

# **WEST VIRGINIA LEGISLATURE**

## **2023 REGULAR SESSION**

### **Committee Substitute**

**for**

### **House Bill 2896**

By Delegates Anderson, Zatezalo, Hanshaw (Mr. Speaker),  
Smith, Riley, Foster, Steele, Tully, Young, Summers, and Hott

[Originating in the Committee on Finance,

February 9, 2023]



1 A BILL to repeal §16-27-1, §16-27-2, §16-27-3, and §16-27-4 of the Code of West Virginia, 1931,  
2 as amended; to repeal §16-34-1, §16-34-2, §16-34-3, §16-34-4, §16-34-5, §16-34-6, §16-  
3 34-7, §16-34-8, §16-34-9, §16-34-10, §16-34-11, §16-34-12, §16-34-13, and §16-34-14 of  
4 said code; to amend and reenact §18-9E-3 of said code; to amend said code by adding  
5 thereto a new article, designated §22-34-1, §22-34-2, §22-34-3, §22-34-4, §22-34-5, §22-  
6 34-6, §22-34-7, §22-34-8, §22-34-9, §22-34-10, §22-34-11, §22-34-12, §22-34-13, §22-  
7 34-14, §22-34-15, §22-34-16, §22-34-17, §22-34-18, §22-34-19, §22-34-20, and §22-34-  
8 21; to amend said code by adding thereto a new article, designated §22-35-1, §22-35-2,  
9 §22-35-3, §22-35-4, §22-35-5, §22-35-6, §22-35-7, §22-35-8, §22-35-9, §22-35-10, §22-  
10 35-11, §22-35-12, §22-35-13 and §22-35-14; and to amend and reenact §29-1H-3 and  
11 §29-1H-5 of said code, all relating to making West Virginia an agreement state with the  
12 United States Nuclear Regulatory Commission and transferring authority and  
13 responsibility for sources of radiation from other state agencies to the Department of  
14 Environmental Protection; establishing a comprehensive regulatory system for the control  
15 of sources of radiation for the protection of the public and the environment; creating the  
16 Radiation Control Act; providing for declaration of policy and purpose; providing for certain  
17 definitions; providing for exemptions; creating the Radiation Advisory Board; providing for  
18 the Board's composition, authorities, duties, and for the compensation of members;  
19 providing that the Department of Environmental Protection is be designated as the state  
20 radiation control agency; providing for the Department's duties, authorities, and  
21 requirements for consistency with federal law and regulations; providing for  
22 comprehensive programs and procedures to control radiation through general and specific  
23 licensing of radioactive materials and equipment; establishing rule making authority under  
24 the Department concerning radiation control; establishing licensing and registration  
25 requirements and procedures; establishing fee schedules, funding sources, and forms;  
26 transferring existing rules, licenses, policies, agreements, grants, and funding to the

27 Department from other agencies; establishing procedures and requirements regarding  
28 perpetual custody of radioactive materials and sureties; providing for the Department to  
29 acquire needed real estate interests; providing for a comprehensive program to regulate  
30 Radon, and its screening, testing, and mitigation; providing for the regulation of X-ray  
31 machines, and providing for reports, fees, and qualifications of such inspectors; creating  
32 the Radiation Site Closure and Reclamation Fund with requirements and funding sources;  
33 creating the Radiation Licensure and Inspection Fund with requirements and funding  
34 sources; allowing for impounding sources of ionizing radiation; providing authority for the  
35 Governor and the Department to enter into agreements with the federal government, other  
36 states, or interstate agencies; defining effects on local ordinances; providing for  
37 administrative procedure and judicial review; defining enforcement procedures regarding  
38 violations of law; establishing civil penalties; establishing felonies with criminal penalties;  
39 providing for the licensure of radon mitigators, testers, contractors, and laboratories;  
40 providing for legislative findings; requiring radon licenses and providing requirements and  
41 exemptions; providing for record keeping, rulemaking, and confidentiality; transferring a  
42 special revenue fund and other funds to the Department; providing for suspension or  
43 revocation of licenses for programs concerning radon and other radioactive materials;  
44 continuing an existing misdemeanor with criminal penalties; and providing that the  
45 Secretary of the Department of Environmental Protection shall assume responsibilities  
46 under the Appalachian States Low-Level Radioactive Waste Compact.

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

## **CHAPTER 16. PUBLIC HEALTH.**

### **ARTICLE 27. STORAGE AND DISPOSAL OF RADIOACTIVE WASTE MATERIALS.**

#### **§16-27-1. Definitions.**

1 [Repealed.]

**§16-27-2. Storage or disposal of radioactive waste material within the state prohibited; exceptions.**

1 [Repealed.]

**§16-27-3. Authority of director of health.**

1 [Repealed.]

**§16-27-4. Penalties.**

1 [Repealed].

**ARTICLE 34. LICENSURE OF RADON MITIGATORS, TESTERS, CONTRACTORS  
AND LABORATORIES.**

**§16-34-1. Legislative finding.**

1 [Repealed].

**§16-34-2. Definitions.**

1 [Repealed].

**§16-34-3. License required and exemptions.**

1 [Repealed].

**§16-34-4. Special licensure requirements.**

1 [Repealed].

**§16-34-5. Powers and duties of the director of the division of health.**

1 [Repealed].

**§16-34-6. Rules.**

1 [Repealed].

**§16-34-7. Complaints.**

1 [Repealed].

**§16-34-8. Licensed tester, mitigator and contractor list.**

1 [Repealed].

**§16-34-9. Record keeping and confidentiality.**

1 [Repealed].

**§16-34-10. Special revenue account.**

1 [Repealed].

**§16-34-11. Reciprocity.**

1 [Repealed].

**§16-34-12. Records review.**

1 [Repealed].

**§16-34-13. Reprimands; suspension or revocation of license; orders; hearings.**

1 [Repealed].

**§16-34-14. Penalties.**

1 [Repealed].

**CHAPTER 18. EDUCATION.**

**ARTICLE 9E. AIR QUALITY IN NEW SCHOOLS ACT.**

**§18-9E-3. Air quality in new schools.**

1 (a) In an effort to create well-ventilated school environments and notwithstanding any other  
2 provision of this code to the contrary, any new school building designed and constructed in the  
3 state by a county board, regardless of the funding source, shall be designed and constructed in  
4 compliance with the current standards of the American society of heating, refrigerating and air  
5 conditioning engineers handbook (ASHRAE), the national fire protection association code (NFPA)  
6 and the code of the building officials and code administrators (BOCA).

7 (b) Upon notice from the School Building Authority that a new public school building is  
8 occupied, the ~~division of health~~ Department of Environmental Protection shall perform radon  
9 testing in the school within the first year after occupancy and at least every five years thereafter.

10 The county board shall provide any reasonable assistance to the ~~division of health~~ Department of

11 Environmental Protection that is necessary to perform the radon testing. The radon testing shall  
12 include all major student-occupied areas at or below grade level. If it is determined that radon is  
13 present in amounts greater than the amount determined to be acceptable by the rules and  
14 standards promulgated by the ~~School Building Authority, pursuant to subsection (d) of this section~~  
15 Department of Environmental Protection, any industry accepted mitigation technique shall be  
16 used to reduce the radon level to ~~the level at~~ or below the ~~level determined acceptable by the~~  
17 ~~School Building Authority~~ acceptable level.

