

1 **H. B. 4285**

2
3 (By Delegates Manypenny, Perdue,
4 Hamilton, Barrett, Ambler and Manchin)
5

6 [Introduced January 24, 2014; referred to the
7 Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

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9
10 A BILL to amend and reenact §22-26-1, §22-26-2, §22-26-3, §22-26-5,
11 §22-26-6, §22-26-7 and §22-26-8 of the Code of West Virginia,
12 1931, as amended; and to amend said code by adding thereto six
13 new sections, designated §22-26-10, §22-26-11, §22-26-12, §22-
14 26-13, §22-26-14 and §22-26-15, all relating to the Water
15 Resources Protection and Management Act; making certain
16 legislative findings regarding storage of fluids in
17 aboveground storage tanks; defining certain terms; eliminating
18 certain variance provision; requiring certain progress report
19 from the secretary; requiring certain cooperating state
20 agencies to continue funding levels for stream gaging network;
21 requiring notification of inability to continue funding of
22 stream gaging network; requiring certain information regarding
23 private wells be submitted to the secretary; requiring
24 secretary to provide annual update on implementation of State
25 Water Resources Management Plan; adopting State Water

1 Resources Management Plan; requiring the Department of
2 Environmental Protection to report biennially to commission
3 regarding implementation of plan and survey results; requiring
4 large quantity users to submit certain report annually;
5 requiring registration and inventory of certain aboveground
6 storage tanks; making it unlawful to construct, maintain or
7 use any aboveground storage tank without secretary's
8 authorization; requiring secretary to develop a regulatory
9 program and providing guidelines for new and existing
10 aboveground storage tanks; requiring inspections, monitoring
11 and testing; providing for administrative orders and
12 reconsideration by secretary; providing for civil penalties
13 and injunctive relief; and authorizing rule making.

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

15 That §22-26-1, §22-26-2, §22-26-3, §22-26-5, §22-26-6, §22-26-
16 7 and §22-26-8 of the Code of West Virginia, 1931, as amended, be
17 amended and reenacted; and that said code be amended by adding
18 thereto six new sections, designated §22-26-10, §22-26-11, §22-26-
19 12, §22-26-13, §22-26-14 and §22-26-15, all to read as follows:

20 **ARTICLE 26. WATER RESOURCES PROTECTION ACT.**

21 **§22-26-1. Short title; legislative findings.**

22 (a) *Short title.* -- This article may be known and cited as the
23 Water Resources Protection and Management Act.

24 (b) *Legislative findings.* --

1 (1) The West Virginia Legislature finds that it is the public
2 policy of the State of West Virginia to protect and conserve the
3 water resources for the state and to provide for the public
4 welfare. The state's water resources are vital natural resources
5 of the state that are essential to maintain, preserve and promote
6 quality of life and economic vitality of the state.

7 (2) The West Virginia Legislature further finds that it is the
8 public policy of the state that the water resources of the state be
9 available for the benefit of the citizens of West Virginia,
10 consistent with and preserving all other existing rights and
11 remedies recognized in common law or by statute, while also
12 preserving the resources within its sovereign powers for the common
13 good.

14 (3) The West Virginia Legislature further finds that the water
15 use survey conducted by the Department of Environmental Protection
16 is a valuable tool for water resources assessment, protection and
17 management.

18 (4) The West Virginia Legislature further finds that the water
19 resources of this state have not been fully measured or assessed
20 and that a program to accurately measure and assess the state's
21 water resources is necessary to protect, conserve and better
22 utilize the water resources of this state.

23 (5) The West Virginia Legislature further finds that the
24 survey information collected and analyzed by the department of

1 ~~Environmental Protection~~ has identified the need for a statewide
2 water resources management plan.

3 (6) The West Virginia Legislature further finds that the
4 development of a state water resources management plan is in the
5 best interest of the state and its citizens and will promote the
6 protection of this valuable natural resource; promote its use for
7 the public good; and enhance its use and development for tourism,
8 industry and other economic development for the benefit of the
9 state and its citizens.

10 (7) The West Virginia Legislature further finds that
11 incomplete data collection from an inadequate groundwater
12 monitoring system continues to hamper efforts to study, develop and
13 protect the state's water resources and will be a major obstacle in
14 the development of a water resources management plan.

