

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

Senate Bill 679

BY SENATORS IHLENFELD, BALDWIN, AND WOELFEL

[Introduced January 31, 2020; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §16-1-9g; and to amend said code by adding four new sections, designated
3 §22-11-31, §22-11-32, §22-11-33, and §22-11-34, all relating to creating the Clean
4 Drinking Water Act of 2020; directing the Secretary of the Department of Health and
5 Human Resources to propose maximum contaminant levels or treatment techniques for
6 certain PFAS pollutants; creating the West Virginia PFAS Action Response Team to act
7 as an advisory body within the Department of Environmental Protection; setting forth the
8 team's responsibilities and powers; requiring facilities using certain PFAS chemicals to
9 report their use; setting forth other duties of those facilities; requiring the Secretary of the
10 Department of Environmental Protection to propose updates to the numeric Public Water
11 Supply human health criteria; and requiring rulemaking.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-9g. Establishment of PFAS maximum contaminant levels; findings; Clean Drinking Water Act of 2020.

1 (a) Legislative findings. -- (1) The Legislature recognizes the prevalence and health risks
2 of perfluoroalkyl and polyfluoroalkyl substances (PFAS), which the United States Environmental
3 Protection Agency has classified as contaminants. These chemicals are used in thousands of
4 applications throughout the industrial, food, and textile industries and are an ingredient in some
5 fire fighting foams, food packaging, cleaning products, and various other household items. They
6 are incredibly stable and accumulate in the environment, and many are highly water soluble,
7 easily transferring through soil to groundwater. They are known to cause cancers and other
8 adverse health effects.

9 (2) The United States Environmental Protection Agency has not recommended human

10 health water quality criteria for surface water and has not set maximum contaminant levels for tap
11 water for PFAS chemicals.

12 (3) Other states have moved forward with calculating and adopting state-specific human
13 health water quality criteria for surface water and maximum contaminant levels for tap water for
14 PFAS chemicals.

15 (4) It is in the public interest for West Virginia to reduce toxic chemicals such as PFAS
16 chemicals in drinking water supplies to protect the health of West Virginians and strengthen the
17 state's economy, without waiting for the United States Environmental Protection Agency to act.

18 (b) On or before April 1, 2021, the secretary, in consultation with the Secretary of the
19 Department of Environmental Protection, shall propose maximum contaminant levels or treatment
20 techniques for the following pollutants:

21 (1) PFOS;

22 (2) PFOA;

23 (3) PFNA;

24 (4) PFHxS;

25 (5) GenX;

26 (6) PFBS;

27 (7) PFHxA; and

28 (8) Any additional PFAS chemicals that the secretary determines are harmful to human
29 health and for which sufficient scientific data are available to develop maximum contaminant
30 levels or treatment techniques.

31 (c) The proposed maximum contaminant levels or treatment techniques shall take into
32 consideration:

33 (1) All maximum contaminant levels or treatment techniques for drinking water, health-
34 based advisory guidance for drinking water, human health criteria for surface water, groundwater
35 standards, and remediation standards for water and soil adopted by other states or by the United

36 States Environmental Protection Agency; and

37 (2) The studies and scientific evidence reviewed by those states and by the United States
38 Environmental Protection Agency, studies and scientific evidence reviewed by the Agency for
39 Toxic Substances and Disease Registry, and the latest peer-reviewed science and independent
40 or government agency studies.

41 (d) The maximum contaminant levels or treatment techniques shall be protective of public
42 health, including vulnerable subpopulations such as pregnant and nursing mothers, infants, and
43 children, and in no case exceeding any maximum contaminant level or health advisory
44 promulgated by the United States Environmental Protection Agency.

45 (e) The secretary shall propose rules for legislative approval in accordance with §29A-3-
46 1 et seq, §16-1-4(b)(4)(A), and §16-1-9a(b)(1) of this code to implement this section.

47 (f) Clean Drinking Water Act of 2020. -- This section and §22-11-31, §22-11-32, §22-11-
48 33, and §22-11-34 of this code shall be known as the Clean Drinking Water Act of 2020.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-31. Legislative findings; Clean Drinking Water Act of 2020.

1 (a) Legislative findings. -- (1) The Legislature recognizes the prevalence and health risks
2 of perfluoroalkyl and polyfluoroalkyl substances (PFAS), which the United States Environmental
3 Protection Agency has classified as contaminants. These chemicals are used in thousands of
4 applications throughout the industrial, food, and textile industries and are an ingredient in some
5 fire fighting foams, food packaging, cleaning products, and various other household items. They
6 are incredibly stable and accumulate in the environment, and many are highly water soluble,
7 easily transferring through soil to groundwater. They are known to cause cancers and other
8 adverse health effects.

9 (2) The United States Environmental Protection Agency has not recommended human

10 health water quality criteria for surface water and has not set maximum contaminant levels for tap
11 water for PFAS chemicals.

12 (3) Other states have moved forward with calculating and adopting state-specific human
13 health water quality criteria for surface water and maximum contaminant levels for tap water for
14 PFAS chemicals.

