

1 **H. B. 3249**

2  
3 (By Delegates Manypenny, Doyle, Fleischauer,  
4 Brown and Perdue)

5  
6 [Introduced February 21, 2011; referred to the  
7 Committee on Government Organization then Finance.]

8 **FISCAL**  
9 **NOTE**

10 A BILL to amend and reenact §22-20-1 of the Code of West Virginia,  
11 1931, as amended, relating to the Department of Environmental  
12 Protection; creating independent Office of Environmental  
13 Advocate; appointment of Director of the Office of  
14 Environmental Advocate; and providing for salary, staff,  
15 powers, duties and rules.

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

17 That §22-20-1 of the Code of West Virginia, 1931, as amended,  
18 be amended and reenacted to read as follows:

19 **ARTICLE 20. ENVIRONMENTAL ADVOCATE.**

20 **§22-20-1. Creation of Office of Environmental Advocate;**

21 **Appointment of Director of Office of Environmental**

22 **Advocate; powers and duties; staff; salary.**

23 ~~The director of the Division of Environmental Protection shall~~  
24 ~~appoint a person to serve as the environmental advocate within the~~  
25 ~~Division of Environmental Protection, and shall adopt and~~

1 ~~promulgate rules in accordance with the provisions of article~~  
2 ~~three, chapter twenty-nine-a of this code governing and controlling~~  
3 ~~the qualifications, powers and duties of the person to be appointed~~  
4 ~~to the position of environmental advocate. The environmental~~  
5 ~~advocate shall serve at the will and pleasure of the director, who~~  
6 ~~shall also set the salary of the environmental advocate. All~~  
7 ~~funding for the office of environmental advocate shall be from~~  
8 ~~existing funds of the Division of Environmental Protection. The~~  
9 ~~director shall provide an office and secretarial and support staff~~  
10 ~~as needed.~~

11 (a) There is hereby created within the Department of  
12 Environmental Protection the Office of Environmental Advocate. The  
13 Secretary of the Department of Environmental Protection shall  
14 appoint a Director of the Office of Environmental Advocate, from a  
15 list of three qualified candidates provided by the West Virginia  
16 Environmental Council, to serve for a term of four years, effective  
17 July 1, 2011. The director shall be eligible for reappointment.  
18 The director shall be a citizen and a resident of this state and an  
19 attorney admitted to practice in this state, with a minimum of five  
20 years active practice of law. The director shall be paid a salary  
21 within the range applicable to the general counsel of the  
22 department. The director shall be responsible for the  
23 administration of the Office of Environmental Advocate, including  
24 the provision of adequate technical and professional staff,

1 including two other attorneys, offices, equipment and other  
2 facilities so as to ensure the departmental and financial  
3 independence of the Office of Environmental Advocate from the  
4 Department of Environmental Protection.

5 (b) The Office of Environmental Advocate may intervene as a  
6 party on behalf of West Virginia citizens or their organizations  
7 who may be directly impacted by any mining permit granted and or  
8 being considered by the West Virginia Department of Environmental  
9 Protection. The Office of the Environmental Advocate is further  
10 authorized and directed to:

11 (1) Evaluate all matters pending before the Department of  
12 Environmental Protection to determine if the interests of West  
13 Virginia citizens are affected;

14 (2) Petition the Department of Environmental protection, its  
15 commissions or boards to initiate proceedings to protect the  
16 interest of West Virginia citizens;

17 (3) Appear before the Department of Environmental Protection,  
18 its commissions or boards as a party on behalf of West Virginia  
19 citizens or its organizations in such cases as the advocate  
20 determines that the citizens may be directly and negatively  
21 impacted by a mining, oil and gas drilling permit or other  
22 environmental impact permit; and

23 (4) Appeal any determination, finding or order of the  
24 Department of Environmental Protection determined by the

1 Environmental Advocate to be adverse to the West Virginia citizens  
2 by whatever legal means or strategy the Environmental Advocate may  
3 determine.

4 (c) The Director of the Office of Environmental Advocate  
5 shall, within the limits of the funds available to that office,  
6 employ such legal, professional, technical, secretarial and  
7 clerical personnel as are necessary to carry out the  
8 responsibilities of that office. The salaries paid to the members  
9 of the staff of the Office of Environmental Advocate shall be  
10 consistent with and in the range applicable to salaries paid to  
11 employees of the Department of Environmental Protection. Offices  
12 for the Environmental Advocate shall be located separately from the  
13 offices of the Department of Environmental Protection and may not  
14 be associated with or connected to the other divisions of the  
15 Department of Environmental Protection. The Department of  
16 Environmental Protection shall provide funding for Offices for the  
17 Environmental Advocate.

18 (d) The Director of the Office of Environmental Advocate may  
19 be removed only for cause by The Secretary of the Department of  
20 Environmental Protection for official misconduct, incompetence,  
21 neglect or duty or gross immorality. No other provision of this  
22 code purporting to limit the term of office of any appointed  
23 official or employee or affecting the removal of any appointed  
24 official or employee is applicable to the Director of the Office of

1 Environmental Advocate.

2       (e) The Secretary of the Department of Environmental  
3 Protection shall propose rules for legislative approval in  
4 accordance with the provisions of article three, chapter twenty-  
5 nine-a of this code governing and controlling the qualifications,  
6 powers and duties of the person to be appointed to the position of  
7 Environmental Advocate.

8       (f) The current Environmental Advocate and staff shall be  
9 remain in place until July 1, 2011 and may be incorporated into the  
10 office created by this section. With the exception of the  
11 selection and dismissal of the advocate and the funding of the  
12 office, The Department of Environmental Protection will have no  
13 continuing supervisory authority over the Office of Environmental  
14 Advocate.

NOTE: The purpose of this bill is to create the Office of Environmental Advocate with an appointment of Director of the Office of Environmental Advocate, independent of the Division of Environmental Protection. The bill also provides for salary, staff, powers, duties and rules.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.