18 (c) If the School Building Authority determines that it is feasible to test for radon prior to the  
19 construction of a school building, the School Building Authority may cause preconstruction site  
20 testing for radon to be performed.

21 (d) The School Building Authority shall promulgate rules pursuant to §29A-3A-1 *et seq.* of  
22 this code to ensure that any new school building designed after the effective date of this article is  
23 designed and constructed in accordance with the current ASHRAE, NFPA and BOCA standards.  
24 ~~The School Building Authority shall promulgate rules, pursuant to article three-a, chapter twenty-~~  
25 ~~nine-a of this code, that establish standards for safe levels of radon for public school buildings. The~~  
26 rules shall include the requirement that county boards submit all new school designs to the School  
27 Building Authority for review and approval for compliance with current education standards and  
28 design efficiencies prior to preparation of final bid documents.

29 (e) On or before July 1, 2002, the School Building Authority shall promulgate rules to  
30 establish a process for independent testing, adjusting and balancing (TABs) heating, ventilation  
31 and air conditioning (HVAC) systems in new school buildings or renovated schools when the  
32 HVAC system has been replaced prior to occupancy. The process shall be consistent with current  
33 ASHRAE standards and shall include, but not be limited to, the following:

34 (1) Requiring HVAC designers to be professional engineers registered in this state in the  
35 specific discipline associated with the system being designed;

36           (2) Requiring a process to ensure that the HVAC system has been installed in the  
37 prescribed manner and will operate within the performance guidelines as designed;

38           (3) Requiring participation of the design engineer who designed the system to verify the  
39 intent of the design;

40           (4) Requiring the TAB agent to be qualified to perform the desired services and perform  
41 testing and balancing procedures, or qualified to perform other School Building Authority-  
42 approved certification according to the procedures contained in the associated air balance council  
43 (AABC) national standards, the national environmental balancing bureau (NEBB) procedural  
44 standards and the environment engineering consultants (EEC) standards for testing, adjusting  
45 and balancing of environmental systems;

46           (5) Requiring that the independent TAB agent directly represent the building owner and is  
47 under contract with the building owner and paid from project funds;

48           (6) Requiring that sufficient documentation is provided to the owner to facilitate control and  
49 maintenance of the systems in accordance with the manufacturer's requirements;

50           (7) Requiring that sufficient training is provided by the equipment manufacturer or an agent  
51 of the manufacturer to those persons who will operate and maintain the systems prior to  
52 occupation of the facility, including at least one full day follow-up training between six and eight  
53 months after the facility has been occupied; and

54           (8) Requiring certification upon successful completion of the TAB process by the  
55 independent TAB agent.

56           (f) To ensure proper maintenance and operation of new and replacement HVAC  
57 equipment, the Department of Education, using existing staff, shall provide county maintenance  
58 personnel additional training on the equipment and its controls at the site of the installation. The  
59 training shall occur within one year after student occupation of any new school facility or at any  
60 existing school facility where the HVAC system has been replaced or generally rehabilitated.  
61 Additionally, the Department of Education's facility staff shall provide on-site training to the county



62 maintenance staff on the county's HVAC equipment at any facility that has been determined to  
63 have problematic indoor air quality as identified through the complaint procedure set forth in state  
64 board policy 6202.

65 (g) Upon completion of the required training, the Department of Education's facility staff  
66 shall provide the county board a report summarizing the training that was completed and a plan for  
67 continuing education of the county's HVAC staff. If sufficient staff is not available to the county to  
68 perform maintenance on HVAC systems, the Department of Education's staff shall assist the  
69 county in the development of an immediate and long range maintenance plan to ensure that HVAC  
70 systems are maintained and operated according to the manufacturer's recommendations.

71 (h) Beginning July 1, 2002, and every three months thereafter, the Department of  
72 Education shall forward to the School Building Authority copies of any complaints received by the  
73 Department of Education of indoor air quality problems which require system repair or  
74 replacement and are identified through the complaint procedure established in state board policy  
75 6202.

76 (i) The state board shall promulgate rules, pursuant to ~~article three-b, chapter twenty-nine-~~  
77 a §29A-3B-1 et seq. of this code, in consultation with the division of health, that authorize the use  
78 of any appropriate floor covering in public school buildings, based on user needs and performance  
79 specifications.

## CHAPTER 22. ENVIRONMENTAL RESOURCES.

### ARTICLE 34. RADIATION CONTROL ACT.

#### §22-34-1. Declaration of policy.

1 It is the policy of the state in furtherance of its responsibility to protect the occupational and  
2 public health and safety of the environment:

3 (1) To institute and maintain a regulatory program for sources of ionizing and nonionizing  
4 radiation so as to provide for compatibility and equivalency with the standards and regulatory

5 programs of the federal government, a single effective system of regulation within the state, and a  
6 system consonant insofar as possible with those of other states.

7 (2) To institute and maintain a program to permit development and use of sources of  
8 radiation for peaceful purposes consistent with the health and safety of the public.

9 (3) To provide for the availability of capacity outside the state for the disposal of low-level  
10 radioactive waste generated within the state except for waste generated as a result of defense or  
11 federal research and development activities and to recognize that such radioactive waste can be  
12 most safely and efficiently managed on a regional basis.

**§22-34-2. Declaration of purpose.**

1 This article is enacted to provide:

2 (1) A program of effective regulation of sources of radiation for the protection of the  
3 occupational and public health and safety.

4 (2) A program to promote an orderly regulatory pattern within the state, among the states,  
5 and between the federal government and the state and facilitate intergovernmental cooperation  
6 with respect to use and regulation of sources of radiation to the end that duplication of regulation  
7 may be minimized.

8 (3) A program to establish procedures for assumption and performance of certain  
9 regulatory responsibilities with respect to byproduct, source and special nuclear materials, and  
10 radiation generating equipment.

11 (4) A program to permit use of sources of radiation consistent with the health and safety of  
12 the \_\_\_\_\_ public.

**§22-34-3. Definitions.**

1 As used in this article unless the context requires a different meaning:

2 (1) "Board" means the Radiation Advisory Board which is hereby created and shall be  
3 composed of four voting appointed members and three voting ex officio members as provided in  
4 this article.

5           (2) "By-product material" means:

6           (A) Any radioactive material, except special nuclear material, yielded in or made  
7 radioactive by exposure to the radiation incident to the process of producing or utilizing special  
8 nuclear material;

9           (B) The tailings or wastes produced by the extraction or concentration of uranium or  
10 thorium from any ore processed primarily of its source material content;

11           (C) Any discrete source of radium-226 that is produced, extracted, or converted after  
12 extraction for use for a commercial, medical, or research activity;

13           (D) Any material that has been made radioactive by use of a particle accelerator and is  
14 produced, extracted, or converted after extraction for use for a commercial, medical, or research  
15 activity; and

16           (E) Any discrete source of naturally occurring radioactive material (NORM), other than  
17 source material that the United States Nuclear Regulatory Commission, in consultation with the  
18 Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of  
19 Homeland Security, and the head of any other appropriate federal agency, determines would pose  
20 a threat similar to the threat posed by a discrete source of radium-226 to the public health and  
21 safety or the common defense and security, that is extracted, or converted after extraction, for use  
22 for a commercial, medical, or research activity.

