

1 **H. B. 4383**

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3 (By Delegates Diserio, Givens and Swartzmiller)

4 [Introduced February 1, 2012; referred to the

5 Committee on Energy, Industry and Labor, Economic Development and

6 Small Business then the Judiciary.]

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10 A BILL to amend and reenact §22-11-7b of the Code of West Virginia,

11 1931, as amended, relating to allowing an affected water

12 intake owner to waive the one-half mile zone requirement

13 contained in water quality standards established by the

14 Department of Environmental Protection.

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

16 That §22-11-7b of the Code of West Virginia, 1931, as amended,

17 be amended and reenacted to read as follows:

18 **ARTICLE 11. WATER POLLUTION CONTROL ACT.**

19 **§22-11-7b. Water quality standards; implementation of**

20 **antidegradation procedures; waiver of one-half mile**

21 **zone requirement.**

22 (a) All authority to promulgate rules and implement water

23 quality standards vested in the Environmental Quality Board is

1 hereby transferred from the Environmental Quality Board to the
2 Secretary of the Department of Environmental Protection as of the
3 effective date of the amendment and reenactment of this section
4 during the 2005 regular session of the Legislature: *Provided, That*
5 the legislative rule containing the state's water quality standards
6 shall remain in force and effect as if promulgated by the
7 Department of Environmental Protection until the secretary amends
8 the rule in accordance with the provisions of article three,
9 chapter twenty-nine-a of this code. Any proceedings, including
10 notices of proposed rulemaking pending before the Environmental
11 Quality Board, and any other functions, actions or authority
12 transferred to the secretary shall continue in effect as actions of
13 the secretary.

14 (b) All meetings with the secretary or any employee of the
15 department and any interested party which are convened for the
16 purpose of making a decision or deliberating toward a decision as
17 to the form and substance of the rule governing water quality
18 standards or variances thereto shall be held in accordance with the
19 provisions of article nine-a, chapter six of this code. When the
20 secretary is considering the form and substance of the rule
21 governing water quality standards, the following are not meetings
22 pursuant to article nine-a, chapter six of this code: (i)
23 Consultations between the department's employees or its
24 consultants, contractors or agents; (ii) consultations with other

1 state or federal agencies and the department's employees or its
2 consultants, contractors or agents; or (iii) consultations between
3 the secretary, the department's employees or its consultants,
4 contractors or agents with any interested party for the purpose of
5 collecting facts and explaining state and federal requirements
6 relating to a site specific change or variance.

7 (c) In order to carry out the purposes of this chapter, the
8 secretary shall promulgate legislative rules in accordance with the
9 provisions of article three, chapter twenty-nine-a of this code
10 setting standards of water quality applicable to both the surface
11 waters and groundwaters of this state. Standards of quality with
12 respect to surface waters shall protect the public health and
13 welfare, wildlife, fish and aquatic life and the present and
14 prospective future uses of the water for domestic, agricultural,
15 industrial, recreational, scenic and other legitimate beneficial
16 uses thereof. The water quality standards of the secretary may not
17 specify the design of equipment, type of construction or particular
18 method which a person shall use to reduce the discharge of a
19 pollutant.

20 (d) The secretary shall establish the antidegradation
21 implementation procedures as required by 40 C.F.R. 131.12(a) which
22 apply to regulated activities that have the potential to affect
23 water quality. The secretary shall propose for legislative
24 approval, pursuant to article three, chapter twenty-nine-a of the

1 code, legislative rules to establish implementation procedures
2 which include specifics of the review depending upon the existing
3 uses of the water body segment that would be affected, the level of
4 protection or "tier" assigned to the applicable water body segment,
5 the nature of the activity and the extent to which existing water
6 quality would be degraded. Any final classification determination
7 of a water as a Tier 2.5 water (Water of Special Concern) does not
8 become effective until that determination is approved by the
9 Legislature through the legislative rule-making process as provided
10 ~~for~~ in article three, chapter twenty-nine-a of the code.

11 (e) All remaining variances shall be applied for and considered
12 by the secretary and any variance granted shall be consistent with
13 33 U.S.C. Section 1311(p) of the Federal Water Control Act. At a
14 minimum, when considering an application for a remaining variance
15 the secretary shall consider the data and information submitted by
16 the applicant for the variance; and comments received at a public
17 comment period and public hearing. The secretary may not grant a
18 variance without requiring the applicant to improve the instream
19 water quality as much as is reasonably possible by applying best
20 available technology economically achievable using best
21 professional judgment. Any such requirement will be included as a
22 permit condition. The secretary may not grant a variance without
23 a demonstration by the applicant that the coal remaining operation
24 will result in the potential for improved instream water quality as

1 a result of the remining operation. The secretary may not grant a
2 variance where he or she determines that degradation of the
3 instream water quality will result from the remining operation.

4 (f) The one-half mile zone requirement contained in §7.2.a.2,
5 series two, title forty-seven of the West Virginia Code of State
6 Rules, is not applicable to any stream segment upstream from the
7 intake of a public water supply (Water Use Category A) if the
8 affected water intake owner waives the benefit of the rule in a
9 writing provided to the department. To remain effective, the
10 waiver must be renewed by the downstream water intake owner for
11 each permit renewal of an affected upstream discharger. Any waiver
12 under this subsection may be revoked by the owner of an affected
13 intake upon the provision of written notice to the department.
14 Upon receipt of the notice of revocation, the department shall
15 modify any upstream permit to impose requirements in accordance
16 with the one-half mile zone requirement.

NOTE: The purpose of this bill is to allow affected water intake owners to waive the one-half mile zone requirement contained in water quality standards established by the Department of Environmental Protection.

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