, the increased  
16 development and production of new and existing  
17 domestic energy sources, the increased awareness of  
18 energy use on the environment and the economy,  
19 dependable, efficient and economical statewide energy  
20 systems capable of supporting the needs of the state,  
21 increased energy self-sufficiency where the ratio of  
22 indigenous to imported energy use is increased, reduce  
23 the ratio energy consumption to economic activity and  
24 maintain low-cost energy. The energy policies and  
25 development plans shall also provide direction for the  
26 private sector.

27 (c) The director shall administer the daily operations  
28 of the Public Energy Authority provided under the  
29 provisions of chapter five-d of this code. The director  
30 shall also have authority over the Office of Coalfield  
31 Community Development, created by the provisions of  
32 article two-a of this chapter, and the energy efficiency  
33 program existing under the West Virginia Development  
34 Office which are hereby transferred to the division. The  
35 director shall effectuate coordination of these entities  
36 relative to the purposes provided in this article.

37 (d) The division shall develop an energy policy and  
38 shall report the same back to the Governor and the  
39 Joint Committee on Government and Finance before the  
40 first day of December, two thousand seven. The energy

41 policy shall be a five-year plan setting forth the state's  
42 energy policies and shall provide a direction for the  
43 private sector. Prior to the expiration of the energy  
44 policy, the division shall begin review of the policy and  
45 submit a revised energy policy to the Governor and the  
46 Joint Committee on Government and Finance six  
47 months before the expiration of the policy.

48 (e) The director shall be a member of the Public  
49 Energy Authority and as such shall attend and  
50 participate in all official meetings and public hearing  
51 conducted under the auspices of the authority.

52 (f) The division shall prepare and submit an annual  
53 energy development plan to the Governor and the Joint  
54 Committee on Government and Finance on or before the  
55 first day of December of each year. The development  
56 plan shall relate to the division's implementation of the  
57 energy policy and the activities of the division during  
58 the previous year. The development plan shall include  
59 any recommended legislation. The Public Energy  
60 Authority, the Office of Coalfield Community  
61 Development, the energy efficiency program, the  
62 Department of Environmental Protection and the  
63 Public Service Commission, in addition to their other  
64 duties prescribed by this code, shall assist the Division  
65 and the director in the development of an energy policy  
66 and related development plans. The energy  
67 development plan shall set forth the plans for  
68 implementing the state's energy policy and shall provide  
69 a direction for the private sector. The energy  
70 development plan shall recognize the powers of the  
71 Public Energy Authority as to development and  
72 financing of projects under its jurisdiction and shall  
73 make such recommendations as are reasonable and

74 practicable for the exercise of such powers.

75 (g) The division shall hold public hearings and  
76 meetings with notice to receive public input regarding  
77 proposed energy policies and development plans. The  
78 energy policy and development plans required by  
79 subsections (d) and (f) of this section shall address  
80 increased efficiency of energy use, traditional and  
81 alternative energy, water as a resource and a component  
82 of energy production, energy distribution systems, the  
83 siting of energy facilities, the increased development  
84 and production of new and existing domestic energy  
85 sources, increased awareness of energy use on the  
86 environment and the economy, energy infrastructure,  
87 the development and implementation of renewable,  
88 clean, technically innovative and advanced energy  
89 projects in this state. Projects may include, without  
90 limitation, solar and wind energy, low-impact hydro  
91 power, geothermal, biomass, landfill gas, fuel cells,  
92 renewable hydrogen fuel technologies, waste coal, coal  
93 minemethane, coal gasification to ultraclean fuels, solid  
94 waste to fuel grade ethanol and coal liquefaction  
95 technologies.

96 (h) The division may propose rules for legislative  
97 approval in accordance with the provisions of article  
98 three, chapter twenty-nine-a of this code designed to  
99 implement an energy policy and development plan in  
100 accordance with the provisions of this chapter.

101 (i) The energy policy and development plans required  
102 by subsections (d) and (f) of this section shall identify  
103 and report on the energy infrastructure in this state and  
104 include without limitation energy infrastructure related  
105 to protecting the state's essential data, information

106 systems and critical government services in times of  
107 emergency, inoperativeness or disaster. In consultation  
108 with the Director of the Division of Homeland Security  
109 and Emergency Management, the director of the  
110 division shall encourage the development of energy  
111 infrastructure and strategic resources that will ensure  
112 the continuity of governmental operations in situations  
113 of emergency, inoperativeness or disaster.

114 (j) In preparing or revising the energy policy and  
115 development plan, the division may rely upon internal  
116 staff reports or the advice of outside advisors or  
117 consultants and may procure such services with the  
118 consent of the Secretary of Commerce. The division  
119 may also involve national, state and local government  
120 leadership and energy experts.