23           (3) "Civil penalty" means any monetary penalty levied on a licensee or registrant because  
24 of violations of statutes, regulations, licenses, or registration certificates, but does not include  
25 criminal penalties.

26           (4) "Decommissioning" means final operational activities at a facility to dismantle site  
27 structures, to decontaminate site surfaces and remaining structures, to stabilize and contain  
28 residual radioactive material, and to carry out any other activities to prepare the site for post-  
29 operational care.

30           (5) "Department" means the West Virginia Department of Environmental Protection.

31 (6) "General license" means a license effective under rules promulgated by the  
32 Department without the filing of an application with the Department or the issuance of licensing  
33 documents to particular persons to transfer, acquire, own, possess, or use quantities of, or devices  
34 or equipment utilizing, radioactive material.

35 (7) "High-level radioactive waste" means:

36 (A) Irradiated reactor fuel;

37 (B) Liquid wastes resulting from the operation of the first cycle solvent extraction system, or  
38 equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a  
39 facility for reprocessing irradiated reactor fuel; or

40 (C) Solids into which such liquid wastes have been converted.

41 (8) "Ionizing radiation" means gamma rays and X-rays, alpha and beta particles, high-  
42 speed electrons, neutrons, protons, and other nuclear particles; but not sound or radio waves, or  
43 visible, infrared, or ultraviolet light.

44 (9) "Licensing" means licensing with the Department in accordance with rules and  
45 regulations adopted pursuant to this article.

46 (10) "Low-level radioactive waste" means radioactive waste not classified as high-level  
47 radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material.

48 (11) "Non-ionizing radiation" means:

49 (A) Any electromagnetic radiation, other than ionizing electromagnetic radiation or

50 (B) Any sonic, ultrasonic, or infrasonic wave.

51 (12) "Person" means any individual, corporation, LLC, partnership, firm, association, trust,  
52 estate, public or private institution, group, agency of this state, other than the Department of  
53 Environmental Protection, political subdivision of this state, any other state or political subdivision  
54 or Department thereof, and any legal successor, representative, agent, or Department of the  
55 foregoing, but not including federal government agencies.

56 (13) "Radiation" means ionizing radiation and nonionizing radiation.

57           (14) "Radiation emergency" means any situation, excluding events resulting from nuclear  
58 warfare, which involves the possibility of accidental release of ionizing radiation that may pose a  
59 threat to the safety and health of any citizen of this state.

60           (15) "Radiation generating equipment" means any manufactured product or device, or  
61 component part of such a product or device, or any machine or system which during operation can  
62 generate or emit radiation except those which emit radiation only from radioactive material.

63           (16) "Radioactive material" means any material (solid, liquid, or gas) which emits ionizing  
64 radiation spontaneously. It includes accelerator-produced, byproduct, naturally occurring, or  
65 source and special nuclear materials.

66           (17) "Registration" means registration with the Department in accordance with rules and  
67 regulations adopted pursuant to this article.

68           (18) "Secretary" means the secretary of the West Virginia Department of Environmental  
69 Protection or his or her designee.

70           (19) "Source material" means uranium or thorium, or any combination thereof, in any  
71 physical or chemical form; or ores that contain by weight one-twentieth of one percent (0.05  
72 percent) or more of uranium, thorium, or any combination thereof. Source material does not  
73 include special nuclear material.

74           (20) "Sources of radiation" means, collectively, radioactive material and radiation  
75 generating equipment.

76           (21) "Special nuclear material" means (i) plutonium, uranium 233, uranium enriched in the  
77 isotope 233 or in the isotope 235, and any other material which the United States Nuclear  
78 Regulatory Commission or any successor thereto has determined to be such but does not include  
79 source material; or (ii) any material artificially enriched by any of the foregoing but not including  
80 source material.

81 (22) "Specific license" means a license, issued to a named person upon application filed  
82 under the rules promulgated pursuant to this article, to use, manufacture, produce, transfer,  
83 receive, acquire, or possess quantities of, or devices utilizing, radioactive material.

84 (23) "Spent nuclear fuel" means irradiated nuclear fuel that has undergone at least one  
85 year's decay since being used as a source of energy in a power reactor. Spent fuel includes the  
86 special nuclear material, byproduct material, source material, and other radioactive material  
87 associated with fuel assemblies.

88 (24) "Transuranic waste" means radioactive waste containing alpha emitting transuranic  
89 elements, with radioactive half-lives greater than five years, in excess of 10 nanocuries per gram.

**§22-34-4. Exemption.**

1 The provisions of this article shall not apply to radioactive materials or facilities, including  
2 nuclear reactors, that are subject to exclusive licensing and regulation by the United States  
3 Nuclear Regulatory Commission.

**§22-34-5. Radiation Advisory Board; composition; compensation, duties generally.**

1 (a) The Radiation Advisory Board shall consist of four voting appointive members and  
2 three voting ex officio members specified below. The Governor shall appoint to the Board  
3 individuals from industry and academia with training in one or more of the following fields:  
4 radiology, medicine, radiation, health physics, physics, related sciences with specialization in  
5 ionizing radiation, law, management of nuclear materials, or emergency management. Not more  
6 than two individuals shall be specialists in any one of the above-named fields. Members of the  
7 Board shall serve at the pleasure of the Governor. The Secretary of the Department of  
8 Environmental Protection, or his or her designee, shall be an ex officio member and preside as  
9 Chair of the Board. The Secretary of the Department of Homeland Security, or his or her designee,  
10 and the Secretary of the Department of Health and Human Resources, or his or her designee,  
11 shall all be ex officio members of the Board. All members are voting members.

12 (b) The Board shall meet at least annually and shall:

13           (1) Review and evaluate policies and programs of the state relating to ionizing and non-  
14 ionizing radiation; and

15           (2) Make recommendations to the Department, and furnish such advice as may be  
16 requested, on matters relating to development, utilization, and regulation of sources of ionizing  
17 and non-ionizing radiation.

18           (c) Each appointed member is entitled to receive, and the Department shall pay to each  
19 member, compensation in the amount of \$250 for each day on which the member attends a  
20 meeting of the Board. In addition, all appointed members shall receive reasonable and necessary  
21 expenses actually incurred in discharging the member's duties pursuant to this article.

22           (d) The Secretary shall provide compensation, office space, staff, and office equipment as  
23 may be necessary to discharge the responsibilities imposed by this article.

**§22-34-6. Powers and duties of the Board.**

1           (a) The Board may make recommendations to the Secretary to:

2           (1) Establish and oversee programs of effective regulation of sources of radiation for the  
3 protection of the public health and safety, including programs of education and technical  
4 assistance relating to radon that is targeted to those areas of the state known to have high radon  
5 levels.

6           (2) Establish and oversee a program to promote the orderly regulation of radiation within  
7 the state, among the states and between the federal government and the state and to facilitate  
8 intergovernmental cooperation with respect to use and regulation of sources of radiation to the end  
9 that duplication of regulation may be minimized.

