

**WEST VIRGINIA LEGISLATURE  
EIGHTIETH LEGISLATURE  
REGULAR SESSION, 2012**

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**ENROLLED**

**COMMITTEE SUBSTITUTE**

**FOR**

**Senate Bill No. 562**

**(SENATORS KESSLER (MR. PRESIDENT), BEACH,  
D. FACEMIRE, FANNING, HALL, HELMICK, PREZIOSO,  
PLYMALE AND KLEMPA, ORIGINAL SPONSORS)**

**[PASSED MARCH 10, 2012; IN EFFECT FROM PASSAGE.]**

SB 562

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

2012 APR -2 PM 4:53

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2012 APR -2 PM 4: 54

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PREZIOSO, PLYMALE AND KLEMPA, *original sponsors*)**

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**[Passed March 10, 2012; in effect from passage.]**

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**AN ACT to amend and reenact §22-11-7b of the Code of West Virginia, 1931, as amended, relating to establishing a public policy for narrative water quality standards; establishing a procedure to determine compliance with the biologic component of the narrative water quality standard; and clarifying that narrative water quality rules cannot be less protective than current requirements.**

***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; procedure to determine compliance with the biologic component of the narrative water quality standard.**

1 (a) All authority to promulgate rules and implement  
2 water quality standards is vested in the Secretary of the  
3 Department of Environmental Protection.

4 (b) All meetings with the secretary or any employee of  
5 the department and any interested party which are convened  
6 for the purpose of making a decision or deliberating toward  
7 a decision as to the form and substance of the rule governing  
8 water quality standards or variances thereto shall be held in  
9 accordance with the provisions of article nine-a, chapter six  
10 of this code. When the secretary is considering the form and  
11 substance of the rules governing water quality standards, the  
12 following are not meetings pursuant to article nine-a,  
13 chapter six of this code: (i) Consultations between the  
14 department's employees or its consultants, contractors or  
15 agents; (ii) consultations with other state or federal agencies  
16 and the department's employees or its consultants, contrac-  
17 tors or agents; or (iii) consultations between the secretary,  
18 the department's employees or its consultants, contractors or  
19 agents with any interested party for the purpose of collecting  
20 facts and explaining state and federal requirements relating  
21 to a site specific change or variance.

22 (c) In order to carry out the purposes of this chapter, the  
23 secretary shall promulgate legislative rules in accordance  
24 with the provisions of article three, chapter twenty-nine-a of  
25 this code setting standards of water quality applicable to  
26 both the surface waters and groundwaters of this state.  
27 Standards of quality with respect to surface waters shall  
28 protect the public health and welfare, wildlife, fish and  
29 aquatic life and the present and prospective future uses of  
30 the water for domestic, agricultural, industrial, recreational,  
31 scenic and other legitimate beneficial uses thereof. The water  
32 quality standards of the secretary may not specify the design  
33 of equipment, type of construction or particular method  
34 which a person shall use to reduce the discharge of a pollut-  
35 ant.

36 (d) The secretary shall establish the antidegradation  
37 implementation procedures as required by 40 C. F. R.  
38 131.12(a) which apply to regulated activities that have the

39 potential to affect water quality. The secretary shall propose  
40 for legislative approval, pursuant to article three, chapter  
41 twenty-nine-a of the code, legislative rules to establish  
42 implementation procedures which include specifics of the  
43 review depending upon the existing uses of the water body  
44 segment that would be affected, the level of protection or  
45 "tier" assigned to the applicable water body segment, the  
46 nature of the activity and the extent to which existing water  
47 quality would be degraded. Any final classification determi-  
48 nation of a water as a Tier 2.5 water (Water of Special  
49 Concern) does not become effective until that determination  
50 is approved by the Legislature through the legislative rule-  
51 making process as provided in article three, chapter  
52 twenty-nine-a of the code.

53 (e) All remining variances shall be applied for and  
54 considered by the secretary and any variance granted shall  
55 be consistent with 33 U. S. C. Section 1311(p) of the Federal  
56 Water Control Act. At a minimum, when considering an  
57 application for a remining variance the secretary shall  
58 consider the data and information submitted by the appli-  
59 cant for the variance; and comments received at a public  
60 comment period and public hearing. The secretary may not  
61 grant a variance without requiring the applicant to improve  
62 the instream water quality as much as is reasonably possible  
63 by applying best available technology economically achiev-  
64 able using best professional judgment. Any such requirement  
65 will be included as a permit condition. The secretary may not  
66 grant a variance without a demonstration by the applicant  
67 that the coal remining operation will result in the potential  
68 for improved instream water quality as a result of the  
69 remining operation. The secretary may not grant a variance  
70 where he or she determines that degradation of the instream  
71 water quality will result from the remining operation.

72 (f) The secretary shall propose rules measuring compli-  
73 ance with the biologic component of West Virginia's narra-  
74 tive water quality standard requires evaluation of the  
75 holistic health of the aquatic ecosystem and a determination  
76 that the stream: (i) Supports a balanced aquatic community

77 that is diverse in species composition; (ii) contains appropri-  
78 ate trophic levels of fish, in streams that have flows suffi-  
79 cient to support fish populations; and (iii) the aquatic  
80 community is composed of benthic invertebrate assemblages  
81 sufficient to perform the biological functions necessary to  
82 support fish communities within the assessed reach, or, if the  
83 assessed reach has insufficient flows to support a fish  
84 community, in those downstream reaches where fish are  
85 present. The secretary shall propose rules for legislative  
86 approval in accordance with the provisions of article three,  
87 chapter twenty-nine-a of this code that implement the  
88 provisions of this subsection. Rules promulgated pursuant to  
89 this subsection may not establish measurements for biologic  
90 components of West Virginia's narrative water quality  
91 standards that would establish standards less protective than  
92 requirements that exist at the time of enactment of the  
93 amendments to this subsection by the Legislature during the  
94 2012 regular session.

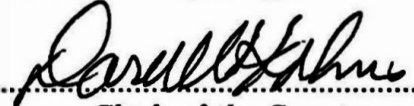
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
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Chairwoman Senate Committee

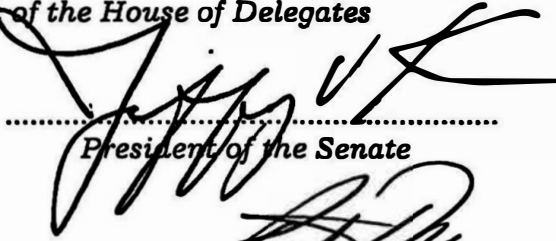
  
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Chairman House Committee

Originated in the Senate.

In effect from passage.

  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker of the House of Delegates

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2012 APR -2 PM 4:54  
SECRETARY OF STATE  
COMMONWEALTH OF VIRGINIA

The within *is approved* this the *2nd*  
Day of *April*, 2012.

  
.....  
Governor

**PRESENTED TO THE GOVERNOR**

MAR 29 2012

Time 4:10 pm