15 (8) The Legislature further finds that large quantities of
16 fluids are stored in aboveground storage tanks within the State of
17 West Virginia and that emergency situations involving these
18 substances can and will arise which may present a hazard to human
19 health, safety or the environment. The Legislature also recognizes
20 that some of these fluids have been stored in aboveground storage
21 tanks in the state in a manner insufficient to protect human
22 health, safety or the state's water resources.

23 **§22-26-2. Definitions.**

24 For purposes of this article, the following words have the

1 meanings assigned unless the context indicates otherwise:

2 "Aboveground storage tank" means any tank or container where
3 ninety percent or more of the tank volume is located above the
4 ground surface, but does not include farm or residential tanks or
5 containers with a capacity of eleven hundred gallons or less and
6 used for noncommercial purposes.

7 ~~(a)~~ "Baseline average" means the average amount of water
8 withdrawn by a large quantity user over a representative historical
9 time period as defined by the secretary.

10 ~~(b)~~ "Beneficial use" means uses that include, but are not
11 limited to, public or private water supplies, agriculture, tourism,
12 commercial, industrial, coal, oil and gas and other mineral
13 extraction, preservation of fish and wildlife habitat, maintenance
14 of waste assimilation, recreation, navigation and preservation of
15 cultural values.

16 ~~(c)~~ "Commercial well" means a well that serves small
17 businesses and facilities in which water is the prime ingredient of
18 the service rendered, including wells drilled to support horizontal
19 well operations.

20 ~~(d)~~ "Community water system" means a public water system that
21 pipes water for human consumption to at least fifteen service
22 connections used by year-round residents or one that regularly
23 serves at least twenty-five residents.

24 ~~(e)~~ "Consumptive withdrawal" means any withdrawal of water

1 which returns less water to the water body than is withdrawn.

2 "Department" means the West Virginia Department of
3 Environmental Protection.

4 ~~(f)~~ "Farm use" means irrigation of any land used for general
5 farming, forage, aquaculture, pasture, orchards, nurseries, the
6 provision of water supply for farm animals, poultry farming or any
7 other activity conducted in the course of a farming operation.

8 ~~(g)~~ "Industrial well" means a well used in industrial
9 processing, fire protection, washing, packing or manufacturing of
10 a product excluding food and beverages or similar nonpotable uses.

11 ~~(h)~~ "Interbasin transfer" means the permanent removal of water
12 from the watershed from which it is withdrawn.

13 ~~(i)~~ "Large quantity user" means any person who withdraws over
14 ~~seven~~ three hundred ~~fifty~~ thousand gallons of water in ~~a~~ any
15 ~~calendar month~~ thirty-day period from the state's waters and any
16 person who bottles water for resale regardless of quantity
17 withdrawn.

18 ~~(j)~~ "Maximum potential" means the maximum designed capacity of
19 a facility to withdraw water under its physical and operational
20 design.

21 ~~(k)~~ "Noncommunity nontransient water system" means a public
22 water system that serves at least twenty-five of the same persons
23 over six months per year.

24 ~~(l)~~ "Nonconsumptive withdrawal" means any withdrawal of water

1 which is not a consumptive withdrawal as defined in this section.

2 "Operator" means any person in control of, or having
3 responsibility for, the daily operation of an aboveground storage
4 tank.

5 "Owner" means a person who owns an aboveground storage tank
6 used for the storage of any fluid.

7 ~~(m)~~ "Person", "persons" or "people" means an individual,
8 public and private business or industry, public or private water
9 service and governmental entity.

10 ~~(n)~~ "Secretary" means the Secretary of the Department of
11 Environmental Protection or his or her designee.

12 ~~(o)~~ "Transient water system" means a public water system that
13 serves at least twenty-five transient people at least sixty days a
14 year.

15 ~~(p)~~ "Test well" means a well that is used to obtain
16 information on groundwater quantity, quality, aquifer
17 characteristics and availability of production water supply for
18 manufacturing, commercial and industrial facilities.