10           (3) Establish and oversee a program to permit maximum utilization of sources of radiation  
11 consistent with the public health and safety.

12           (4) Establish fee schedules for licensures required pursuant to this article.

13           (5) Establish fee schedules for the registrations required pursuant to this article.

14           (6) Encourage, participate in, and conduct studies, investigations, training, research, and  
15 demonstrations relating to control of sources of radiation.

**§22-34-7. Department designated state radiation control agency; powers and duties.**

1           (a) The Department of Environmental Protection is hereby designated as the state  
2 radiation control agency.

3           (b) The Secretary shall designate the director of the state radiation control agency who  
4 shall perform the functions vested in the state radiation control agency under the provisions of this  
5 article.

6           (c) In accordance with the laws of the state, the state radiation control agency may employ,  
7 compensate, and prescribe the powers and duties of such individuals as may be necessary to  
8 carry out the provisions of this article.

9           (d) The state radiation control agency, for the protection of the occupational and public  
10 health and safety and the environment, shall:

11           (1) Develop programs for evaluation and control of hazards associated with use of sources  
12 of radiation.

13           (2) Develop programs with due regard for compatibility with federal programs for regulation  
14 of byproduct, source, and special nuclear materials.

15           (3) Develop programs with due regard for consistency with federal programs for regulation  
16 of radiation generating equipment.

17           (4) Formulate, adopt, promulgate, and repeal rules, and regulations, which may provide for  
18 licensing and/or registration, relating to control of sources of radiation with due regard for  
19 compatibility with the regulatory programs of the federal government.

20           (5) Advise, consult, and cooperate with other agencies of the state, the federal  
21 government, other states and interstate agencies, political subdivisions, and other organizations  
22 concerned with control of sources of radiation.



23 (6) Have the authority to accept and administer loans, grants, or other funds or gifts,  
24 conditional or otherwise, in furtherance of its functions, from the federal government and from  
25 sources, public or private.

26 (7) Encourage, participate in, or conduct studies, investigations, training, research, and  
27 demonstrations relating to control of sources of radiation.

28 (8) Collect and disseminate information relating to control of sources of radiation,  
29 including:

30 (A) Establish and maintain a file of all license applications, issuances, denials,  
31 amendments, transfers, renewals, modifications, suspensions, and revocations;

32 (B) Establish and maintain a file of registrants possessing sources of radiation requiring  
33 registration under the provisions of this article and any administrative or judicial action pertaining  
34 thereto; and

35 (C) Establish and maintain a file of all agency rules related to regulation of sources of  
36 radiation, pending or promulgated, and proceedings thereon.

37 (9) Establish a database of registered and certified X-ray machines, which shall include but  
38 not be limited to the name of the owner or operator and the location of the machine.

39 (10) Pursuant to its powers enumerated in §22-34-9 of this code, provide for scheduled  
40 and random unannounced inspections of facilities and physicians' offices that provide relevant  
41 services to ensure compliance with laws, rules, licenses, or conditions.

42 (11) Establish forms including the periodic radiation inspection reports.

43 (12) Develop programs for responding adequately to radiation emergencies and  
44 coordinate such programs with the emergency management agencies.

45 (13) Publish and make available a list of qualified inspectors of X-rays and X-ray machines.

46 (14) Ensure compliance with all requirements under the Appalachian States Low-Level  
47 Radioactive Waste Compact pursuant to §29-1H-1 et seq. of this code and all federal laws.

48           (15) Promulgate all rules necessary under this article, in accordance with the provisions of  
49 §29A-3-1 et seq. of this code, including providing for (i) general or specific licenses to use, store,  
50 dispose, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or  
51 devices or equipment utilizing, by-product, source, special nuclear materials, or other radioactive  
52 material occurring naturally or produced artificially, (ii) registration of the possession of a source of  
53 radiation and of information with respect thereto, (iii) regulation of by-product, source and special  
54 nuclear material and (iv) compliance with Appalachian States Low-Level Radioactive Waste  
55 Compact pursuant to §29-1H-1 et seq. of this code and all federal laws. All prior existing legislative  
56 rules, policies, and licenses shall be transferred to the Department and remain effective until  
57 amended or terminated pursuant to the provisions of §29A-3-1 et seq. of this code.

58           (16) Issue such orders or modifications thereof as may be necessary in connection with  
59 proceedings under this article.

60           (e) The Department is authorized to require by rule, regulation, or order, the keeping of  
61 such records with respect to activities under licenses and registration certificates issued under this  
62 article as may be necessary to effectuate the purpose of this article. These records shall be made  
63 available for inspection by, or copies thereof shall be submitted to, the Department on request.

64           (f) The Secretary, subject to the approval of the Governor, may:

65           (1) Acquire by purchase, exercise of the right of eminent domain, grant, gift, devise or  
66 otherwise, the fee simple title to or any acceptable lesser interest in any lands necessary,  
67 desirable, or acceptable sites for ionizing radiation control projects, including any and all lands  
68 adjacent to a project site as may be necessary or suitable for restricted areas; but in all instances  
69 lands which are to be designated as radioactive waste material sites shall be acquired in fee  
70 simple absolute and dedicated in perpetuity to such purpose.

71           (2) Convey or lease, for such term as may be in the public interest, any lands so acquired,  
72 either for a fair and reasonable consideration or solely or partly as an inducement to the  
73 establishment or location in the state of any scientific or technological facility, project, satellite

74 project or nuclear storage area; but subject to such restraints as may be deemed proper to bring  
75 about a reversion of title or termination of any lease in the event the grantee or lessee, as the case  
76 may be, shall cease to use the premises or facilities in the conduct of business or activities  
77 consistent with the purposes of this article: *Provided*, That radioactive waste material sites may be  
78 leased but may not otherwise be disposed of except to another department, agency or institution  
79 of the state or to the United States.

80 (3) Assume responsibility for perpetual custody and maintenance of radioactive materials  
81 held for custodial purposes at any publicly or privately operated facility located within the state in  
82 the event the parties operating such facilities abandon their responsibility and whenever the  
83 federal government or any of its agencies has not assumed the responsibility. In such event, the  
84 Secretary may oversee collections of fees, penalties, and sureties from private or public parties  
85 holding radioactive materials for perpetual custodial purposes to finance such perpetual custody  
86 and maintenance as the Secretary may undertake: *Provided*, That the fees and required sureties  
87 shall be sufficient in each individual case to defray the estimated cost of the Department's  
88 custodial management activities for that individual case. All such fees, penalties, and forfeited  
89 sureties, when received by the Department, shall be deposited in the fund established in §22-34-  
90 13 of this code, and shall be used exclusively for maintenance costs or for otherwise satisfying  
91 custodial and maintenance obligations.

92 (4) Enter into an agreement with the federal government or any of its authorized agencies  
93 to assume perpetual maintenance of lands donated, leased, or purchased from the federal  
94 government or any of its authorized agencies and used for development of atomic energy  
95 resources or used as custodial sites for radioactive material.