15 (4) It is in the public interest for West Virginia to reduce toxic chemicals such as PFAS
16 chemicals in drinking water supplies to protect the health of West Virginians and strengthen the
17 state's economy, without waiting for the United States Environmental Protection Agency to act.

18 (b) Clean Drinking Water Act of 2020. -- This section and §22-11-32, §22-11-33 and §22-
19 11-34 and §16-1-9g of this code shall be known as the Clean Drinking Water Act of 2020.

§22-11-32. Establishment of West Virginia PFAS Action Response Team.

1 (a) The West Virginia PFAS Action Response Team ("WV-PART") is created as an
2 advisory body within the Department of Environmental Protection.

3 (b) WV-PART consists of the following members:

4 (1) The secretary, or the secretary's designee, who serves as the chairperson;

5 (2) The Commissioner of the Bureau for Public Health, or the commissioner's designee;

6 (3) The Director of the Division of Natural Resources, or the director's designee;

7 (4) The Commissioner of Agriculture, or the commissioner's designee;

8 (5) The Secretary of the Department of Transportation, or the secretary's designee; and

9 (6) The Secretary of the Department of Military Affairs and Public Safety, or the secretary's
10 designee.

11 (c) WV-PART shall:

12 (1) Provide recommendations to the secretary, and the heads of other departments or
13 agencies, and coordinate activities among departments and agencies.

14 (2) Research, identify, recommend PFAS response actions relative to the discovery,
15 communication, and mitigation of PFAS, and will do all the following:

16 (A) Identify impacted locations and implement a PFAS action plan to assist state and local
17 authorities to ensure the safety of West Virginia's land, air, and water;

18 (B) Assess the status of any PFAS contaminated site and develop individualized response
19 strategies;

20 (C) Continue to develop, as needed, environmental response protocols for all positively
21 identified sites, as well as specialized site plans;

22 (D) Develop routine communication and information-sharing protocols between all
23 members and stakeholders;

24 (E) Perform outreach to ensure all stakeholders in impacted areas are informed, educated,
25 and empowered. Stakeholder outreach will include, but is not limited to, residents, community
26 members, other partner organizations, tribal governments, local government officials, and other
27 elected officials representing the impacted areas;

28 (F) Perform outreach to ensure the general public is informed about PFAS contamination
29 and the work of WV-PART;

30 (G) Identify avenues of funding for PFAS identification and remediation efforts;

31 (H) Create measurable goals and objectives along an established timeline;

32 (I) Recommend changes in West Virginia law;

33 (J) Recommend structural changes necessary to address other threats to the
34 environment, public health and safety from other chemicals of emerging concern, which WV-
35 PART identifies while performing its duties;

36 (K) Perform other duties as requested by the secretary or the Governor; and

37 (L) Report regularly to the Governor on its activities.

38 (d) WV-PART shall operate as follows:

39 (1) The department shall assist WV-PART in the performance of its duties and provide
40 personnel to staff WV-PART. The budgeting, procurement, and related management functions of
41 WV-PART will be performed under the direction and supervision of the secretary.

42 (2) WV-PART shall adopt procedures consistent with West Virginia law governing its
43 organization and operations.

44 (3) A majority of the members of WV-PART serving constitutes a quorum for the
45 transaction of the business of WV-PART, which shall act by a majority vote of its serving
46 members.

47 (4) WV-PART shall meet at the call of its chairperson and as otherwise provided in
48 procedures adopted by WV-PART.

49 (5) WV-PART shall establish advisory workgroups composed of individuals or entities
50 participating in WV-PART activities or other members of the public as deemed necessary by WV-
51 PART to assist WV-PART in performing its duties and responsibilities. WV-PART may adopt,
52 reject, or modify any recommendations proposed by an advisory workgroup, and shall explain its
53 decisions in writing.

54 (6) WV-PART may, as appropriate, make inquiries, studies, and investigations, hold
55 hearings, and receive comments from the public. WV-PART may also consult with outside experts
56 in order to perform its duties, including, but not limited to, experts in the private sector, government
57 agencies, and at institutions of higher education.

58 (7) WV-PART may hire or retain contractors, sub-contractors, advisors, consultants, and
59 agents, and may make and enter into contracts necessary or incidental to the exercise of the
60 powers of WV-PART and the performance of its duties as the secretary deems advisable and
61 necessary, consistent with applicable law, rules and procedures, subject to available funding.

62 (8) WV- PART may accept donations of labor, services, or other things of value from any
63 public or private agency or person. Any donations shall be received and used in accordance with
64 applicable law.

65 (9) Members of WV-PART will coordinate all legislative and media contacts that directly
66 involve the work of WV-PART.

67 (e) All departments, committees, commissioners, or officers of this state shall give to WV-

68 PART, or to any member or representative of WV-PART, any necessary assistance required by
69 WV-PART, or any member or representative of WV-PART, in the performance of the duties of
70 WV-PART so far as is compatible with their duties and consistent with this section and applicable
71 law. Free access also must be given to any books, records, or documents in their custody relating
72 to matters within the scope of inquiry, study, or review of WV-PART, consistent with this section
73 and applicable law.