19 ~~(q)~~ "Water resources", "water" or "waters" means any and all
20 water on or beneath the surface of the ground, whether percolating,
21 standing, diffused or flowing, wholly or partially within this
22 state, or bordering this state and within its jurisdiction and
23 includes, without limiting the generality of the foregoing, natural
24 or artificial lakes, rivers, streams, creeks, branches, brooks,

1 ponds, impounding reservoirs, springs, wells, watercourses and
 2 wetlands: *Provided*, That farm ponds, industrial settling basins
 3 and ponds and waste treatment facilities are excluded from the
 4 waters of the state.

5 ~~(r)~~ "Watershed" means a hydrologic unit utilized by the United
 6 States Department of Interior's geological survey, adopted in
 7 1974, as a framework for detailed water and related land-resources
 8 planning.

9 ~~(s)~~ "Withdrawal" means the removal or capture of water from
 10 water resources of the state regardless of whether it is
 11 consumptive or nonconsumptive: *Provided*, That water encountered
 12 during coal, oil, gas, water well drilling and initial testing of
 13 water wells, or other mineral extraction and diverted, but not used
 14 for any purpose and not a factor in low-flow conditions for any
 15 surface water or groundwater, is not ~~deemed~~ a withdrawal.

16 **§22-26-3. Waters claimed by state; water resources protection**
 17 **survey; registration requirements; agency**
 18 **cooperation; information gathering.**

19 (a) The waters of the State of West Virginia are hereby
 20 claimed as valuable public natural resources held by the state for
 21 the use and benefit of its citizens. The state shall manage ~~the~~
 22 ~~quantity of~~ and protect its waters effectively for present and
 23 future use and enjoyment and for the protection of the environment.

1 Therefore, it is necessary for the state to determine the nature
2 and extent of its water resources, the quantity of water being
3 withdrawn or otherwise used and the nature of the withdrawals or
4 other uses: *Provided*, That ~~no~~ the provisions of this article ~~may~~
5 ~~be construed to~~ do not amend or limit any other rights and remedies
6 created by statute or common law in existence on the date of the
7 enactment of this article.

8 (b) The secretary shall conduct an ongoing water resources
9 survey of consumptive and nonconsumptive surface water and
10 groundwater withdrawals by large quantity users in this state. The
11 secretary shall determine the form and format of the information
12 submitted, including the use of electronic submissions. The
13 secretary shall establish and maintain a statewide registration
14 program to monitor large quantity users of water resources of this
15 state beginning in 2006.

16 (c) Large quantity users, except those who purchase water from
17 a public or private water utility or other service that is
18 reporting its total withdrawal, shall register with the department
19 ~~of Environmental Protection~~ and provide all requested survey
20 information regarding withdrawals of the water resources. Multiple
21 withdrawals from state water resources that are made or controlled
22 by a single person and used at one facility or location ~~shall be~~
23 are considered a single withdrawal of water. Water withdrawals for
24 self-supplied farm use and private households ~~will~~ shall be

1 estimated. Water utilities regulated by the Public Service
2 Commission pursuant to article two, chapter twenty-four of this
3 code are exempted from providing information on interbasin
4 transfers to the extent those transfers are necessary to provide
5 water utility services within the state.

6 (d) Except as provided in subsection (f) of this section,
7 large quantity users who withdraw water from a West Virginia water
8 resource shall comply with the survey and registration requirements
9 of this article. Registration shall be maintained annually by
10 every large quantity user ~~by certifying,~~ on forms and in a manner
11 prescribed by the secretary. ~~that the amount withdrawn in the~~
12 ~~previous calendar year varies by no more than ten percent from the~~
13 ~~users' baseline average or by certifying the change in usage.~~

14 (e) The secretary shall maintain a listing of all large
15 quantity users and each such user's baseline average water
16 withdrawal.

17 (f) The secretary shall make a good faith effort to obtain
18 survey and registration information from persons who are
19 withdrawing water from in-state water resources, but who are
20 located outside the state borders.

