

# **WEST VIRGINIA LEGISLATURE**

## **2021 REGULAR SESSION**

**Introduced**

### **House Bill 2980**

BY DELEGATES DOYLE, HANSEN, THOMPSON,

FLEISCHAUER AND WALKER

[Introduced March 08, 2021; Referred to the  
Committee on Health and Human Resources then the  
Judiciary]

1 A BILL to amend and reenact §22-12-2, §22-12-3, and §22-12-8 of the Code of West Virginia,  
2 1931, as amended, all relating to providing for groundwater protection in karst terrain;  
3 defining karst terrain; providing specific requirements for agency action affecting karst  
4 terrain; and establishing rulemaking authority.

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

## **ARTICLE 12. GROUNDWATER PROTECTION ACT.**

### **§22-12-2. Legislative findings, public policy and purposes.**

1 (a) The Legislature finds that:

2 (1) West Virginia has relatively pure groundwater resources which are abundant and  
3 readily available;

4 (2) Over 50 percent of West Virginia's overall population, and over 90 percent of the state's  
5 rural population, depend on groundwater for drinking water. Drinking water derived from  
6 groundwater in karst terrain involves a significantly greater risk of contamination than drinking  
7 water derived from other groundwater;

8 (3) A rural lifestyle has created a quality of life in many parts of West Virginia which is  
9 highly valued. Maintaining this lifestyle depends upon protecting groundwater to avoid increased  
10 expenses associated with providing treated drinking water supplies to rural households;

11 (4) West Virginia's groundwater resources are geologically complex, with the nature and  
12 vulnerability of groundwater aquifers and recharge areas not fully known;

13 (5) Contamination of groundwater is generally much more difficult and expensive to clean  
14 up than is the case with surface water;

15 (6) Groundwaters and surface waters can be highly interconnected. The quality of any  
16 given groundwater can have a significant impact on the quality of groundwaters and surface  
17 waters to which it is hydrologically connected;

18 (7) A diverse array of human activities can adversely impact groundwater, making it  
19 necessary to develop regulatory programs that utilize a variety of approaches;

20 (8) Various agencies of state government currently exercise regulatory control over  
21 activities which may impact on groundwater. Coordination and streamlining of the regulatory  
22 activities of these agencies is necessary to assure that the state's groundwater is maintained and  
23 protected through an appropriate groundwater protection program;

24 (9) Disruption of existing state regulatory programs should be avoided to the maximum  
25 extent practical;

26 (10) The maintenance and protection of the state's groundwater resources can be  
27 achieved consistent with the maintenance and expansion of employment opportunities,  
28 agriculture, and industrial development; and

29 (11) A state groundwater management program will provide economic, social, and  
30 environmental benefits for the citizens of West Virginia now and in the future.

31 (b) Therefore, the Legislature establishes that it is the public policy of the State of West  
32 Virginia to maintain and protect the state's groundwater so as to support the present and future  
33 beneficial uses and further to maintain and protect groundwater at existing quality where the  
34 existing quality is better than that required to maintain and protect the present and future beneficial  
35 uses. Such existing quality shall be maintained and protected unless it is established that (1) the  
36 measures necessary to preserve existing quality are not technically feasible or economically  
37 practical and (2) a change in groundwater quality is justified based upon economic or societal  
38 objectives. Such a change shall maintain and protect groundwater quality so as to support the  
39 present and future beneficial uses of such groundwater.

40 (c) The purposes of this article are to:

41 (1) Maintain and protect the state's groundwater resources consistent with this article to  
42 protect the present and future beneficial uses of the groundwater;

43 (2) Provide for the establishment of a state groundwater management program which will:

44 (i) Define the roles of agencies of the state and political subdivisions with respect to the  
45 maintenance and protection of groundwater, and designate a lead agency for groundwater

46 management;

47 (ii) Designate a state agency responsible for establishment of groundwater quality  
48 standards;

49 (iii) Provide for the establishment of standards of purity and quality for all groundwater;

50 (iv) Provide for the establishment of groundwater protection programs consistent with this  
51 article;

52 (v) Establish groundwater protection and groundwater remediation funds;

53 (vi) Provide for the mapping and analysis of the state's groundwater resources and  
54 coordination of the agencies involved; and

55 (vii) Provide for public education on groundwater resources and methods for preventing  
56 contamination;

57 (3) Provide such enforcement and compliance mechanisms as will assure the  
58 implementation of the state's groundwater management program; and

59 (4) Assure that actions taken to implement this article are consistent with the policies set  
60 forth in §22-11-2 of this code.

**§22-12-3. Definitions.**

1 Unless the context in which used clearly requires a different meaning, as used in this  
2 article:

3 (a) "Agency action" means the issuance, renewal or denial of any permit, license or other  
4 required agency approval, or any terms or conditions thereof, or any order or other directive issued  
5 by the Division of Environmental Protection, bureau of public health, Department of Agriculture or  
6 any other agency of the state or a political subdivision to the extent that such action relates directly  
7 to the implementation, administration or enforcement of this article.

8 (b) "Beneficial uses" means those uses which are protective of human health and welfare  
9 and the environment. Pollution of groundwater is not considered a beneficial use.

10 (c) "Board" means the state water resources environmental quality board.