121 (k) The division shall prepare an energy use database,  
122 including without limitation, end-use applications and  
123 infrastructure needs for different classes of energy users  
124 including residential, commercial and industrial users,  
125 data regarding the interdependencies and sources of  
126 electricity, oil, coal, water and gas infrastructure, data  
127 regarding energy use of schools and state-owned  
128 facilities and collect data on the impact of the energy  
129 policy and development plan on the decisions and  
130 strategies of energy users of the state.

131 (l) The division shall promote collaboration between  
132 the state's universities and colleges, private industry  
133 and nonprofit organizations to encourage energy  
134 research and leverage available federal energy research  
135 and development resources.

136 (m) The division shall promote initiatives to enhance

137 the nation's energy security through research and  
138 development directed at transforming the state's energy  
139 resources into the resources that fuel the nation.

140 (n) The Performance Evaluation and Research  
141 Division of the Legislative Auditor's office shall  
142 perform an agency review of the Division of Energy in  
143 two thousand ten as part of its review of the  
144 Department of Commerce as set forth in article four,  
145 chapter ten of this code.

#### **CHAPTER 5D. PUBLIC ENERGY AUTHORITY.**

##### **ARTICLE 1. PUBLIC ENERGY AUTHORITY OF THE STATE OF WEST VIRGINIA.**

##### **§5D-1-4. West Virginia Public Energy Authority continued; West Virginia Public Energy Board continued; organization of authority and board; appointment of board members; term, compensation and expenses; director of authority; appointment.**

1 (a) The West Virginia Public Energy Authority is  
2 continued. The authority is a governmental  
3 instrumentality of the state and a body corporate. The  
4 exercise by the authority of the powers conferred by  
5 this article and the carrying out of its purposes and  
6 duties are essential governmental functions and for a  
7 public purpose.

8 (b) The authority shall be controlled, managed and  
9 operated by a seven-member board known as the West  
10 Virginia Public Energy Authority Board, which is  
11 continued. The seven members include the Director of  
12 the Division of Energy or designee; the Secretary of the



13 Department of Environmental Protection or designee;  
14 the Director of the Economic Development Authority or  
15 designee; and four members representing the general  
16 public. The public members are appointed by the  
17 Governor, by and with the advice and consent of the  
18 Senate, for terms of one, two, three and four years,  
19 respectively.

20 (c) On the thirtieth day of June, two thousand seven,  
21 the terms of all appointed members shall expire. Not  
22 later than the first day of July, two thousand seven, the  
23 Governor shall appoint the public members required in  
24 subsection (b) of this section to assume the duties of the  
25 office immediately, pending the advice and consent of  
26 the Senate.

27 (d) The successor of each appointed member is  
28 appointed for a four-year term. A vacancy is filled by  
29 appointment by the Governor in the same manner as the  
30 original appointment. A member appointed to fill a  
31 vacancy serves for the remainder of the unexpired term.  
32 Each board member serves until a successor is  
33 appointed.

34 (e) No more than three of the public members may at  
35 any one time belong to the same political party. No  
36 more than two public members may be employed by or  
37 associated with any industry the authority is  
38 empowered to affect. One member shall be a person  
39 with significant experience in the advocacy of  
40 environmental protection. Board members may be  
41 reappointed to serve additional terms.

42 (f) All members of the board shall be citizens of the  
43 state. Before engaging in their duties, each member of

44 the board shall comply with the requirements of article  
45 one, chapter six of this code and give bond in the sum of  
46 twenty-five thousand dollars in the manner provided in  
47 article two of said chapter. The Governor may remove  
48 any board member as provided in section four, article  
49 six of said chapter.

50 (g) The Director of the Division of Energy shall serve  
51 as chair. The board annually elects one of its members  
52 as vice chair and appoints a secretary-treasurer who  
53 need not be a member of the board.

54 (h) Four members of the board constitute a quorum  
55 and the affirmative vote of the majority of members  
56 present at any meeting is necessary for any action taken  
57 by vote of the board. A vacancy in the membership of  
58 the board does not impair the rights of a quorum by  
59 such vote to exercise all the rights and perform all the  
60 duties of the board and the authority.

61 (i) The person appointed as secretary-treasurer,  
62 including a board member if so appointed, shall give  
63 bond in the sum of fifty thousand dollars in the manner  
64 provided in article two, chapter six of this code.