21 (g) All state agencies and local governmental entities that
22 have a regulatory, research, planning or other function relating to
23 water resources, including, but not limited to, the state
24 Geological and Economic Survey, the Division of Natural Resources,

1 the Public Service Commission, the Bureau for Public Health, the
2 Commissioner of the Department of Agriculture, the Division of
3 Homeland Security and Emergency Management, Marshall University,
4 West Virginia University and regional, county and municipal
5 planning authorities may enter into interagency agreements with the
6 secretary and shall cooperate by: (i) Providing information
7 relating to the water resources of the state; (ii) providing any
8 necessary assistance to the secretary in effectuating the purposes
9 of this article; and (iii) assisting in the development of a state
10 water resources management plan. The secretary shall determine the
11 form and format of the information submitted by these agencies.

12 (h) Persons required to participate in the survey and
13 registration shall provide any reasonably available information on
14 stream flow conditions that impact withdrawal rates.

15 (i) Persons required to participate in the survey and
16 registration shall provide the most accurate information available
17 on water withdrawal during seasonal conditions and future potential
18 maximum withdrawals or other information that the secretary
19 determines is necessary for the completion of the survey or
20 registration: *Provided*, That a coal-fired electric generating
21 facility shall also report the nominal design capacity of the
22 facility, which is the quantity of water withdrawn by the
23 facility's intake pumps necessary to operate the facility during a
24 calendar day.

1 (j) The secretary shall, to the extent reliable water
2 withdrawal data is reasonably available from sources other than
3 persons required to provide data and participate in the survey and
4 registration, utilize that data to fulfill the requirements of this
5 section. If the data is not reasonably available to the secretary,
6 persons required to participate in the survey and registration are
7 required to provide the data. Altering locations of intakes and
8 discharge points that result in an impact to the withdrawal of the
9 water resources ~~by an amount of ten percent or more from the~~
10 ~~consecutive baseline average~~ shall also be reported.

11 (k) The secretary shall report annually to the Joint
12 Legislative Oversight Commission on State Water Resources on the
13 survey results. The secretary shall also make a progress report
14 ~~every three years~~ annually on the ~~development~~ implementation of the
15 state Water Resources Management Plan and any significant changes
16 that may have occurred since the ~~survey report~~ State Water
17 Resources Management Plan was submitted in ~~two thousand six~~ 2013.

18 (l) In addition to any requirements for completion of the
19 survey established by the secretary, the survey must accurately
20 reflect both actual and maximum potential water withdrawal. Actual
21 withdrawal shall be established through metering, measuring or
22 alternative accepted scientific methods to obtain a reasonable
23 estimate or indirect calculation of actual use.

24 (m) The secretary shall make recommendations to the Joint

1 Legislative Oversight Commission created in section five of this
2 article relating to the implementation of a water quantity
3 management strategy for the state or regions of the state where the
4 quantity of water resources are found to be currently stressed or
5 likely to be stressed due to emerging beneficial or other uses,
6 ecological conditions or other factors requiring the development of
7 a strategy for management of these water resources.

8 (n) The secretary may propose rules pursuant to article three,
9 chapter twenty-nine-a of this code as necessary to implement the
10 survey registration or plan requirements of this article.

11 (o) The secretary is authorized to enter into cooperative
12 agreements with local, state and federal agencies and private
13 policy or research groups to obtain federal matching funds, conduct
14 research and analyze survey and registration data and other
15 agreements as may be necessary to carry out his or her duties under
16 this article.

17

(p) The department, the Division of Natural Resources, the
18 Division of Highways, and the conservation agency (cooperating
19 state agencies) shall continue providing matching funds for the
20 United States Geological Survey's stream gaging network to the
21 maximum extent practicable. Should a cooperating state agency
22 become unable to maintain its contribution level, it should notify
23 the United States Geological Survey and the commission of its
24 inability to continue funding for the subsequent federal fiscal

1 year by July 1, in order to allow for the possible identification
2 of alternative funding resources.

3 **§22-26-5. Joint Legislative Oversight Commission on State Water**
4 **Resources.**

5 (a) The President of the Senate and the Speaker of the House
6 of Delegates shall each designate five members of their respective
7 houses, at least one of whom shall be a member of the minority
8 party, to serve on a Joint Legislative Oversight Commission charged
9 with immediate and ongoing oversight of the water resources survey,
10 registration and development of a State Water Resources Management
11 Plan. This commission shall be known as the Joint Legislative
12 Oversight Commission on State Water Resources and shall regularly
13 investigate and monitor all matters relating to ~~the~~ water
14 resources, including the survey and plan.