§22-11-33. Self-reporting of PFAS manufacture and use, and monitoring of PFAS discharges.

1 (a) No later than December 31, 2020, all facilities, including, but not limited to, chemical
2 and manufacturing facilities, which manufacture, use, or have used any of the following PFAS
3 chemicals in their production process since January 1, 2011, must report the use of these
4 chemicals to the Department of Environmental Protection:

5 (1) PFOS;

6 (2) PFOA;

7 (3) PFNA;

8 (4) PFHxS;

9 (5) GenX;

10 (6) PFBS;

11 (7) PFHxA; and

12 (8) Any additional PFAS chemicals that the secretary determines are harmful to human
13 health.

14 (b) This reporting shall include the chemical name, the Chemical Abstracts Service (CAS)
15 number, the amount used in each year from 2011 through 2020, and any additional information
16 required by the secretary to ascertain sources of PFAS chemicals in West Virginia, and shall be
17 provided in a manner and form prescribed by the secretary.

18 (c) For every facility that reports the use of one or more PFAS chemicals, and that

19 discharges to a publicly owned treatment works, the secretary shall forward the information
20 provided by the facility to the publicly owned treatment works within 30 days of receipt.

21 (d) For every facility that reports the use of one or more PFAS chemicals monitoring of the
22 self-reported PFAS chemicals shall be required within six months of notification by the facility, as
23 follows:

24 (1) If the facility discharges to a surface water under a West Virginia/National Pollutant
25 Discharge Elimination System permit, the secretary shall modify the facility's West
26 Virginia/National Pollutant Discharge Elimination System permit.

27 (2) If the facility discharges to a publicly owned treatment works under an industrial
28 pretreatment program and the permit holder for the publicly owned treatment works has
29 pretreatment authority, the permit holder for the publicly owned treatment works shall modify the
30 pretreatment permit held by the facility that reports the use of one or more PFAS chemicals.

31 (3) If the facility discharges to a publicly owned treatment works under an industrial
32 pretreatment program and the department has pretreatment authority, the secretary shall modify
33 the pretreatment permit held by the facility that reports the use of one or more PFAS chemicals.

34 (e) Monitoring shall be at least quarterly. The permit shall include provisions for
35 discontinuing monitoring for a specific PFAS chemical if four consecutive monitoring results for
36 that specific PFAS chemical are below the lowest possible detection levels.

37 (f) Monitoring shall use laboratory and sampling methods approved by the United States
38 Environmental Protection Agency, or other approved methods, that provide the lowest possible
39 detection levels.

§22-11-34. Establishment of PFAS human health water quality criteria.

1 (a) On or before April 1, 2021, the secretary, in consultation with the Secretary of the
2 Department of Health and Human Resources, shall propose updates to the numeric Public Water
3 Supply human health criteria found in 47 CSR 2, Appendix E, subsection 8.23 Organics to be
4 presented to the 2022 Legislative Session for the following pollutants:

- 5 (1) Perfluorooctane sulfonic acid (PFOS);
6 (2) Perfluorooctanoic acid (PFOA);
7 (3) PFNA;
8 (4) PFHxS;
9 (5) GenX;
10 (6) PFBS;
11 (7) PFHxA; and
12 (8) Any additional PFAS chemicals that the secretary determines are harmful to human
13 health and for which sufficient scientific data are available to calculate such criteria.
14 (b) The proposed updates shall take into consideration:
15 (1) All maximum contaminant levels for drinking water, health-based advisory guidance
16 for drinking water, human health criteria for surface water, groundwater standards, and
17 remediation standards for water and soil adopted by other states or by the United States
18 Environmental Protection Agency; and
19 (2) The studies and scientific evidence reviewed by those states and by the United States
20 Environmental Protection agency, studies and scientific evidence reviewed by the Agency for
21 Toxic Substances and Disease Registry, and the latest peer-reviewed science and independent
22 or government agency studies.
23 (c) The proposed numeric human health criteria shall apply to all surface waters for which
24 the Public Water Supply use is applied.
25 (d) The secretary shall propose rules for legislative approval in accordance with §29A-3-
26 1 et seq. of this code to implement this section, and §22-11-31, §22-11-32, and §22-11-33 of this
27 code.

NOTE: The purpose of this bill is to create the Clean Drinking Water Act of 2020. The bill directs the Secretary of the Department of Health and Human Resources to propose maximum contaminant levels or treatment techniques for certain PFAS pollutants. The bill

creates the West Virginia PFAS Action Response Team to act as an advisory body within the Department of Environmental Protection. The bill sets forth the team's responsibilities and powers. The bill requires facilities using certain PFAS chemicals to report their use. The bill sets forth other duties of those facilities. The bill requires the Secretary of the Department of Environmental Protection to propose updates to the numeric Public Water Supply human health criteria. The bill requires the Secretary of the Department of Environmental Protection and the Secretary of the Department of Health and Human Resources to, individually and together, promulgate legislative rules.

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