

H. B. 4530

(By Delegates Lane, Raines and McCuskey)
[Introduced February 14, 2014; referred to the
Committee on the Judiciary then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §15-5B-3a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto eleven new sections, designated §22-26-10, §22-26-11, §22-26-12, §22-26-13, §22-26-14, §22-26-15, §22-26-16, §22-26-17, §22-26-18, §22-26-19 and §22-26-20, all relating to creating an aboveground storage tank registry; creating the Industrial Accident Citizen's Protection Fund; creating a bond requirement, increased bonding requirements and a voucher for persons residing in the counties affected by the recent water emergency; providing health screening; requiring agency review, revision, and reporting concerning rules made by each state agency; requiring the implementation of recommendations from United States Chemical Safety Board; allowing citizen suits to enforce provisions; setting a baseline of severance tax revenue for purposes of future tax severance allocation;

1 creating West Virginia Safe Water Fund; providing legislative
2 intent and permissible uses of distributed revenues;
3 specifying duties of State Treasurer and State Tax
4 Commissioner; allowing audits and rulemaking; setting a
5 baseline of oil and natural gas severance tax revenue
6 collections; providing for the distribution of funds collected
7 in excess of that baseline; providing initial funding of the
8 West Virginia Safe Water Fund to consist of twenty-five
9 percent of excess proceeds from oil and natural gas severance
10 taxes; expressing legislative intent not to encumber, spend,
11 promise or otherwise use any interest from the West Virginia
12 Safe Water Fund for a term of six years following the creation
13 of the West Virginia Safe Water Fund; expressing legislative
14 intent that the principal of the West Virginia Future Fund be
15 inviolable and not be encumbered, spent, promised or otherwise
16 disturbed; requiring moneys to be expended solely for
17 improving and protecting safe water infrastructure; providing
18 for secondary intake and raw water storage requirements; and
19 requiring the Public Service Commission to study
20 interconnectivity of water systems.

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

22 That §15-5B-3a of the Code of West Virginia, 1931, as amended,
23 be amended and reenacted; and that said code be amended by adding
24 thereto eleven new sections, designated §22-26-10, §22-26-11,

1 §22-26-12, §22-26-13, §22-26-14, §22-26-15, §22-26-16, §22-26-17,
2 §22-26-18, §22-26-19 and §22-26-20, all to read as follows:

3 **CHAPTER 15. PUBLIC SAFETY.**

4 **ARTICLE 5B. MINE AND INDUSTRIAL ACCIDENT RAPID RESPONSE SYSTEM.**

5 **§15-5B-3a. Industrial facility emergency event notification and**
6 **access.**

7 (a) *Definitions.* -- Unless the context in which used clearly
8 requires a different meaning, the following words and phrases as
9 used in this section have the following meanings:

10 (1) "Industrial facility" means:

11 (A) Any facility that is required to submit a risk management
12 plan to the United States Environmental Protection Agency pursuant
13 to regulations promulgated under Section 112(r) of the Clean Air
14 Act of 1990, 42 U.S.C. §7412(r), including the property upon which
15 the facility is located and any buildings appurtenant thereto or
16 associated therewith, including storage facilities; or

17 (B) A facility which is a factory, mill, plant, chemical
18 storage facility or refinery, other than a coal facility or a site
19 in which a gas well is undergoing hydraulic fracturing, including
20 the property upon which a factory, mill, plant, chemical storage
21 facility or refinery is located and any buildings appurtenant
22 thereto or associated therewith, including storage facilities,
23 found by the director to be of a type to have a reasonable

1 potential to have an emergency event: *Provided*, That before any
2 facility may be subject to the provisions of this section, the
3 owner or operator of each facility must be placed on actual written
4 notice via certified mail, return receipt requested, of the
5 facility's inclusion thereon, as well as the requirements imposed
6 by the provisions of this section and any rules promulgated
7 thereunder: *Provided, however*, That the list required by the
8 provisions of this section shall be filed with the President of the
9 Senate and the Speaker of the House of Delegates by the first day
10 of the 2010 legislative session.