15 (b) The expenses of the commission, including the cost of
16 conducting the survey and monitoring any subsequent strategy and
17 those incurred in the employment of legal, technical,
18 investigative, clerical, stenographic, advisory and other
19 personnel, are to be approved by the Joint Committee on Government
20 and Finance and paid from legislative appropriations.

21 **§22-26-6. Mandatory survey and registration compliance.**

22 (a) The water resources survey and subsequent registry will
23 provide critical information for protection of the state's water
24 resources and, thus, mandatory compliance with the survey and

1 registry is necessary.

2 (b) All large quantity users who withdraw water from a West
3 Virginia water resource shall complete the survey and register such
4 use with the department. ~~of Environmental Protection~~ Any person
5 who fails to complete the survey or register, provides false or
6 misleading information on the survey or registration, or fails to
7 provide other information as required by this article may be
8 subject to a civil administrative penalty not to exceed \$5,000 to
9 be collected by the secretary consistent with the secretary's
10 authority pursuant to this chapter. Every thirty days after the
11 initial imposition of the civil administrative penalty, another
12 penalty may be assessed if the information is not provided. The
13 secretary shall provide written notice of failure to comply with
14 this section thirty days prior to assessing the first
15 administrative penalty.

16 **§22-26-7. Secretary authorized to log wells; collect data.**

17 (a) In order to obtain important information about the
18 state's surface and groundwater, the secretary is authorized to
19 collect scientific data on surface and groundwater and to enter
20 into agreements with local and state agencies, the federal
21 government and private entities to obtain this information.

22 ~~(1)~~ (b) Any person who installs a community water system,
23 noncommunity nontransient water system, transient water system,
24 commercial well, industrial or test well shall notify the secretary

1 of his or her intent to drill a water well no less than ten days
2 prior to commencement of drilling. The ten-day notice is the
3 responsibility of the owner, but may be given by the drilling
4 contractor.

5 ~~(2)~~ (c) The secretary has the authority to gather data,
6 including driller and geologist logs, run electric and other
7 remote-sensing logs and devices and perform physical
8 characteristics tests on nonresidential and multifamily water
9 wells.

10 ~~(3)~~ (d) The drilling contractor shall submit to the secretary
11 a copy of the well completion forms submitted to the Division of
12 Health for a community water system, noncommunity nontransient
13 water system, transient water system, commercial well, industrial
14 or test well. The drilling contractor shall also provide the well
15 GPS location and depth to groundwater on the well report submitted
16 to the secretary.

17 ~~(4)~~ (e) Any person who fails to notify the secretary prior to
18 drilling a well or impedes collection of information by the
19 secretary under this section is in violation of the Water Resources
20 Protection and Management Act and is subject to the civil
21 administrative penalty authorized by section six of this article.

22 ~~(5)~~ (f) Any well contracted for construction by the secretary
23 for groundwater or geological testing must be constructed at a
24 minimum to well design standards as promulgated by the ~~Division of~~

1 ~~Health~~ Bureau for Public Health. Any wells contracted for
2 construction by the secretary for groundwater or geological testing
3 that would at a later date be converted to a public use water well
4 must be constructed to comport to state public water design
5 standards.

6 **§22-26-8. State Water Resources Management Plan; powers and duty**
7 **of secretary.**

8 (a) The secretary ~~of the Department of Environmental~~
9 ~~Protection~~ shall oversee the development of a State Water Resources
10 Management Plan to be completed no later than November 30, 2013.
11 The plan shall be reviewed and revised as needed after its initial
12 adoption. The plan shall be developed with the cooperation and
13 involvement of local and state agencies with regulatory, research
14 or other functions relating to water resources including, but not
15 limited to, those agencies and institutions of higher education set
16 forth in section three of this article and a representative of
17 large quantity users. The State Water Resources Management Plan
18 shall be developed utilizing the information obtained pursuant to
19 said section and any other relevant information available to the
20 secretary.

21 (b) The secretary shall develop definitions for use in the
22 state Water Resources Management Plan for terms that are defined
23 differently by various state and federal governmental entities as
24 well as other terms necessary for implementation of this article.