65 (j) Each public member shall be reimbursed for  
66 reasonable expenses incurred in the discharge of official  
67 duties. All expenses incurred by the board shall be paid  
68 in a manner consistent with guidelines of the Travel  
69 Management Office of the Department of  
70 Administration and are payable solely from funds of the  
71 authority or from funds appropriated for such purpose  
72 by the Legislature. Liability or obligation is not  
73 incurred by the authority beyond the extent to which  
74 moneys are available from funds of the authority or

75 from such appropriations.

76 (k) In addition to such other duties and  
77 responsibilities as may be prescribed in this code, the  
78 Director of the Division of Energy is responsible for  
79 managing and administering the daily functions of the  
80 authority and for performing all other functions  
81 necessary to the effective operation of the authority.

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

### **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  
2 the allied, advisory, affiliated or related entities and  
3 funds associated with any agency or board, are  
4 incorporated in and administered as a part of the  
5 Department of Administration:

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

8 (2) Public Employees Insurance Agency and Public  
9 Employees Insurance Agency Advisory Board provided  
10 in article sixteen, chapter five of this code;

11 (3) Governor's Mansion Advisory Committee provided  
12 in article five, chapter five-a of this code;

13 (4) Commission on Uniform State Laws provided in  
14 article one-a, chapter twenty-nine of this code;

15 (5) West Virginia Public Employees Grievance Board  
16 provided in article three, chapter six-c of this code;

17 (6) Board of Risk and Insurance Management  
18 provided in article twelve, chapter twenty-nine of this  
19 code;

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

22 (8) Public Defender Services provided in article  
23 twenty-one, chapter twenty-nine of this code;

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

26 (10) The West Virginia Ethics Commission provided in  
27 article two, chapter six-b of this code;

28 (11) Consolidated Public Retirement Board provided  
29 in article ten-d, chapter five of this code; and

30 (12) Real Estate Division provided in article ten,  
31 chapter five-a of this code.

32 (b) The following agencies and boards, including all of  
33 the allied, advisory, affiliated or related entities and  
34 funds associated with any agency or board, are  
35 incorporated in and administered as a part of the  
36 Department of Commerce:

37 (1) Division of Labor provided in article one, chapter  
38 twenty-one of this code, which includes:

39 (A) Occupational Safety and Health Review

40 Commission provided in article three-a, chapter twenty-  
41 one of this code; and

42 (B) Board of Manufactured Housing Construction and  
43 Safety provided in article nine, chapter twenty-one of  
44 this code;

45 (2) Office of Miners' Health, Safety and Training  
46 provided in article one, chapter twenty-two-a of this  
47 code. The following boards are transferred to the Office  
48 of Miners' Health, Safety and Training for purposes of  
49 administrative support and liaison with the office of the  
50 Governor:

51 (A) Board of Coal Mine Health and Safety and Coal  
52 Mine Safety and Technical Review Committee provided  
53 in article six, chapter twenty-two-a of this code;

54 (B) Board of Miner Training, Education and  
55 Certification provided in article seven, chapter twenty-  
56 two-a of this code; and

57 (C) Mine Inspectors' Examining Board provided in  
58 article nine, chapter twenty-two-a of this code;

59 (3) The West Virginia Development Office, which  
60 includes the Division of Tourism and the Tourism  
61 Commission provided in article two, chapter five-b of  
62 this code;

63 (4) Division of Natural Resources and Natural  
64 Resources Commission provided in article one, chapter  
65 twenty of this code;

66 (5) Division of Forestry provided in article one-a,

67 chapter nineteen of this code;

68 (6) Geological and Economic Survey provided in  
69 article two, chapter twenty-nine of this code; and

70 (7) Workforce West Virginia provided in chapter  
71 twenty-one-a of this code, which includes:

72 (A) Division of Unemployment Compensation;

73 (B) Division of Employment Service;

74 (C) Division of Workforce Development; and

75 (D) Division of Research, Information and Analysis;  
76 and

77 (8) Division of Energy provided in article two-f,  
78 chapter five-b of this code.

79 (c) The Economic Development Authority provided in  
80 article fifteen, chapter thirty-one of this code is  
81 continued as an independent agency within the  
82 executive branch.

83 (d) The Water Development Authority and Board  
84 provided in article one, chapter twenty-two-c of this  
85 code is continued as an independent agency within the  
86 executive branch.