11 (2) "Appropriate state and local officials" means the Governor
12 or his or her representative, the Director of the Division of
13 Homeland Security and Emergency Management, a representative
14 designated by the Director of the Division of Homeland Security and
15 Emergency Management who has been trained and qualified by the
16 Federal Emergency Management Agency's (FEMA) National Incident
17 Management System (NIMS) program and/or a representative of a local
18 emergency management agency who has been trained and qualified by
19 FEMA's NIMS program.

20 (3) "Director" means the Director of the Division of Homeland
21 Security and Emergency Management.

22 (4) "Emergency event" means an unplanned event, including, but
23 not limited to, an explosion, a fire that cannot be contained
24 within fifteen minutes of discovery, the release of a reportable

1 quantity, as specified in 40 C.F.R. §302 (2009) or its successor,
2 of an extremely hazardous substance listed in the appendices to 40
3 C.F.R. §355 (2009) or its successor, discharge of a substance into
4 the waters of the state which renders those waters nonpotable, loss
5 of life or serious personal injury at an industrial facility:
6 *Provided,* That the director may, by promulgation of a legislative
7 rule, establish a higher threshold report level for a particular
8 extremely hazardous substance than is set in the aforementioned
9 Code of Federal Regulations citation.

10 (b) *Reporting requirement.* --

11 (1) Within fifteen minutes of the industrial facility
12 ascertaining the occurrence of an emergency event at an industrial
13 facility, the industrial facility shall contact the Mine and
14 Industrial Accident Emergency Operations Center by telephone at the
15 statewide telephone number established by the director or shall
16 contact a local emergency telephone system, as defined in article
17 six, chapter twenty-four of this code, by telephone at the number
18 established by the system to communicate the occurrence of the
19 emergency event: *Provided,* That if telephone communications fail
20 for any reason, the industrial facility shall contact local
21 emergency services in the most expeditious manner possible. The
22 industrial facility shall provide the following information:

23 (A) The name and title of the individual making the report;

24 (B) The name and address of the facility; and

1 (C) Notification that an emergency event has occurred.

2 (2) If the caller has ready access to the following
3 information, he or she shall also provide:

4 (A) Then-available information concerning the nature and
5 extent of the emergency event, including any information that
6 concerns the existence or nonexistence of potential threats to the
7 public health;

8 (B) In the event of an unplanned fire that cannot be contained
9 within fifteen minutes, explosion or release as defined in this
10 section, preliminary information regarding the type of substance
11 involved and, if a release, the estimated amount released, if
12 known; and

13 (C) The name, title and contact information of the individual
14 designated to serve as a contact person on behalf of the industrial
15 facility.

16 (3) Any call made pursuant to this subsection may be recorded
17 by the agency receiving the call. In the event that an industrial
18 facility contacts a local emergency telephone system to report an
19 emergency event, the local emergency telephone system shall
20 immediately forward all information received to the Mine and
21 Industrial Accident Emergency Operations Center.

22 (c) *Event communications.* -- As soon as practicable after
23 providing the notice required under subsection (b) of this section,
24 the industrial facility shall implement a communications system

1 designed to provide timely information to appropriate state and
2 local officials. At a minimum, the industrial facility shall
3 designate a person to serve as a contact for state and local
4 emergency responders. Any person so designated shall, upon the
5 request of an appropriate state or local official, provide such
6 additional information known or subsequently known that may be
7 necessary to assess the extent of the emergency or to provide
8 appropriate public assistance.

9 (d) *Authorized access to public officials.* -- As soon as
10 practicable after the occurrence of an emergency event, the
11 industrial facility shall, upon request, provide appropriate state
12 and local officials with timely authorized access to the person or
13 persons charged with managing the event on behalf of the facility
14 and the area(s) where the emergency event is being managed or the
15 industrial facility's response to the emergency event is being
16 coordinated. The industrial facility shall also provide
17 appropriate state and local officials with timely authorized access
18 to any areas affected by the emergency event: *Provided*, That the
19 industrial facility has determined those areas to be reasonably
20 safe: *Provided, however*, That within thirty minutes of obtaining
21 information that affects the public health, safety and welfare,
22 state and local officials shall notify the public of any hazardous
23 materials or events which may affect the area; and shall
24 specifically notify the chief health official in the affected

1 county of any hazardous materials or events which may affect the
2 area.

