

SB 503

FILED

2008 APR -1 PM 2:39

**WEST VIRGINIA LEGISLATURE**  
**SEVENTY-EIGHTH LEGISLATURE**  
**REGULAR SESSION, 2008**

CLERK OF STATE  
SECRETARY OF STATE

—  
**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.]

FILED

2008 APR -1 PM 2: 39

OFFICE OF THE  
SECRETARY OF STATE 

**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.**

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

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

30 (c) The secretary has responsibility for the conduct of  
31 the intergovernmental relations of the department,  
32 including assuring:

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

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

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

50 (1) Sign and execute in the name of the state by the  
51 Department of Environmental Protection any contract  
52 or agreement with the federal government or its  
53 departments or agencies, subdivisions of the state,  
54 corporations, associations, partnerships or individuals:  
55 *Provided*, That the powers granted to the secretary to  
56 enter into agreements or contracts and to make  
57 expenditures and obligations of public funds under this  
58 subdivision may not exceed or be interpreted as  
59 authority to exceed the powers granted by the  
60 Legislature to the various commissioners, directors or

61 board members of the various departments, agencies or  
62 boards that comprise and are incorporated into each  
63 secretary's department pursuant to the provisions of  
64 chapter five-f of this code;

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

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

77 (4) Require any applicant or holder of a permit to  
78 install, establish, modify, operate or close a solid waste  
79 facility to furnish the fingerprints of the applicant or  
80 permittee; any officer, director or manager of the  
81 applicant or permittee; any person owning a five  
82 percent or more interest, beneficial or otherwise, in the  
83 applicant's or permittee's business; or any other person  
84 conducting or managing the affairs of the applicant or  
85 permittee or of the proposed licensed premises, in whole  
86 or in part. These fingerprints may be used to obtain and  
87 review any police record for the purposes that may be  
88 relevant pursuant to section five, article fifteen of this  
89 chapter, and to use the fingerprints furnished to  
90 conduct a criminal records check through the Criminal  
91 Identification Bureau of the West Virginia State Police  
92 and a national criminal history check through the

93 Federal Bureau of Investigation. The results of the  
94 checks shall be provided to the secretary.

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

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

117 (7) Issue certifications required under 33 U. S. C.  
118 §1341 of the federal Clean Water Act and enter into  
119 agreements in accordance with the provisions of section  
120 seven-a, article eleven of this chapter. Prior to issuing  
121 any certification the secretary shall solicit from the  
122 Division of Natural Resources reports and comments  
123 concerning the possible certification. The Division of  
124 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.

156 (g) The secretary shall receive an annual salary as  
157 provided in section two-a, article seven, chapter six of  
158 this code and is allowed and shall be paid necessary  
159 expenses incident to the performance of his or her  
160 official duties. Prior to the assumption of the duties of  
161 his or her office, the secretary shall take and subscribe  
162 to the oath required of public officers prescribed by  
163 section five, article IV of the Constitution of West  
164 Virginia and shall execute a bond, with surety approved  
165 by the Governor, in the penal sum of ten thousand  
166 dollars, which executed oath and bond will be filed in  
167 the Office of the Secretary of State. Premiums on the  
168 bond shall be paid from the department funds.

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

*Ch White*  
.....  
Chairman Senate Committee

*Jan*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Daniel Clarke*  
.....  
Clerk of the Senate

*Shirley M. Byrd*  
.....  
Clerk of the House of Delegates

*Carl Roy Tomblin*  
.....  
President of the Senate

*R.B.*  
.....  
Speaker House of Delegates

The within *is approved* ..... this  
the *18<sup>th</sup>* Day of *April* ....., 2008.

*Robert M. Anderson*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

MAR 25 2008

Time 3:45pm