96 (g) The Secretary shall establish fee schedules for licensures, registrations, inspections,  
97 and modifications thereto required pursuant to this article. All such fees collected shall be paid to  
98 the Department for deposit in a special fund called the Radiation Licensure and Inspection Fund  
99 created pursuant to §22-34-14 of this code.

100 (h) The Secretary shall provide compensation, office space, staff, and office equipment as  
101 may be necessary to discharge the responsibilities imposed by this article.

102 (i) All prior existing contracts, agreements, grant arrangements, and funding shall be  
103 transferred and assigned to the Department and remain valid, enforceable, and effective until  
104 amended or terminated by the Department.

**§22-34-8. Radon education, screening, testing, and mitigation.**

1 The Department shall take into consideration recommendations of the Board and establish  
2 and administer programs for radon education, screening, testing, and mitigation pursuant to §22-  
3 35-1 et seq. of this code.

**§22-34-9. Inspections of X-ray machines required; Radiation Inspection Reports; fees; qualification of inspectors.**

1 (a) All X-ray machines shall be registered with the Department.

2 (b) Every owner or operator of an X-ray machine shall request an initial inspection by a  
3 private inspector or a Department inspector no later than 30 days after the installation of the  
4 equipment. Inspections shall be performed periodically on a schedule prescribed by the rules  
5 promulgated by the Department. The Department may also require random, unannounced, follow-  
6 up inspections of machines that were inspected by private inspectors to maintain quality control. In  
7 the event of changes in or installations of new equipment during the last 90 days of a period for  
8 which an inspection has been made, no interim inspection shall be required. In addition, the  
9 Department may require the inspection and certification of other machines emitting radiation or  
10 utilizing radiation for patients, consumers, workers, or the public. Inspections shall be performed  
11 by Department personnel or by private inspectors only. Inspections conducted by private  
12 inspectors shall be conducted in conformance with the rules of the Department and reports on  
13 these inspections shall be filed by the registrant with the Department on forms prescribed by the  
14 Department. Results of all inspections shall be reviewed by the Department.

15           (c) The Department shall issue a certificate for a diagnostic or therapeutic X-ray machine,  
16 or X-ray machine not used in the healing arts, when the results of the inspection indicate the  
17 machine meets the Department's standards. If the machine does not meet the Department's  
18 standards, the certification may be denied. If the certification is denied, the machine shall not be  
19 used for treatment, diagnosis, evaluation of patients, whether human or animal, or any other use  
20 until the standards of the Department have been met. A copy of the certificate shall be displayed  
21 by the registrant in a conspicuous place in close proximity to the X-ray machine.

22           (d) The Department shall, in accordance with the provisions of §29A-3-1 et seq. of this  
23 code, timely promulgate all such rules as the Department deems necessary to protect the health  
24 and safety of health care workers, patients, and the general public, including but not limited to:

25           (1) Fee schedules for licensing and registration of X-ray machines;

26           (2) Schedule for inspections of X-ray machines;

27           (3) Fee schedules for inspections of X-ray machines by Department personnel; however,  
28 no fee shall be charged for inspections initiated by the Department;

29           (4) Standards for certification of X-ray machines; and

30           (5) Qualifications for private inspectors of X-ray machines required for inclusion on a list of  
31 qualified inspectors of X-ray machines published pursuant to §22-34-7 of this code, a requirement  
32 for annual registration as a private inspector of X-ray machines for inclusion on such list, and a fee  
33 not to exceed \$250.00 for such registration.

34           (e) All prior existing legislative rules, policies, and licenses shall be transferred to the  
35 Department and remain effective until amended or terminated pursuant to the provisions of §29A-  
36 3-1 et seq. of this code.

37           (f) The provisions of this section and of §22-34-7 and §22-34-9 of this code relating to X-ray  
38 machines and machines emitting or utilizing radiation shall not apply to devices purchased or used  
39 primarily for personal, family, or household purposes.

40 (g) All prior existing contracts, agreements, grant arrangements, and funding shall be  
41 transferred and assigned to the Department and remain valid, enforceable, and effective until  
42 amended or terminated by the Department.

**§22-34-10. Costs of inspection conducted by the Department of Environmental Protection;**  
**fees to be used to support program.**

1 In order to minimize competition with the private sector, the fee schedule developed for  
2 routine inspections of X-ray machines by the Department's inspectors shall include all reasonable  
3 costs of such inspections.

**§22-34-11. Licensing of radioactive material.**

1 (a) All radioactive material not under the authority of the United States Nuclear Regulatory  
2 Commission, and devices or equipment utilizing such material, shall be licensed by the  
3 Department under the rules promulgated by the Department.

4 (b) Rules promulgated under this article should provide for recognition of other Agreement  
5 State or federal licenses, subject to such requirements as the Department may prescribe.

6 (c) It shall be unlawful for any person to use, store, dispose, manufacture, produce,  
7 distribute, sell, transport, transfer, install, repair, receive, acquire, own, or possess any source of  
8 radiation unless licensed by or registered with the Department in conformance with this article and  
9 any rules promulgated by the Department pursuant to this article. The disposal of radioactive  
10 waste material in a solid waste facility or in a commercial solid waste facility, as defined in §22-15-  
11 2 of this code, is prohibited.

12 (d) The Department shall provide by rule or regulation for general or specific licensing of  
13 radioactive material or devices or equipment utilizing such material. Such rule or regulation shall  
14 provide for amendment, suspension, or revocation of licenses.

15 (e) The Department is authorized to require registration or licensing of other sources of  
16 radiation.

17           (f) The Department is authorized to exempt certain sources of radiation or kinds of uses or  
18 users from the licensing or registering requirements set forth in this section when the Department  
19 makes a finding that the exemption of such sources of radiation or kinds of use or users will not  
20 constitute a significant risk to the environment or health and safety to the public.

21           (g) Rules and regulations promulgated under this article may provide for recognition of  
22 other state or federal licenses as the Department may deem desirable, subject to such registration  
23 requirements as the Department may prescribe.

**§22-34-12. Surety requirements.**

1           (a) For licensed activities involving source material milling, source material mill tailing and  
2 disposal of low-level radioactive waste the Department shall, and for other classes of licensed  
3 activity the Department may, establish by rule or regulation standards and procedures to ensure  
4 that the licensee will provide an adequate surety or other financial arrangement to permit the  
5 completion of all requirements established by the Department for the decontamination, closure,  
6 decommissioning and reclamation of sites, structures, and equipment used in conjunction with  
7 such licensed activity, in case the licensee should default for any reason in performing such  
8 requirements.

9           (b) All sureties required under subsection (a) which are forfeited shall be paid to the  
10 Department for deposit in a special fund called the Radiation Site Closure and Reclamation Fund  
11 created pursuant to §22-34-13 of this code.

12           (c) For licensed activities involving the disposal of source material mill tailings and disposal  
13 of low-level radioactive waste the Department shall, and for other classes of licensed activity when  
14 radioactive material which will require surveillance or care is likely to remain at the site after the  
15 licensed activities cease the Department may, establish by rule or regulation standards and  
16 procedures to ensure that the licensee, before termination of the license, will make available such  
17 funding arrangements as may be necessary to provide for long-term site surveillance and care.

