WEST VIRGINIA LEGISLATURE
SEVENTY-EIGHTH LEGISLATURE
REGULAR SESSION, 2008

ENROLLED

Senate Bill No. 503

(By Senators Fanning, Kessler, Foster, Bailey, Wells, White, Plymale and McKenzie)

[Passed March 8, 2008; in effect ninety days from passage.]
ENROLLED

Senate Bill No. 503

(BY SENATORS FANNING, KESSLER, FOSTER, BAILEY, WELLS, WHITE, PLYMALE AND MCKENZIE)

[Passed March 8, 2008; in effect ninety days from passage.]

AN ACT to amend and reenact §22-1-6 of the Code of West Virginia, 1931, as amended, relating to authorizing the Secretary of the Department of Environmental Protection to require solid waste facility permit applicants and specified others connected with applicants and permittees to furnish fingerprints for the purpose of conducting state and federal criminal history checks.

Be it enacted by the Legislature of West Virginia:

That §22-1-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:
ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-6. Secretary of the Department of Environmental Protection.

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

(b) The secretary has the power to and may designate supervisory officers or other officers or employees of the department to substitute for him or her on any board or commission established under this code or to sit in his or her place in any hearings, appeals, meetings or other activities with such substitute having the same powers, duties, authority and responsibility as the secretary. The secretary has the power to delegate, as he or she considers appropriate, to supervisory officers or other officers or employees of the department his or her powers, duties, authority and responsibility relating to issuing permits, hiring and training inspectors and other employees of the department, conducting hearings and appeals and such other duties and functions set forth in this chapter or elsewhere in this code.
(c) The secretary has responsibility for the conduct of the intergovernmental relations of the department, including assuring:

(1) That the department carries out its functions in a manner which supplements and complements the environmental policies, programs and procedures of the federal government, other state governments and other instrumentalities of this state; and

(2) That appropriate officers and employees of the department consult with individuals responsible for making policy relating to environmental issues in the federal government, other state governments and other instrumentalities of this state concerning differences over environmental policies, programs and procedures and concerning the impact of statutory law and rules upon the environment of this state.

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

(1) Sign and execute in the name of the state by the Department of Environmental Protection any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals: Provided, That the powers granted to the secretary to enter into agreements or contracts and to make expenditures and obligations of public funds under this subdivision may not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors or
board members of the various departments, agencies or boards that comprise and are incorporated into each secretary's department pursuant to the provisions of chapter five-f of this code;

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

(3) Enter private lands to make surveys and inspections for environmental protection purposes; to investigate for violations of statutes or rules which the department is charged with enforcing; to serve and execute warrants and processes; to make arrests; issue orders, which for the purposes of this chapter include consent agreements; and to otherwise enforce the statutes or rules which the department is charged with enforcing;

(4) Require any applicant or holder of a permit to install, establish, modify, operate or close a solid waste facility to furnish the fingerprints of the applicant or permittee; any officer, director or manager of the applicant or permittee; any person owning a five percent or more interest, beneficial or otherwise, in the applicant's or permittee's business; or any other person conducting or managing the affairs of the applicant or permittee or of the proposed licensed premises, in whole or in part. These fingerprints may be used to obtain and review any police record for the purposes that may be relevant pursuant to section five, article fifteen of this chapter, and to use the fingerprints furnished to conduct a criminal records check through the Criminal Identification Bureau of the West Virginia State Police and a national criminal history check through the
Federal Bureau of Investigation. The results of the
checks shall be provided to the secretary.

(5) Acquire for the state in the name of the
Department of Environmental Protection by purchase,
condemnation, lease or agreement, or accept or reject
for the state, in the name of the Department of
Environmental Protection, gifts, donations,
contributions, bequests or devises of money, security or
property, both real and personal, and any interest in
property;

(6) Provide for workshops, training programs and
other educational programs, apart from or in
cooperation with other governmental agencies,
necessary to ensure adequate standards of public
service in the department. The secretary may provide
for technical training and specialized instruction of any
employee. Approved educational programs, training
and instruction time may be compensated for as a part
of regular employment. The secretary is authorized to
pay out of federal or state funds, or both, as such funds
are available, fees and expenses incidental to the
educational programs, training and instruction.
Eligibility for participation by employees shall be in
accordance with guidelines established by the secretary;

(7) Issue certifications required under 33 U. S. C.
§1341 of the federal Clean Water Act and enter into
agreements in accordance with the provisions of section
seven-a, article eleven of this chapter. Prior to issuing
any certification the secretary shall solicit from the
Division of Natural Resources reports and comments
concerning the possible certification. The Division of
Natural Resources shall direct the reports and
125 comments to the secretary for consideration; and

126 (8) Notwithstanding any provisions of this code to the
127 contrary, employ in-house counsel to perform all legal
128 services for the secretary and the department, including,
129 but not limited to, representing the secretary, any chief,
130 the department or any office thereof in any
131 administrative proceeding or in any proceeding in any
132 state or federal court. Additionally, the secretary may
133 call upon the Attorney General for legal assistance and
134 representation as provided by law.

135 (e) The secretary shall be appointed by the Governor,
136 by and with the advice and consent of the Senate, and
137 serves at the will and pleasure of the Governor.

138 (f) At the time of his or her initial appointment, the
139 secretary must be at least thirty years old and shall be
140 selected with special reference and consideration given
141 to his or her administrative experience and ability, to
142 his or her demonstrated interest in the effective and
143 responsible regulation of the energy industry and the
144 conservation and wise use of natural resources. The
145 secretary must have at least a bachelor's degree in a
146 related field and at least three years of experience in a
147 position of responsible charge in at least one discipline
148 relating to the duties and responsibilities for which the
149 secretary will be responsible upon assumption of the
150 office. The secretary may not be a candidate for or hold
151 any other public office, may not be a member of any
152 political party committee and shall immediately forfeit
153 and vacate his or her office as secretary in the event he
154 or she becomes a candidate for or accepts appointment
155 to any other public office or political party committee.
The secretary shall receive an annual salary as provided in section two-a, article seven, chapter six of this code and is allowed and shall be paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of the duties of his or her office, the secretary shall take and subscribe to the oath required of public officers prescribed by section five, article IV of the Constitution of West Virginia and shall execute a bond, with surety approved by the Governor, in the penal sum of ten thousand dollars, which executed oath and bond will be filed in the Office of the Secretary of State. Premiums on the bond shall be paid from the department funds.
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 15th Day of April, 2008.

Governor