3 (e) *Civil penalties.* --

4 (1) The director shall impose a civil penalty of up to
5 \$100,000 on the industrial facility if he or she determines that
6 the industrial facility failed to comply with the reporting
7 requirement of subsection (b) of this section. No penalty shall be
8 imposed upon an industrial facility giving notice pursuant to this
9 section for unintentionally providing inaccurate or incomplete
10 preliminary information to the Mine and Industrial Accident
11 Emergency Operations Center or local emergency telephone system:
12 *Provided,* That the industrial facility implemented reasonable
13 efforts to provide the most accurate and complete preliminary
14 information possible: *Provided, however,* That the industrial
15 facility implemented reasonable efforts to correct inaccurate or
16 incomplete preliminary information reported to the Mine and
17 Industrial Accident Emergency Operations Center or local emergency
18 telephone system once such information was determined by the
19 industrial facility to be inaccurate or incomplete.

20 (2) The director shall impose a civil penalty on the operator
21 or operators of an industrial facility if he or she determines that
22 the industrial facility failed to comply with the communication or
23 access requirements of subsections (c) and (d) of this section.
24 Application of this subdivision and amounts levied as civil

1 penalties by the director shall be determined in accordance with
2 legislative rules promulgated pursuant to article three, chapter
3 twenty-nine-a of this code.

4 (3) The director may waive the imposition of a civil penalty
5 imposed under this section: *Provided*, That he or she finds that
6 the failure to comply with the requirements of this section was
7 caused by circumstances outside the control of the industrial
8 facility.

9 (4) All moneys collected pursuant to this section shall be
10 deposited in the Hazardous Waste Emergency Response Fund, as
11 established pursuant to section three, article nineteen, chapter
12 twenty-two of this code.

13 (f) Nothing in this section may be construed to:

14 (1) Relieve an industrial facility from any other reporting or
15 notification requirement imposed under state or federal law;

16 (2) Limit in any way the jurisdiction of state and local
17 emergency responders;

18 (3) Limit the police power authority of the Governor; or

19 (4) Limit the authority of the state Fire Marshal.

20 (g) The director, working in cooperation with the Department
21 of Environmental Protection, the state Fire Marshal and the state
22 Emergency Response Commission, shall promulgate legislative rules
23 identifying a list of industrial facilities that are subject to the
24 requirements of this section.

1 (h) The Division of Homeland Security and Emergency Management
2 is authorized to promulgate rules, including emergency rules,
3 pursuant to the provisions of article three, chapter twenty-nine-a
4 of this code to implement the provisions of this section.

5 **CHAPTER 22. ENVIRONMENTAL RESOURCES.**

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

7 **§22-26-10. Aboveground storage tank registry.**

8 (a) "Aboveground storage tank" means any tank or container
9 within one mile of a river, stream, lake or pond where ninety
10 percent or more of the tank volume is located above the ground
11 surface, but does not include farm or residential tanks or
12 containers with a capacity of eleven hundred gallons or less and
13 used for noncommercial purposes or tanks not reasonably mounted so
14 as to be in place for one year.

15 (b) "Operator" means any person in control of, or having
16 responsibility for, the daily operation of an aboveground storage
17 tank.

18 (c) "Owner" means a person who owns an aboveground storage
19 tank used for the storage of any fluid.

20 (d) To assure protection of the water resources of the state,
21 the secretary shall compile an inventory of aboveground storage
22 tanks and their contents in existence on the effective date of this
23 section. The secretary shall complete the inventory and report the
24 inventory findings to the Speaker of the House, the Minority Leader

1 of the House, the President of the Senate and the Minority Leader
2 of the Senate within thirty days of the effective date of this
3 section.

4 (e) Within fifteen days of the effective date of this section
5 owners or operators shall register each aboveground storage tank
6 and provide an inventory of its contents to the secretary. The
7 Material Safety Data Sheet of each substance stored shall be
8 provided.