1 (c) The secretary shall continue to develop and obtain the
2 following:

3 (1) An inventory of the surface water resources of each region
4 of this state, including an identification of the boundaries of
5 significant watersheds and an estimate of the safe yield of such
6 sources for consumptive and nonconsumptive uses during periods of
7 normal conditions and drought;

8 (2) A listing of each consumptive or nonconsumptive withdrawal
9 by a large quantity user, including the amount of water used,
10 location of the water resources, the nature of the use, location of
11 each intake and discharge point by longitude and latitude where
12 available and, if the use involves more than one watershed or
13 basin, the watersheds or basins involved and the amount
14 transferred;

15 (3) A plan for the development of the infrastructure necessary
16 to identify the groundwater resources of each region of this state,
17 including an identification of aquifers and groundwater basins and
18 an assessment of their safe yield, prime recharge areas, recharge
19 capacity, consumptive limits and relationship to stream base flows;

20 (4) After consulting with the appropriate state and federal
21 agencies, assess and project the existing and future nonconsumptive
22 use needs of the water resources required to serve areas with
23 important or unique natural, scenic, environmental or recreational
24 values of national, regional, local or statewide significance,

1 including national and state parks; designated wild, scenic and
2 recreational rivers; national and state wildlife refuges; and the
3 habitats of federal and state endangered or threatened species;

4 (5) Assessment and projection of existing and future
5 consumptive use demands;

6 (6) Identification of potential problems with water
7 availability or conflicts among water uses and users including, but
8 not limited to, the following:

9 (A) A discussion of any area of concern regarding historical
10 or current conditions that indicate a low-flow condition or where
11 a drought or flood has occurred or is likely to occur that
12 threatens the beneficial use of the surface water or groundwater in
13 the area; and

14 (B) Current or potential in-stream or off-stream uses that
15 contribute to or are likely to exacerbate natural low-flow
16 conditions to the detriment of the water resources;

17 (7) Establish criteria for designation of critical water
18 planning areas comprising any significant hydrologic unit where
19 existing or future demands exceed or threaten to exceed the safe
20 yield of available water resources;

21 (8) An assessment of the current and future capabilities of
22 public water supply agencies and private water supply companies to
23 provide an adequate quantity and quality of water to their service
24 areas;

1 (9) An assessment of flood plain and stormwater management
2 problems;

3 (10) Efforts to improve data collection, reporting and water
4 monitoring where prior reports have found deficiencies;

5 (11) A process for identifying projects and practices that are
6 being, or have been, implemented by water users that reduce the
7 amount of consumptive use, improve efficiency in water use, provide
8 for reuse and recycling of water, increase the supply or storage of
9 water or preserve or increase groundwater recharge and a
10 recommended process for providing appropriate positive recognition
11 of such projects or practices in actions, programs, policies,
12 projects or management activities;

13 (12) An assessment of both structural and nonstructural
14 alternatives to address identified water availability problems,
15 adverse impacts on water uses or conflicts between water users,
16 including potential actions to develop additional or alternative
17 supplies, conservation measures and management techniques;

18 (13) A review and evaluation of statutes, rules, policies and
19 institutional arrangements for the development, conservation,
20 distribution and emergency management of water resources;

21 (14) A review and evaluation of water resources management
22 alternatives and recommended programs, policies, institutional
23 arrangements, projects and other provisions to meet the water
24 resources needs of each region and of this state; and

1 (15) Proposed methods of implementing various recommended
2 actions, programs, policies, projects or management activities.

3 (d) The State Water Resources Management Plan shall consider:

4 (1) The interconnections and relationships between groundwater
5 and surface water as components of a single hydrologic resource;

6 (2) Regional or watershed water resources needs, objectives
7 and priorities;

8 (3) Federal, state and interstate water resource policies,
9 plans, objectives and priorities, including those identified in
10 statutes, rules, regulations, compacts, interstate agreements or
11 comprehensive plans adopted by federal and state agencies and
12 compact basin commissions;

13 (4) The needs and priorities reflected in comprehensive plans
14 and zoning ordinances adopted by a county or municipal government;

15 (5) The water quantity and quality necessary to support
16 reasonable and beneficial uses;

17 (6) A balancing and encouragement of multiple uses of water
18 resources, recognizing that all water resources of this state are
19 capable of serving multiple uses and human needs, including
20 multiple uses of water resources for reasonable and beneficial
21 uses;

22 (7) The distinctions between short-term and long-term
23 conditions, impacts, needs and solutions to ensure appropriate and
24 cost-effective responses to water resources issues; and

1 (8) Application of the principle of equal and uniform
2 treatment of all water users that are similarly situated without
3 regard to established political boundaries.

