

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2506

BY DELEGATES ZATEZALO, FOSTER, G., KESSINGER,
SUMMERS, ATKINSON, AMBLER, PHILLIPS, WESTFALL AND
MILEY

[Introduced February 16, 2017; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §22-11-7b of the Code of West Virginia, 1931, as amended, all
2 relating to adoption of the Fair Standards Act, the implementation of water quality
3 standards for the protection of drinking water; requiring permit limits to be calculated using
4 the design flows recommended by the United States Environmental Protection Agency for
5 the protection of human health; and allowing overlapping mixing zones for calculating
6 permit limits for drinking water criteria.

Be it enacted by the Legislature of West Virginia:

1 That §22-11-7b of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted, all to read as follows:

ARTICLE 11. WATER POLLUTION CONTROL ACT.

**§22-11-7b. Water quality standards; implementation of antidegradation procedures;
procedure to determine compliance with the biologic component of the narrative
water quality standard.**

1 (a) All authority ~~to promulgate~~ to propose rules for legislative approval and implement
2 water quality standards is vested in the Secretary of the Department of Environmental Protection.

3 (b) All meetings with the secretary or any employee of the department and any interested
4 party which are convened for the purpose of making a decision or deliberating toward a decision
5 as to the form and substance of the rule governing water quality standards or variances thereto
6 shall be held in accordance with ~~the provisions of~~ article nine-a, chapter six of this code. When
7 the secretary is considering the form and substance of the rules governing water quality
8 standards, the following are not meetings pursuant to article nine-a, chapter six of this code: (i)
9 Consultations between the department's employees or its consultants, contractors or agents; (ii)
10 consultations with other state or federal agencies and the department's employees or its
11 consultants, contractors or agents; or (iii) consultations between the secretary, the department's
12 employees or its consultants, contractors or agents with any interested party for the purpose of
13 collecting facts and explaining state and federal requirements relating to a site specific change or

14 variance.

15 (c) In order to carry out the purposes of this chapter, the secretary shall ~~promulgate~~
16 ~~legislative~~ propose rules for legislative approval in accordance with ~~the provisions of~~ article three,
17 chapter twenty-nine-a of this code setting standards of water quality applicable to both the surface
18 waters and groundwaters of this state. Standards of quality with respect to surface waters shall
19 protect the public health and welfare, wildlife, fish and aquatic life and the present and prospective
20 future uses of the water for domestic, agricultural, industrial, recreational, scenic and other
21 legitimate beneficial uses thereof. The water quality standards of the secretary may not specify
22 the design of equipment, type of construction or particular method which a person shall use to
23 reduce the discharge of a pollutant. For implementing human health criteria for the protection of
24 drinking water, the Secretary shall calculate permit limits using the harmonic mean flow and may
25 determine the point of compliance for a permittee's discharge pursuant to the mixing zone
26 provisions of the Legislative rule entitled Requirements Governing Water Quality Standards, 47
27 C.S.R. 2: Provided, That the Secretary may allow mixing zones to overlap, but not to go beyond
28 a point one-half mile upstream of a public water supply.

29 (d) The secretary shall establish the antidegradation implementation procedures as
30 required by 40 C. F. R. 131.12(a) which apply to regulated activities that have the potential to
31 affect water quality. The secretary shall propose for legislative approval, pursuant to article three,
32 chapter twenty-nine-a of the code, legislative rules to establish implementation procedures which
33 include specifics of the review depending upon the existing uses of the water body segment that
34 would be affected, the level of protection or "tier" assigned to the applicable water body segment,
35 the nature of the activity and the extent to which existing water quality would be degraded. Any
36 final classification determination of a water as a Tier 2.5 water (Water of Special Concern) does
37 not become effective until that determination is approved by the Legislature through the legislative
38 rule-making process as provided in article three, chapter twenty-nine-a of the code.

39 (e) All remaining variances shall be applied for and considered by the secretary and any

40 variance granted shall be consistent with 33 U. S. C. Section 1311(p) of the Federal Water Control
41 Act. At a minimum, when considering an application for a remining variance the secretary shall
42 consider the data and information submitted by the applicant for the variance; and comments
43 received at a public comment period and public hearing. The secretary may not grant a variance
44 without requiring the applicant to improve the instream water quality as much as is reasonably
45 possible by applying best available technology economically achievable using best professional
46 judgment. Any such requirement ~~will~~ shall be included as a permit condition. The secretary may
47 not grant a variance without a demonstration by the applicant that the coal remining operation will
48 result in the potential for improved instream water quality as a result of the remining operation.
49 The secretary may not grant a variance where he or she determines that degradation of the
50 instream water quality will result from the remining operation.

51 (f) The secretary shall propose rules measuring compliance with the biologic component
52 of West Virginia's narrative water quality standard requires evaluation of the holistic health of the
53 aquatic ecosystem and a determination that the stream: (i) Supports a balanced aquatic
54 community that is diverse in species composition; (ii) contains appropriate trophic levels of fish,
55 in streams that have flows sufficient to support fish populations; and (iii) the aquatic community is
56 composed of benthic invertebrate assemblages sufficient to perform the biological functions
57 necessary to support fish communities within the assessed reach, or, if the assessed reach has
58 insufficient flows to support a fish community, in those downstream reaches where fish are
59 present. The secretary shall propose rules for legislative approval in accordance with ~~the~~
60 ~~provisions of~~ article three, chapter twenty-nine-a of this code that implement the provisions of this
61 subsection. Rules promulgated pursuant to this subsection may not establish measurements for
62 biologic components of West Virginia's narrative water quality standards that would establish
63 standards less protective than requirements that exist at the time of enactment of the
64 amendments to this subsection by the Legislature during the 2012 regular session.

NOTE: The purpose of this bill, in the implementation of water quality standards for the protection of drinking water; is to require permits limits to be calculated using design flows recommended by the United States Environmental Protection Agency for protection of human health; specifically, the use of the harmonic mean flow, and to allow overlapping mixing zones while retaining the application of water quality criteria that are developed for protection of drinking water.

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