87 (e) The following agencies and boards, including all of  
88 the allied, advisory and affiliated entities, are  
89 transferred to the Department of Environmental  
90 Protection for purposes of administrative support and  
91 liaison with the office of the Governor:

92 (1) Air Quality Board provided in article two, chapter  
93 twenty-two-b of this code;

94 (2) Solid Waste Management Board provided in article  
95 three, chapter twenty-two-c of this code;

96 (3) Environmental Quality Board, or its successor  
97 board, provided in article three, chapter twenty-two-b  
98 of this code;

99 (4) Surface Mine Board provided in article four,  
100 chapter twenty-two-b of this code;

101 (5) Oil and Gas Inspectors' Examining Board provided  
102 in article seven, chapter twenty-two-c of this code;

103 (6) Shallow Gas Well Review Board provided in  
104 article eight, chapter twenty-two-c of this code; and

105 (7) Oil and Gas Conservation Commission provided in  
106 article nine, chapter twenty-two-c of this code.

107 (f) The following agencies and boards, including all of  
108 the allied, advisory, affiliated or related entities and  
109 funds associated with any agency or board, are  
110 incorporated in and administered as a part of the  
111 Department of Education and the Arts:

112 (1) Library Commission provided in article one,  
113 chapter ten of this code;

114 (2) Educational Broadcasting Authority provided in  
115 article five, chapter ten of this code;

116 (3) Division of Culture and History provided in article

117 one, chapter twenty-nine of this code;

118 (4) Division of Rehabilitation Services provided in  
119 section two, article ten-a, chapter eighteen of this code.

120 (g) The following agencies and boards, including all of  
121 the allied, advisory, affiliated or related entities and  
122 funds associated with any agency or board, are  
123 incorporated in and administered as a part of the  
124 Department of Health and Human Resources:

125 (1) Human Rights Commission provided in article  
126 eleven, chapter five of this code;

127 (2) Division of Human Services provided in article  
128 two, chapter nine of this code;

129 (3) Bureau for Public Health provided in article one,  
130 chapter sixteen of this code;

131 (4) Office of Emergency Medical Services and  
132 Advisory Council provided in article four-c, chapter  
133 sixteen of this code;

134 (5) Health Care Authority provided in article twenty-  
135 nine-b, chapter sixteen of this code;

136 (6) Commission on Mental Retardation provided in  
137 article fifteen, chapter twenty-nine of this code;

138 (7) Women's Commission provided in article twenty,  
139 chapter twenty-nine of this code; and

140 (8) The Child Support Enforcement Division provided  
141 in chapter forty-eight of this code.



142 (h) The following agencies and boards, including all of  
143 the allied, advisory, affiliated or related entities and  
144 funds associated with any agency or board, are  
145 incorporated in and administered as a part of the  
146 Department of Military Affairs and Public Safety:

147 (1) Adjutant General's Department provided in article  
148 one-a, chapter fifteen of this code;

149 (2) Armory Board provided in article six, chapter  
150 fifteen of this code;

151 (3) Military Awards Board provided in article one-g,  
152 chapter fifteen of this code;

153 (4) West Virginia State Police provided in article two,  
154 chapter fifteen of this code;

155 (5) Division of Homeland Security and Emergency  
156 Management and Disaster Recovery Board provided in  
157 article five, chapter fifteen of this code and Emergency  
158 Response Commission provided in article five-a of said  
159 chapter;

160 (6) Sheriffs' Bureau provided in article eight, chapter  
161 fifteen of this code;

162 (7) Division of Corrections provided in chapter  
163 twenty-five of this code;

164 (8) Fire Commission provided in article three, chapter  
165 twenty-nine of this code;

166 (9) Regional Jail and Correctional Facility Authority  
167 provided in article twenty, chapter thirty-one of this

168 code;

169 (10) Board of Probation and Parole provided in article  
170 twelve, chapter sixty-two of this code; and

171 (11) Division of Veterans' Affairs and Veterans'  
172 Council provided in article one, chapter nine-a of this  
173 code.

174 (i) The following agencies and boards, including all of  
175 the allied, advisory, affiliated or related entities and  
176 funds associated with any agency or board, are  
177 incorporated in and administered as a part of the  
178 Department of Revenue:

179 (1) Tax Division provided in article one, chapter  
180 eleven of this code;

181 (2) Racing Commission provided in article twenty-  
182 three, chapter nineteen of this code;

183 (3) Lottery Commission and position of Lottery  
184 Director provided in article twenty-two, chapter  
185 twenty-nine of this code;

186 (4) Agency of Insurance Commissioner provided in  
187 article two, chapter thirty-three of this code;

188 (5) Office of Alcohol Beverage Control Commissioner  
189 provided in article sixteen, chapter eleven of this code  
190 and article two, chapter sixty of this code;

191 (6) Board of Banking and Financial Institutions  
192 provided in article three, chapter thirty-one-a of this  
193 code;

194 (7) Lending and Credit Rate Board provided in  
195 chapter forty-seven-a of this code;

196 (8) Division of Banking provided in article two,  
197 chapter thirty-one-a of this code;

198 (9) The State Budget Office provided in article two of  
199 this chapter;

200 (10) The Municipal Bond Commission provided in  
201 article three, chapter thirteen of this code;

202 (11) The Office of Tax Appeals provided in article ten-  
203 a, chapter eleven of this code; and

204 (12) The State Athletic Commission provided in article  
205 five-a, chapter twenty-nine of this code.