9 (f) Any owner or operator who fails to register as required in
10 this section, is subject to a civil penalty of \$1,000 per day for
11 each above ground storage tank not timely registered and
12 administrative injunction against continuing operations until the
13 owner or operator registers.

14 (g) All costs associated with compliance with the provisions
15 of this section are tax deductible.

16 (h) All water providers in each public service district shall
17 provide risk assessments for water contamination in each public
18 service districts. The assessments shall be completed and
19 submitted to the secretary within sixty days of the effective date
20 of this section.

21 (i) The purposes of this section are that any data derived be
22 used purely for information gathering and future water protection
23 policy development. Any and all proprietary information provided by
24 any subject company shall remain proprietary to that entity.

1 §22-26-11. Industrial Accident Citizen's Protection Fund; bond
2 requirement.

3 (a) Each entity which has a license or construction permit
4 issued for the public purposes of chemical storage, water treatment
5 or other industrial purposes as are determined by the Secretary of
6 the Department of Environmental Protection to pose a significant
7 risk of water or air contamination, shall have as a condition of
8 the license a requirement that the licensee have and maintain
9 financial protection of such type as to fully cover the amounts of
10 response, remediation and basic compensation to the state and to
11 all affected citizens.

12 (b) Amount and type of financial protection for licensees -

13 (1) The amount of primary financial protection required shall
14 be in the amount of \$10 million. The protection shall be in the
15 form of a bond available from private sources, made payable to the
16 State of West Virginia.

17 (2) There shall be a two percent premium surcharge on each
18 bond, the proceeds from which shall be used to establish a fund
19 within the budget to be known as the Industrial Accident Citizen's
20 Protection Fund, which shall be overseen by the Department of
21 Environmental Protection. The proceeds from this surcharge shall
22 also be used to pay all administrative expenses for the fund.

23 (3) In the event of an industrial accident involving the
24 discharge of a chemical, and the payment of the bond, all proceeds

1 from the bond shall be deposited into the Industrial Accident
2 Citizen's Protection Fund and used to cover the expenses of the
3 state's response, any needed environmental remediation and to
4 provide basic compensation to the state and to all affected
5 citizens.

6 (4) Any licensee who subscribes to the bonding required and
7 pays into the Industrial Accident Citizen's Protection Fund the
8 surcharges provided by this section is not liable to respond in
9 damages at common law or by statute for the injury or death of any
10 employee or other person, however occurring, after so subscribing
11 or electing, and during any period in which the licensee is not in
12 default in the payment of the premiums and has complied fully with
13 all other provisions of this chapter. The licensee shall obtain
14 from the state, a certificate that the licensee is in good standing
15 with the Industrial Accident Citizen's Protection Fund.

16 (5) The Department of Environmental Protection on behalf of
17 the Industrial Accident Citizen's Protection Fund shall report to
18 the Legislature and may recommend a greater amount of required
19 bonding on the basis of criteria set forth in writing, which it may
20 revise from time to time, taking into consideration such factors as
21 the following:

22 (A) The cost and terms of private bonding;

23 (B) The type, size, and location of the licensed activity and
24 other factors pertaining to the hazard;

1 (C) The nature and purpose of the licensed activity; and

2 (D) Prior claims experience with the affected licensee.

3 **§22-26-12. Increased bonding requirement.**

4 Any person who has an ownership interest of ten percent or
5 greater in any corporation, company or entity doing business in the
6 State of West Virginia not already participating in the Industrial
7 Accident Citizen's Protection Fund, and, which causes, either by
8 negligence or intentional act, a state of emergency affecting fifty
9 thousand or more persons in West Virginia, in more than one county,
10 shall post a bond with the Industrial Accident Citizen's Protection
11 Fund protection in an amount which the Industrial Accident
12 Citizen's Protection Fund determines, but which, in no case, may
13 be less than \$50 million. Additionally, all permits for the
14 corporation, company or entity and, any licenses necessary for it
15 to engage in business in West Virginia, shall be revoked until the
16 bond required by this section is posted. The Secretary of the
17 Department of Environmental Protection is authorized to propose for
18 legislative approval rules for the better realization of the goals
19 of this section.