4 (e) In November of each year, the secretary shall report to
5 the Joint Legislative Oversight Commission on State Water Resources
6 on the implementation of the state Water Resources Management Plan.
7 ~~The report on the water resources plan shall include benchmarks for~~
8 ~~achieving the plan's goals and time frames for meeting them.~~

9 (f) ~~Upon adoption of the state Water Resources Management Plan~~
10 ~~by the Legislature, the report requirements of this article shall~~
11 ~~be superceded by the plan and subsequent reports shall be on the~~
12 ~~survey results and the water resources plan. If the plan is not~~
13 ~~adopted a detailed report discussing the provisions of this section~~
14 ~~as well as progress reports on the development of the plan shall be~~
15 ~~submitted every three years. The State Water Resources Management~~
16 ~~Plan is hereby adopted. Persons identified as large quantity users~~
17 ~~prior to the effective date of this subsection shall report actual~~
18 ~~monthly water withdrawals for the previous calendar year by March~~
19 ~~31 of each succeeding year. Persons identified as large quantity~~
20 ~~users on or after the effective date of this subsection shall~~
21 ~~submit their initial annual report no later than March 31, 2016,~~
22 ~~and subsequent annual reports by March 31 of each year after that.~~
23 **§22-26-10. Registration of existing aboveground storage tanks.**

24 (a) To assure protection of the water resources of the state,

1 the secretary shall compile an inventory of aboveground storage
2 tanks in existence on the effective date of this section. To
3 develop the inventory, the secretary shall promulgate and propose
4 emergency and legislative rules for legislative approval in
5 accordance with the provisions of article three, chapter twenty-
6 nine-a of this code regarding registration requirements.

7 (b) Within thirty days of the effective date of the rules
8 referred to in subsection (a) of this section, owners or operators
9 shall register each aboveground storage tank and provide an
10 inventory of its contents to the secretary.

11 **§22-26-11. Permit required; Aboveground Storage Tank Regulatory**
12 **Program.**

13 (a) Without authorization from the secretary, it is unlawful
14 for any person to construct, maintain or use any aboveground
15 storage tank for the storage of any fluid other than water, without
16 first obtaining a permit from the secretary.

17 (b) To assure further protection of the water resources of the
18 state, the secretary shall develop a regulatory program for new and
19 existing aboveground storage tanks. At a minimum, the program
20 shall include the following:

21 (1) A requirement to submit a verified application for a
22 permit containing such information as may be proscribed by the
23 secretary;

24 (2) Performance standards for design, construction,

1 installation, maintenance, release detection and prevention and
2 secondary containment;

3 (3) Requirements for maintaining a leak detection system,
4 inventory control systems together with tank testing, or a
5 comparable system or method designed to identify releases from
6 aboveground storage tanks in a manner consistent with the
7 protection of human health and the environment;

8 (4) Requirements for maintaining records of any monitoring or
9 leak detection system or inventory control system or tank testing
10 system;

11 (5) Requirements for reporting releases and corrective action
12 taken in response to a release;

13 (6) Requirements for taking corrective action in response to
14 a release from an aboveground storage tank;

15 (7) Requirements for the closure of aboveground storage tanks
16 to prevent future releases of fluids to the state's water
17 resources;

18 (8) Requirements for certification of installation, removal,
19 retrofit, testing and inspection of aboveground storage tanks and
20 leak detection systems by a registered professional engineer or
21 other qualified person;

22 (9) The assessment of permit application and registration fees
23 as determined by the secretary;

24 (10) Permit issuance only after the application and any other

1 supporting documents have been submitted, reviewed and approved by
2 the secretary, and that permits may be issued with certain
3 conditions or contingencies;

