

**H. B. 2593**

(By Delegates Faircloth, McGeehan, Moffatt, Kessinger,  
J. Nelson, Ihle and Foster)

[Introduced February 4, 2015; referred to the  
Committee on the Judiciary.]

**FISCAL  
NOTE**

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-32-1, §22-32-2 and §22-32-3, all relating to creating the Private Property Protection Act; stating legislative authority; declaring that the proposed federal regulation defining the "waters of the United States" is not enforceable in the State of West Virginia; providing criminal penalties for certain violations; dedicating the Attorney General to defend citizens charged with violations of this rule.

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §22-32-1, §22-32-2 and §22-32-3, all to read as follows:

**ARTICLE 32. PRIVATE PROPERTY PROTECTION ACT.**

**§22-32-1. Short title.**

This article may be cited as the "Private Property Protection Act."

**§22-32-2. Authority.**

The Legislature declares that the authority for this article is as follows:

1       (1) The Tenth Amendment to the United States Constitution guarantees to the states and their  
2 people all powers not granted to the federal government elsewhere in the Constitution and reserves  
3 to the state and people of West Virginia certain powers as they were understood at the time that West  
4 Virginia was admitted to statehood in 1863. The guaranty of those powers is a matter of contract  
5 between the state and people of West Virginia and the United States as of the time that the compact  
6 with the United States was agreed upon and adopted by West Virginia and the United States in 1863.

7       (2) The Ninth Amendment to the United States Constitution guarantees to the people rights  
8 not granted in the Constitution and reserves to the people of West Virginia certain rights as they were  
9 understood at the time that West Virginia was admitted to statehood in 1863. The guaranty of those  
10 rights is a matter of contract between the state and people of West Virginia and the United States as  
11 of the time that the compact with the United States was agreed upon and adopted by West Virginia  
12 and the United States in 1863.

13       (3) Section two, Article I of the West Virginia Constitution, states: "The government of the  
14 United States is a government of enumerated powers, and all powers not delegated to it, nor inhibited  
15 to the states, are reserved to the states or to the people thereof." Specifically enumerated among  
16 those "powers so reserved to the states is the exclusive regulation of their own internal government  
17 and police; and it is the high and solemn duty of the several departments of government, created by  
18 this Constitution, to guard and protect the people of this state from all encroachments upon the rights  
19 so reserved."

20       (4) The regulation of intrastate commerce, including the natural environment as affected by  
21 intrastate business, is vested in the states under the Ninth and Tenth Amendments to the United  
22 States Constitution and is specifically retained by the property owners of the State of West Virginia

1 according to Section 2, Article I of the West Virginia Constitution.

2 **§22-32-3. Requirements.**

3 (a) The Legislature declares that the United States Environmental Protection Agency and the  
4 United States Army Corps of Engineers, acting under the color of authority of Congress to regulate  
5 interstate commerce, lack the authority to apply, administer, or enforce the proposed rule described  
6 in the notice of proposed rule published in the Federal Register entitled "Definition of "Waters of  
7 the United States" Under the Clean Water Act " (79 Fed. Reg. 22188 (April 21, 2014)). Therefore,  
8 it shall have no effect in the State of West Virginia.

9 (b) Further, section 101(g) of the Clean Water Act expressly states that it is "the authority of  
10 each state to allocate quantities of water within its jurisdiction [that] shall not be superseded,  
11 abrogated, or otherwise impaired by this act." Therefore, it is the duty of the Legislature of this state  
12 to adopt any and all measures as may be necessary to prevent the proposed rule described in section  
13 (a) and its effect on the property rights of the citizens of the State of West Virginia.

14 (c) A public officer or employee of this state who enforces or attempts to enforce an order,  
15 law, statute, rule or regulation of the United States Government in violation of this section is guilty  
16 of a felony and, upon conviction thereof, shall be confined in jail not less than one year and one day.

17 (d) The Attorney General of West Virginia shall represent any citizen charged with violation  
18 of the proposed rule described in section (a).

NOTE: The purpose of this bill is to declare the Environmental Protection Agency and the Army Corps of Engineers' proposed rule defining the "waters of the United States" unenforceable in the State of West Virginia.

This article is new; therefore, it has been completely underscored.