11 (d) "Constituent" means any chemical or biological substance found in groundwater due  
12 to either natural or man-made conditions.

13 (e) "Director" means the director of the Division of Environmental Protection or such other  
14 person to whom the director has delegated authority or duties pursuant to sections six or eight,  
15 article one of this chapter.

16 (f) "Groundwater" means the water occurring in the zone of saturation beneath the  
17 seasonal high water table, or any perched water zones.

18 (g) "Groundwater certification" means an assurance issued by the director of the Division  
19 of Environmental Protection that a permit or other approval issued by a state, county or local  
20 government body regarding an activity that affects or is reasonably anticipated to affect  
21 groundwater complies with all requirements of this chapter, the legislative rules promulgated  
22 pursuant to this chapter in accordance with chapter twenty-nine-a of this code and any other  
23 requirements of state law, rules or agreements regarding groundwater.

24 (h) "Karst terrain" means those tax districts in West Virginia designated by the West  
25 Virginia Geological and Economic Survey to contain landscape formed primarily by the dissolution  
26 of soluble rock, such as limestone or dolostone, and characterized by sinkholes, sinking streams,  
27 closed depressions, subterranean drainage, and caves.

28 ~~(h)~~(i) "Person" means any industrial user, public or private corporation, institution,  
29 association, firm or company organized or existing under the laws of this or any other state or  
30 country; state of West Virginia; governmental agency, including federal facilities; political  
31 subdivision; county commission; municipal corporation; industry; sanitary district; public service  
32 district; soil conservation district; watershed improvement district; partnership; trust; estate;  
33 person or individual; group of persons or individuals acting individually or as a group; or any legal  
34 entity whatever.

35 ~~(i)~~ (j) "Pollution" means the man-made or man-induced alteration of the chemical, physical,  
36 biological or radiological integrity of the groundwater.

37           ~~(j)~~ (k) "Preventative action limit" means a numerical value expressing the concentration of  
38 a substance in groundwater that, if exceeded, causes action to be taken to assure that standards  
39 of purity and quality of groundwater are not violated.

40           ~~(k)~~ (l) "Water" means any and all water on or beneath the surface of the ground, whether  
41 percolating, standing, diffused or flowing, wholly or partially within this state, or bordering this  
42 state and within its jurisdiction, and includes without limiting the generality of the foregoing, natural  
43 or artificial lakes, rivers, streams, creeks, branches, brooks, ponds (except farm ponds, industrial  
44 settling basins and ponds and water treatment facilities), impounding reservoirs, springs, wells,  
45 watercourses and wetlands.

**§22-12-8. Groundwater certification.**

1           (a) To ensure a comprehensive, consistent and unfragmented approach to the  
2 management and protection of groundwater, including evaluation of the cumulative effects of all  
3 activities that have the potential to impact on groundwater, the director shall oversee and  
4 coordinate the implementation of this article by each of the groundwater regulatory agencies  
5 through a groundwater certification program as hereby established.

6           (b) Every state, county or local government body which reviews or issues permits,  
7 licenses, registrations, certificates of other forms of approval, or renewal thereof, for activities or  
8 practices which may affect groundwater quality shall first submit to the director for review and  
9 approval an application for certification. Such application shall include a copy of the approval  
10 proposed by such body, including any terms and conditions which have been imposed by it. Upon  
11 receipt of this application, the director shall act within thirty days to determine whether to waive  
12 or exercise his or her certification powers. If no decision is made or communicated by the director  
13 within said 30 day period, groundwater certification is approved. If the director decides to exercise  
14 his or her certification powers, he or she may utilize additional time, not to exceed an additional  
15 60 days, to further review the materials submitted or to conduct such investigations as he or she  
16 deems necessary.

17 (c) No agency action or failure to act may result in a permit, license, registration, certificate  
18 or other form of approval or renewal thereof for activities or practices which may affect  
19 groundwater quality in karst terrain unless, at a minimum, the application contains:

20 (1) A groundwater contamination risk assessment report evaluating storm water runoff and  
21 sediment, below ground site conditions and the materials proposed to be used or consumed at  
22 the site;

23 (2) A design proposal for the appropriate storage and containment structures to mitigate  
24 the risk identified; and

25 (3) A water monitoring and contamination response plan, including procedures for the  
26 stoppage and restart of operations at the site.

27 Within one year of the effective date of this subsection, the Department of Agriculture,  
28 Bureau for Public Health and Department of Environmental Protection shall promulgate in  
29 accordance with the provisions of §29A-1-1 et seq. of this code such legislative rules as may be  
30 necessary to implement the authority granted them by this subsection. Such rules may exempt  
31 from the requirements of this subsection activities and practices having a *de minimus* effect on  
32 groundwater quality in karst terrain.

33 ~~(c)~~ (d) The director may waive, grant, grant with conditions, or deny groundwater  
34 certification. Groundwater certification, and all conditions required under such certification, shall  
35 become a condition on any permit, approval or renewal thereof, issued by any state, county or  
36 local government body. Where appropriate, the director may provide general groundwater  
37 certification for or may waive certification for classes or categories of activities or approvals.

NOTE: The purpose of this bill is to provide for groundwater protection in karst terrain;  
define karst terrain; provide specific requirements for agency action affecting karst terrain;  
and establish rulemaking authority.

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