4 (11) A requirement that any aboveground storage tank work
5 begin within six months from the date the permit was issued and
6 completed within one year of commencement. If the work has not
7 started or is not completed during the stated time periods the
8 permit expires and a new permit is required, unless a written
9 extension is granted by the secretary. An extension may be granted
10 only if the applicant can demonstrate that the delay was not
11 deliberate and that the delay will not present harm to the general
12 public or the environment;

13 (12) A procedure for the administrative resolution of
14 violations including the assessment of administrative civil
15 penalties; and

16 (13) A procedure for any person adversely affected by a
17 decision or order of the secretary relating to the aboveground
18 storage tank program to appeal to the Environmental Quality Board,
19 pursuant to the provisions of article one, chapter twenty-two-b of
20 this code.

21 **§22-26-12. Inspections, monitoring and testing.**

22 (a) Any owner or operator of an aboveground storage tank
23 shall, upon request of the director, furnish information relating
24 to the tanks, their associated equipment and contents, conduct

1 reasonable monitoring or testing, permit the secretary or his or
2 her authorized representative at all reasonable times to have
3 access to, and to copy all records relating to the tanks and permit
4 the secretary or his or her authorized representative to have
5 access to the aboveground storage tank for corrective action.

6 (b) The secretary or his or her authorized representative may:

7 (1) Enter at reasonable times any establishment or other place
8 where an aboveground storage tank is located;

9 (2) Inspect and obtain samples from any person of any fluids
10 contained in the tank;

11 (3) Conduct monitoring or testing of the tanks, associated
12 equipment, contents or surrounding soils, air, surface, water or
13 groundwater; and

14 (4) Take any necessary corrective action.

15 **§22-26-13. Administrative orders; requests for reconsideration.**

16 (a) Whenever on the basis of any information, the secretary
17 determines that any person is in violation of any requirement
18 related to the aboveground storage program or any rule promulgated
19 thereunder, the secretary may issue an order stating with
20 reasonable specificity the nature of the violation and requiring
21 compliance within a reasonable specified time period. The
22 secretary may, except as provided in subsection (b) of this
23 section, stay any order he or she issues upon application, until
24 the order is reviewed by the Environmental Quality Board.

1 (b) Any person issued an order may file a notice of request
2 for reconsideration with the secretary not more than seven days
3 from the issuance of the order. The notice of request for
4 reconsideration shall identify the order to be reconsidered and
5 shall set forth in detail the reasons for which reconsideration is
6 requested. The secretary shall grant or deny the request for
7 reconsideration within twenty days of the filing of the notice of
8 request of reconsideration.

9 **§22-26-14. Civil penalties and injunctive relief.**

10 (a) The secretary may commence a civil action for temporary
11 and permanent injunctive relief to compel compliance with any
12 provision or requirement of the aboveground storage tank program.

13 (b) The secretary may also commence a civil action for civil
14 penalties for any violation of any provision or requirement of the
15 aboveground storage tank program.

16 (c) Venue for the civil actions authorized by subsections (a)
17 and (b) of this section is in the circuit court of Kanawha County
18 or the circuit court of the county in which an aboveground storage
19 tank is located.

20 **§22-26-15. Promulgation of rules.**

21 The secretary may promulgate and propose emergency and
22 legislative rules for legislative approval in accordance with the
23 provisions of article three, chapter twenty-nine-a of this code to
24 implement the aboveground storage tank program.

NOTE: The purpose of this bill is to amend the Water Resources Protection and Management Act to incorporate recommendations from the state Water Resources Management Plan (Plan). Those recommendations include: Changing the definition of a large quantity user to a person who uses at least 300,000 gallons of water in any thirty-day period; Requiring large quantity users to report actual water withdrawals or usage for a calendar year on an annual basis; Requiring any agency that contributes to funding the stream gage network to notify the commission and the United States Geological Survey if the agency cannot maintain its level of funding; Requiring drilling contractors or well owners to report the depth to groundwater of drilled wells; adopting the Plan; and Requiring the Department of Environmental Protection to report annually to the commission on the implementation of the plan and survey results. The bill also requires registration of existing aboveground storage tanks and directs the Secretary of the Department of Environmental Protection to develop a program to regulate new and existing aboveground storage tanks.

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