18           (d) All funds collected from licensees under subsection (c) shall be paid to the Department  
19 for deposit in a special fund called Radiation Site Closure and Reclamation Fund created under  
20 §22-34-13 of this code.

21           (e) The sureties or other financial arrangements and funds required by subsections (a) and  
22 (c) shall be established in amounts sufficient to ensure compliance with those standards, if any,  
23 established by the United States Nuclear Regulatory Commission pertaining to closure,  
24 decommissioning, reclamation, and long-term site surveillance and care of such facilities and  
25 sites.

26           (f) In order to provide for the proper care and surveillance of sites subject to subsection (c)  
27 the Department may acquire by gift or transfer from another government agency or private person,  
28 any land and appurtenances necessary to fulfill the purposes of this section. Any such gift or  
29 transfer is subject to approval and acceptance by the Department.

30           (g) The Department may by contract, agreement, lease, or license with any person,  
31 including another state agency, provide for the decontamination, closure, decommissioning,  
32 reclamation, surveillance, or other care of a site subject to this section as needed to carry out the  
33 purposes of this section.

34           (h) In the event a person licensed by any governmental agency other than the West  
35 Virginia Department of Environmental Protection desires to transfer a site to the state for the  
36 purpose of administering or providing long-term care, a lump sum deposit shall be made to the  
37 radiation long-term care fund. The amount of such deposit shall be determined by the Department  
38 taking into account the factors stated in subsections (c) and (e) of this section.

39           (i) All federal, state, local, or other governmental agencies, shall be exempt from the  
40 requirements of subsection (a) and (c).

**§22-34-13. Radiation Site Closure and Reclamation Fund.**



2           (a) There is hereby created in the State Treasury a special revenue fund known as the  
3 Radiation Site Closure and Reclamation Fund. The fund shall be administered by and under the  
4 control of the Secretary of Department of Environmental Protection. Expenditures from the fund  
5 shall be solely for the purposes under this article of administration, acquisition, construction,  
6 decommission, decontamination, maintenance, surveillance, remediation, reclamation, closure,  
7 or other care on sites containing or associated with licensable radioactive material for the  
8 protection of the environment, public health, safety, and welfare.

9           (b) The fund shall consist of moneys appropriated by the Legislature, moneys received  
10 from the federal government, moneys received from forfeited sureties, moneys received under  
11 §22-34-12(d) of this code, and from private donations, grants, bequests, and all other moneys  
12 received from all sources for the purposes stated herein.

13           (c) Any funds remaining in the Fund at the end of the fiscal year shall not revert to the  
14 general revenue but shall remain in the fund solely for the purposes stated in this article.

15           (d) The moneys accrued in this fund, any earnings thereon, and yield from investments by  
16 the State Treasurer or West Virginia Investment Management Board are reserved solely and  
17 exclusively for the purposes set forth in this code section.

**§22-34-14. Radiation Licensure and Inspection Fund.**

1           (a) There is hereby created in the State Treasury a special revenue fund known as the  
2 Radiation Licensure and Inspection Fund. The fund shall be administered by and under the control  
3 of the Secretary of Department of Environmental Protection. Expenditures from the fund shall be  
4 solely for the purposes under this article of administration, registration, licensing, and inspection of  
5 radioactive materials facilities for the protection of the environment, public health, safety, and  
6 welfare.

7           (b) The fund shall consist of moneys appropriated by the Legislature, moneys received  
8 from the federal government, moneys received from licensing and registration fees, and from  
9 private donations, grants, bequests, and all other moneys received from all sources for the

10 purposes stated herein. Moneys from forfeited sureties and any interest earned thereon shall not  
11 be deposited into this fund or used for normal operating expenses.

12 (c) Any funds remaining in the Fund at the end of the fiscal year shall not revert to the  
13 general revenue but shall remain in the fund solely for the purposes stated in this article.

14 (d) The moneys accrued in this fund, any earnings thereon, and yield from investments by  
15 the State Treasurer or West Virginia Investment Management Board are reserved solely and  
16 exclusively for the purposes set forth in this code section.

**§22-34-15. Impounding sources of ionizing radiation.**

1 The Department is authorized, in the event of an emergency or under other circumstances  
2 constituting a hazard to health and safety, to impound or order the impounding of sources of  
3 ionizing radiation in the possession of any person who is not equipped to observe or fails to  
4 observe the provisions of this article, federal law, or any rules or regulations promulgated or issued  
5 thereunder.

**§22-34-16. Authority of Governor to enter into agreements with federal government; effect**  
**on federal license.**

1 (a) The Governor is authorized to enter into agreements with the U.S. Nuclear Regulatory  
2 Commission under Section 274b of the Atomic Energy Act of 1954, as amended, providing for  
3 discontinuance of certain of the U.S. Nuclear Regulatory Commission's licensing and related  
4 regulatory authority with respect to byproduct, source and special nuclear materials, and the  
5 assumption of regulatory authority therefore by this state.

6 (b) Any person who, on the effective date of an agreement under subsection (a) above,  
7 except those exempted under §22-34-4 of this code, possesses a license issued by the U.S.  
8 Nuclear Regulatory Commission for radioactive materials subject to the agreement shall be  
9 deemed to possess a like license issued under this article, which shall expire either 90 days after  
10 receipt from the Department of a notice of expiration of such license, or on the date of expiration  
11 specified in the U.S. Nuclear Regulatory Commission license, whichever is earlier.

**§22-34-17. Authority of Department to enter into agreements with federal government, other states or interstate agencies; training programs for personnel.**

1        (a) The Department, with the prior approval of the Governor, is authorized to enter into an  
2 agreement or agreements with the federal government, other states or interstate agencies,  
3 whereby this state will perform, on a cooperative basis with the federal government, other states or  
4 interstate agencies, inspections or other functions relating to control of sources of ionizing  
5 radiation.

6        (b) The Department, from funds provided by law, may institute programs for the purpose of  
7 training personnel to carry out the provisions of this article and, with the prior approval of the  
8 Governor, may make such personnel available for participation in any program or programs of the  
9 federal government, other states, or interstate agencies in furtherance of this article.

**§22-34-18. Effect upon local ordinances, etc.**

1        Ordinances, resolutions, or rules, now or hereafter in effect, of the governing body of a  
2 county, political subdivision, municipality, other state agencies, or other local government body  
3 relating to by-product, source, and special nuclear materials shall not be superseded by this  
4 article, provided that such ordinances or rules are and continue to be consistent with the  
5 provisions of this article, amendments thereto and rules thereunder.

**§22-34-19. Administrative procedure and judicial review.**

2        (a) In any proceeding for the issuance or modification of rules or regulations relating to  
3 control of sources of radiation, the Department shall provide an opportunity for public participation  
4 through written comment or a public hearing.

5        (b) In any proceeding for the denial of an application for license or for revocation,  
6 suspension, or modification of a license, the Department shall provide to the applicant or licensee  
7 an opportunity for a hearing on the record.