20 **§22-26-13. Water emergency voucher.**

21 Each household in the counties of Boone, Cabell, Clay,
22 Jackson, Kanawha, Lincoln, Logan, Putnam and Roane, affected by the
23 January 2014 water emergency shall be allowed a one-time voucher
24 payable on the State Treasury equal to \$250, due to the effects of

1 the chemical spill in the Elk River. Persons obtaining the vouchers
2 must obtain them at their local health department and shall provide
3 proof that they were a customer of West Virginia American Water
4 Company. Vouchers shall be redeemable at any retail business
5 location or at any licensed water or sewage provider. All the
6 vouchers must be redeemed by June 30, 2014.

7 **§22-26-14. Health department screening.**

8 Each person in a household in the counties of Boone, Cabell,
9 Clay, Jackson, Kanawha, Lincoln, Logan, Putnam and Roane, affected
10 by the January 2014 water emergency shall be allowed health
11 department screening for adverse effects from the event. The
12 screening shall include the following tests: Serum dioxin, fasting
13 glucose, hemoglobin alc, fasting lipid profile, erythrocyte
14 sedimentation rate, and cbc with differential. The participants
15 shall also receive a history and physical examination. Reports
16 summarizing the results of the tests shall be sent to participants
17 and/or the participant's primary care physician at the
18 participants' election. Persons obtaining the monitoring must
19 present themselves for screening at their local health department
20 and shall provide proof that they were a customer of West Virginia
21 American Water Company. All such monitoring must be obtained by
22 January 30, 2016.

23 **§22-26-15. Agency review, revision, and report.**

24 (a) The Department of Environmental Protection shall undertake

1 a review of its rules as often as necessary to ensure that its
2 rules are correct and comply with statutory requirements: *Provided,*
3 That it shall perform a formal review of its rules prior to January
4 1, 2015, and every four years after that.

5 (b) Prior to January 1, 2015, and every four years after that,
6 the Department of Environmental Protection shall complete a formal
7 review of its rules and file the report with the President of the
8 Senate, the Speaker of the House of Delegates, the Governor and the
9 Legislative Rule-making Review Committee. The report must specify
10 any recommended changes including changes that will promote public
11 safety, efficiency, reduce paperwork or decrease costs to
12 government and the private sector.

13 **§22-26-16. Implementation of recommendations from the United**
14 **States Chemical Safety Board.**

15 All state, county, and local agencies and entities shall by
16 January 1, 2015, report to the Joint Committee on Government and
17 Finance on the progress of implementing all recommendations made to
18 them by the United States Chemical Safety Board following the Bayer
19 CropScience Pesticide Waste Tank Explosion and the DuPont
20 Corporation Toxic Chemical Releases. All recommendations made in
21 the wake of those twin disasters shall be implemented by January 1,
22 2016 or state, county, and local agencies and entities must furnish
23 good cause as to why such finding have not been implemented. State,
24 county, and local agencies and entities not fully implementing the

1 recommendations may be fined up to \$100,000 for each recommendation
2 not fully implemented; and officials responsible for failing to
3 implement the recommendations may be subject to impeachment for
4 non-feasance of office.

5 **§22-26-17. Citizen suits to enforce provisions of this article.**

6 Any citizen of the State of West Virginia who seeks
7 enforcement of any provision of this article or rules of the
8 Department of Environmental Protection may file an action with the
9 West Virginia Supreme Court of Appeals in the form of a writ of
10 mandamus against the public entity charged with enforcement to
11 enforce the specified provision or provisions. Citizens bringing
12 these actions are not entitled to attorneys fees and costs.

13 **§22-26-18. Setting a baseline of severance tax revenue for**
14 **purposes of future tax severance allocation;**
15 **creation of West Virginia Safe Water Fund;**
16 **legislative intent; permissible uses of distributed**
17 **revenues; duties of State Treasurer and State Tax**
18 **Commissioner; audits; rulemaking.**

19 (a) For fiscal years beginning July 1, 2014, a baseline for
20 collections of severance tax on the privilege of producing oil and
21 natural gas levied by section three-a, article thirteen-a, chapter
22 eleven of this code that are deposited in the General Revenue Fund
23 as provided in section five-a of this article, is established at

1 \$175 million.