206 (j) The following agencies and boards, including all of  
207 the allied, advisory, affiliated or related entities and  
208 funds associated with any agency or board, are  
209 incorporated in and administered as a part of the  
210 Department of Transportation:

211 (1) Division of Highways provided in article two-a,  
212 chapter seventeen of this code;

213 (2) Parkways, Economic Development and Tourism  
214 Authority provided in article sixteen-a, chapter  
215 seventeen of this code;

216 (3) Division of Motor Vehicles provided in article two,  
217 chapter seventeen-a of this code;

218 (4) Driver's Licensing Advisory Board provided in

219 article two, chapter seventeen-b of this code;

220 (5) Aeronautics Commission provided in article two-a,  
221 chapter twenty-nine of this code;

222 (6) State Rail Authority provided in article eighteen,  
223 chapter twenty-nine of this code; and

224 (7) Port Authority provided in article sixteen-b,  
225 chapter seventeen of this code.

226 (k) Except for powers, authority and duties that have  
227 been delegated to the secretaries of the departments by  
228 the provisions of section two of this article, the position  
229 of administrator and the powers, authority and duties  
230 of each administrator and agency are not affected by  
231 the enactment of this chapter.

232 (l) Except for powers, authority and duties that have  
233 been delegated to the secretaries of the departments by  
234 the provisions of section two of this article, the  
235 existence, powers, authority and duties of boards and  
236 the membership, terms and qualifications of members  
237 of the boards are not affected by the enactment of this  
238 chapter. All boards that are appellate bodies or are  
239 independent decision makers shall not have their  
240 appellate or independent decision-making status  
241 affected by the enactment of this chapter.

242 (m) Any department previously transferred to and  
243 incorporated in a department by prior enactment of this  
244 section means a division of the appropriate department.  
245 Wherever reference is made to any department  
246 transferred to and incorporated in a department created  
247 in section two, article one of this chapter, the reference

248 means a division of the appropriate department and any  
249 reference to a division of a department so transferred  
250 and incorporated means a section of the appropriate  
251 division of the department.

252 (n) When an agency, board or commission is  
253 transferred under a bureau or agency other than a  
254 department headed by a secretary pursuant to this  
255 section, that transfer is solely for purposes of  
256 administrative support and liaison with the office of the  
257 Governor, a department secretary or a bureau. Nothing  
258 in this section extends the powers of department  
259 secretaries under section two of this article to any  
260 person other than a department secretary and nothing  
261 limits or abridges the statutory powers and duties of  
262 statutory commissioners or officers pursuant to this  
263 code.

## CHAPTER 22. ENVIRONMENTAL RESOURCES.

### ARTICLE 3A. OFFICE OF EXPLOSIVES AND BLASTING.

#### §22-3A-7. Funding.

1 (a) The office shall assess each operator permitted  
2 under the provisions of this chapter a fee on each  
3 quantity of explosive material used for any purpose on  
4 the surface mining operations.

5 (b) The office shall propose a legislative rule for  
6 promulgation in accordance with article three, chapter  
7 twenty-nine-a of this code establishing the fees required  
8 by this section. The fees shall be calculated to generate  
9 sufficient money to provide for the operation of this  
10 office and the Division of Energy as provided for in  
11 article two-f, chapter five-b of this code. These fees

12 cannot be increased except by legislative rule and  
13 cannot be used to fund additional positions in the  
14 Division of Energy in future years.

15 (c) The office shall deposit all moneys received from  
16 these fees into a special revenue fund to be known as  
17 the Mountaintop Removal Fund in the State Treasury to  
18 be expended by the offices and the Division of Energy  
19 in the performance of their duties. The expenditure of  
20 moneys in the fund is not authorized from collections,  
21 but shall be appropriated by the Legislature.

Enr. Com. Sub. for Com. Sub. for S. B. No. 177] 30

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.

In effect ninety days from passage.

  
.....  
Clerk of the Senate

  
.....  
Clerk of the House of Delegates

  
.....  
President of the Senate

  
.....  
Speaker House of Delegates

The within *is approved* ..... this  
the *4<sup>th</sup>* Day of *April* ..... 2007.

  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

APR 02 2007

Time 3:35 pm