8        (c) Whenever the Department finds that an emergency exists requiring immediate action to  
9 protect the environment and the public health and safety, the Department may, without notice or

10 hearing, issue a regulation or order reciting the existence of such emergency and requiring that  
11 such action be taken as is necessary to meet the emergency. Notwithstanding any provision of  
12 this article, such regulation or order shall be effective immediately. Any person to whom such  
13 regulation or order is directed shall comply therewith immediately, but on application to the  
14 Department shall be afforded a hearing within five business days. On the basis of such hearing,  
15 the emergency regulation or order shall be continued, modified, or revoked within 30 days after  
16 such hearing.

17 (d) Any final Department action or order entered in any proceeding under subsections (a),  
18 (b), and (c) above shall be subject to appeal to the Environmental Quality Board within 30 days  
19 after receipt of written notice of a final action or order. The provisions of §22B-1-1 et seq. of this  
20 code shall apply to such appeals.

**§22-34-20. Enforcement; civil penalties.**

1 (a) Any person who violates any licensing or registration provision of this article or any rule,  
2 regulation, or order issued thereunder, or any term, condition, or limitation of any license or  
3 registration certificate issued thereunder or commits any violation for which a license or  
4 registration certificate may be revoked under rules or regulations issued under this article may be  
5 subject to a civil penalty, to be imposed by the Department, not to exceed \$10,000. If any violation  
6 is a continuing one, each day of such violation shall constitute a separate violation for the  
7 purposes of computing the applicable civil penalty. The Department shall have the power to  
8 compromise, mitigate, or remit such penalties.

9 (b) Whenever the agency proposes to subject a person to the imposition of a civil penalty  
10 under the provisions of this section, it shall notify such person in writing;

11 (1) Setting forth the date, facts, and nature of each act or omission with which the person is  
12 charged;

13 (2) Specifically identifying the particular provision or provisions of the section, rule,  
14 regulation, order, license, or registration certificate involved in the violation; and

15           (3) Advising of each penalty which the Department proposes to impose and its amount.  
16           Such written notice shall be sent by registered or certified mail by the Department to the  
17 last known address of such person. The person so notified shall be granted an opportunity to  
18 show in writing, within such reasonable period as the Department shall by rule prescribe, why such  
19 penalty should not be imposed. The notice shall also advise such person that upon failure to pay  
20 the civil penalty subsequently determined by the Department, if any, the penalty may be collected  
21 by civil action. Any person upon whom a civil penalty is imposed may appeal such action under  
22 §29A-1-1 et seq. of this code.

23           (c) The Department, or upon the request of the Department, the Attorney General, is  
24 authorized in the name of the state to institute a civil action to collect a penalty imposed pursuant to  
25 this section. The Department, or upon the request of the Department, the Attorney General, shall  
26 have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred for  
27 collection.

28           (d) All moneys collected from civil penalties shall be deposited in the Radiation Licensure  
29 and Inspection Fund created pursuant to §22-34-14 of this code.

30           (e) In addition to the provisions of §22-34-7 of this code, the Department shall have the  
31 power to enter at all reasonable times, or in cases of an emergency, upon any private or public  
32 property for the purpose of determining whether or not there is compliance with or violation of the  
33 provisions of this article and rules issued thereunder, except that entry into areas under the  
34 jurisdiction of the federal government shall be effected only with the concurrence of the federal  
35 government or its duly designated representative.

**§22-34-21. Felony created; criminal penalties; injunctions; civil penalties; charges for violations.**

1           (a) Any person who willfully violates any of the provisions of the rules, regulations, or  
2 orders of the Department or Secretary or any provision under this article is guilty of a felony, and,

3 upon conviction thereof, shall be fined not less than \$1,000 nor more than \$25,000, for each day of  
4 such violation, or imprisoned not less than one nor more than five years, or both fined and  
5 imprisoned. If the conviction is for a violation committed after a first conviction of such person, the  
6 person shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than \$5,000  
7 nor more than \$50,000 for each day of such violation, or imprisoned not less than two nor more  
8 than ten years, or both fined and imprisoned.

9 (b) Any person who violates or intends to violate, or fails, neglects, or refuses to obey any  
10 law, lawful rule, or order of the Department or Secretary or any provision of this article may be  
11 compelled in a proceeding instituted in an appropriate court by the Department or Secretary to  
12 obey such rule, order or provision of this article and to comply therewith by injunction, mandamus,  
13 or other appropriate remedy.

14 (c) Without limiting the remedies which may be obtained in subsection (b) of this section,  
15 any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other  
16 remedy obtained pursuant to subsection (b) shall be subject, in the discretion of the court, to a civil  
17 penalty not to exceed \$25,000 for each violation, which shall be paid to the Radiation Licensure  
18 and Inspection Fund created pursuant to §22-34-14 of this code. Each day of violation shall  
19 constitute a separate offense.

20 (d) With the consent of any person who has violated or failed, neglected, or refused to obey  
21 any rule or order of the Department or Secretary or any provision of this article, the Department or  
22 Secretary may provide, in an order issued by the Department or Secretary against such person,  
23 for the payment of civil charges for past violations in specific sums, not to exceed the limits  
24 specified in §22-34-20 of this code. Such civil charges shall be instead of any appropriate civil  
25 penalty which could be imposed under §22-34-20 of this code.

**ARTICLE 35. LICENSURE OF RADON MITIGATORS, TESTERS, CONTRACTORS**

**AND**

**LABORATORIES.**

**§22-35-1. Legislative finding.**

1           The Legislature hereby finds and declares that radon is a dangerous toxic substance and  
2 harmful to the citizens of this state. Therefore, to help ensure the protection of the citizens of this  
3 state, persons who come into contact with radon through remediation or testing should be trained  
4 and licensed professionals who know how to deal with radon.

**§22-35-2. Definitions.**

1           As used in this article unless context requires a different meaning:

2           (1) "Building" means a publicly or privately owned structure consisting of any combination  
3 of foundations, walls, columns, girders, beams, floors and roofs, with or without other elements of  
4 appurtenances.

5           (2) "Business entity" means a corporation, llc, partnership, association, firm, sole  
6 proprietorship, or other entity engaged in business.

7           (3) "Mitigate" means to repair or alter an existing building or design for the purpose, in  
8 whole or in part, of reducing the concentration of radon in the indoor atmosphere.

9           (4) "Radon" means the radioactive noble gas radon-222 and the short-lived radionuclides  
10 which are products of radon-222 decay, including polonium-218, lead-214, bismuth-214 and  
11 polonium-214.

12           (5) "Radon laboratory" means a business entity that offers its laboratory services for the  
13 purpose of studying air, soil samples or passive radon detection devices to determine the  
14 concentration of radon.

15           (6) "Radon mitigation contractor" means a business entity having at least one person  
16 licensed as a radon mitigation specialist.

17           (7) "Radon mitigation specialist" means a person holding a license to install or apply  
18 methods or materials to reduce airborne radon concentrations in a building or to prevent the entry  
19 of radon into the indoor atmosphere.

20 (8) "Radon testers" means a business entity or person licensed to examine a building, air,  
21 soil or water for the presence of radon, including taking air, soil or water samples, or the act of  
22 diagnosing the cause of radon contamination in a building.

23 (9) "Secretary" means the secretary of the Department of Environmental Protection or his  
24 or her designee.