2 (b) There is created in the State Treasury a special revenue
3 account, designated the "West Virginia Safe Water Fund," which is
4 an interest-bearing account and may be invested by the West
5 Virginia Investment Management Board in the manner permitted by the
6 provisions of article six, chapter twelve of this code, with the
7 interest income a proper credit to the fund. Notwithstanding any
8 provision of this code to the contrary, twenty-five percent of the
9 excess proceeds, above the baseline set by subsection (a) of this
10 section, received on and after the effective date of this section
11 as state revenue pursuant to the provisions of section three-a,
12 article thirteen-a, chapter eleven of this code shall be deposited
13 in this fund, up to a total of \$1 billion. Amounts in excess of
14 \$1 billion may be withdrawn from this fund and deposited in the
15 General Revenue Fund. The Legislature may, by general appropriation
16 or by designation of other funding sources, deposit into the fund
17 additional moneys as it considers appropriate.

18 (c) The Legislature declares its intention to use the fund as
19 a means of conserving a portion of the state's revenue derived from
20 the increased revenue proceeds received by the state as a result of
21 any new oil and natural gas production as well as other funding
22 sources as the Legislature may designate in order to meet future
23 needs. The Legislature further declares its intention that the fund
24 shall maintain inviolability of principal while maximizing total

1 return and that only interest income be used for the purposes
2 enumerated in this section. No interest income of the West Virginia
3 Safe Water Fund may be used for a term of six years following the
4 effective date of this section except for the purposes enumerated
5 in this section.

6 (d) Moneys from the interest income of the West Virginia Safe
7 Water Fund are to be expended solely for improving and protecting
8 water safety and water infrastructure projects.

9 (e) A report of expenditures of the interest income of the
10 West Virginia Safe Water Fund is to be required to be submitted
11 annually to Joint Committee on Government and Finance. Audits of
12 the distributed funds may be authorized by the Joint Committee on
13 Government and Finance.

14 **§22-26-19. Water providers required to have secondary intakes or**
15 **stored water.**

16 Each water provider in the state shall be equipped with a
17 sufficient secondary intake source of water and at least three to
18 five days of sufficient raw water storage.

19 **§22-26-20. Public Service Commission to study interconnectivity of**
20 **water systems.**

21 The Public Service Commission shall study the need for
22 interconnectivity and other improvements in West Virginia's water
23 distribution systems; and, to evaluate the existing water

1 transmission infrastructure in West Virginia and how the
 2 infrastructure can be optimized so that water diversions and
 3 transfers can be accomplished to:

4 (1) Avert and mitigate drought related water supply
 5 emergencies;

6 (2) Mitigate the water supply problems during water supply
 7 emergencies due to catastrophic loss; and

8 (3) Optimize current water distribution under normal
 9 operations.

NOTE: The purpose of this bill is to add additional requirements for notification relating to industrial facilities emergency event notification and access. The bill would add new sections to create an aboveground storage tank registry, an Industrial Accident Citizen's Protection Fund and a bond requirement. It would provide increased bonding requirements for certain persons, a voucher for persons residing in the counties affected by the recent water emergency, and provide for health screenings. It requires agency review, revision, and reporting concerning rules made by each state agency. It requires the implementation of recommendations from US Chemical Safety Board. It allows citizen suits to enforce its provisions and sets a baseline of severance tax revenue for purposes of future tax severance allocation. It creates the West Virginia Safe Water Fund and specifies permissible uses of its revenues. It requires moneys to be expended solely for improving and protecting safe water infrastructure and providing for secondary intake and raw water storage requirements. It also requires the Public Service Commission to study interconnectivity of water systems.

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

§22-26-10; §22-26-11, §22-26-12, §22-26-13, §22-26-14, §22-26-15, §22-26-16, §22-26-17, §22-26-18, §22-26-19 and §22-26-20 are new; therefore, they have been completely underscored.