25 (10) "Test" means the act of examining a building, soil or air for the presence of radon,  
26 including taking air or soil samples, or the act of diagnosing the cause of radon contamination in a  
27 building.

**§22-35-3. License required and exemptions.**

1 (a) Except as otherwise provided in subsection (b) of this section:

2 (1) No individual may perform radon testing or hold himself or herself out as performing  
3 radon testing without a valid radon tester or mitigation specialist license;

4 (2) No individual may provide professional or expert advice on radon testing, radon  
5 exposure or the health risks related to radon exposure or hold himself or herself out as providing  
6 such advice without a valid radon tester or mitigation specialist license;

7 (3) No individual may provide on-site supervision of radon mitigation or hold himself or  
8 herself out as providing such supervision without a valid radon mitigation specialist license;

9 (4) No individual may provide professional or expert advice on radon mitigation or radon  
10 entry routes or hold himself or herself out as providing such advice without a valid radon mitigation  
11 specialist license;

12 (5) No business or government entity may perform or authorize any individual employed by  
13 it to perform radon mitigation or hold itself out as performing radon mitigation without a valid radon  
14 mitigation contractor license; and

15 (6) No laboratory shall perform analyses of radon air and soil samples or radon detection  
16 devices for the purpose of assessing radon content without a valid radon laboratory license.

17 (b) Subsection (a) of this section does not apply to any of the following:





18           (B) The advantage of long-term testing and the value of a second opinion as ways to verify  
19 testing results and to assure that the proposed mitigation is appropriate, especially when the  
20 mitigation is to be performed by the tester, mitigation specialist, or mitigation contractor that was  
21 involved in the testing or provision of advice that led to the mitigation contract.

22           (2) For purposes of this subsection, a radon tester, mitigation specialist, or mitigation  
23 contractor involved in testing or providing advice with respect to a particular building will be  
24 considered to be "involved in the performance of mitigation on that building" if he or she has any  
25 ownership interest in, or has any contractual or employment relationship with, the individual or  
26 entity providing the mitigation.

27           (c) No licensed radon tester, licensed radon mitigation specialist, or licensed radon  
28 mitigation contractor may perform radon testing or mitigation or provide any advice related to  
29 radon, radon testing or radon mitigation unless it is performed in accordance with the requirements  
30 of this article and the rules adopted under this article.

31           (d) No licensed radon tester, licensed radon mitigation specialist, licensed radon mitigation  
32 contractor or licensed radon laboratory may violate any requirement of this article or any rule  
33 adopted \_\_\_\_\_ hereunder.

**§22-35-5. Powers and duties of the secretary.**

1           (a) The Secretary shall license radon testers, mitigation specialists, mitigation contractors  
2 and radon laboratories located within the state. Each applicant for a license shall submit a  
3 completed application to the Secretary on a form prescribed and furnished by the Secretary.

4           (b) The Secretary shall issue the appropriate license to each applicant who pays the  
5 license fee, meets the licensing criteria, and complies with any other licensing and training  
6 requirements established by the Secretary. An individual business entity or government entity may  
7 hold more than one license issued under this section, but a separate application is required for  
8 each license.

9           (c) Notwithstanding §22-35-3(a)(1) of this code, the Secretary shall issue a radon  
10 mitigation contractor license on request to the holder of a radon mitigation specialist license if the  
11 license holder is the owner or chief stockholder of a business entity for which he or she is the only  
12 individual who will work as a radon mitigation specialist. The licensing criteria and any other  
13 licensing and training requirements that the individual was required to meet to qualify for the radon  
14 mitigation specialist license are hereby considered to satisfy any and all criteria and requirements  
15 for a radon mitigation contractor license. A license issued under this section expires at the same  
16 time as the individual's radon mitigation specialist license.

17           (d) A license issued under this section expires annually and may be renewed by the  
18 Secretary in accordance with criteria and procedures established by the Secretary under this  
19 article and upon payment of the prescribed license renewal fee.

20           (e) The Secretary may:

21           (1) Refuse to issue a license to an individual, business entity, or government entity that  
22 does not meet the requirements of this article or the rules adopted under this article or that has  
23 violated the provisions of this article or of any rules promulgated under this article; or

24           (2) Suspend, revoke, or refuse to renew the license of an individual, business entity, or  
25 government entity that is or has been in violation of the requirements of this article or the rules  
26 adopted under this article.

27           (f) The Secretary shall approve and assess fees for all of the following:

28           (1) Licenses for radon testers, mitigation specialists, mitigation contractors, and radon  
29 laboratories;

30           (2) Accredited training courses for radon testers and mitigation specialists; and

31           (3) Training courses for employees of mitigation contractors.

32           (g) Each applicant for approval shall submit a completed application to the Secretary on a  
33 form the Secretary shall prescribe and furnish.

34 (h) In accordance with rules adopted under section six of this article, the Secretary shall  
35 issue the appropriate approval to each applicant that pays the approval fee and meets the criteria  
36 for approval.

37 (i) The Secretary may refuse to issue an approval and may revoke or suspend an approval  
38 issued under this section if the operator of the course or laboratory fails to meet the established  
39 criteria.

40 (j) The Secretary shall do all of the following:

41 (1) Administer the radon licensing program established by this article and enforce the  
42 requirements of this article and the rules adopted under this article;

43 (2) Examine the records of radon testers, mitigation specialists, mitigation contractors, and  
44 radon laboratories and training courses approved under this article as he or she considers  
45 necessary to determine whether they are in compliance with the requirements of this article and  
46 the rules adopted under this article;

47 (3) Coordinate the radon licensing program with any radon programs in schools;

48 (4) Collect and disseminate information relating to radon in this state; and

49 (5) Conduct research on indoor radon contamination, which may include a statewide  
50 survey on radon contamination.

51 (k) The Secretary may do any of the following:

52 (1) Conduct inspections as he or she considers necessary to determine whether the  
53 requirements of this article and the rules adopted under this article have been met;

54 (2) Conduct training programs and establish and collect fees to cover the cost of  
55 conducting them;

56 (3) Advise, consult, cooperate with, and, with the consent of the Secretary, enter into  
57 contracts or grant agreements with any individual business entity, government entity, interstate  
58 agency, or the federal government as he or she considers appropriate to fulfill the requirements of  
59 this article and the rules adopted under this article; and

60 (4) Collect the information required to be reported to him or her under any rules adopted  
61 under this article.

62 (l) Nothing in this article shall be construed to allow the Secretary to:

63 (1) Require the performance of a test for radon;

64 (2) Regulate construction practices; or

65 (3) Regulate the retail sales of radon test kits for use by individuals to do their own radon  
66 testing in buildings owned by them.

67 (m) All prior existing contracts, agreements, grant arrangements, and funding shall be  
68 transferred and assigned to the Department and remain valid, enforceable, and effective until  
69 amended or terminated by the Department.

**§22-35-6. Rules.**

1 (a) To protect the health of individuals inhabiting, occupying, or frequenting buildings, the  
2 Department of Environmental Protection shall timely promulgate rules, taking into consideration  
3 recommendations of the Radiation Advisory Board created by §22-34-1 et seq. of this code, to  
4 implement the requirements of this article. All rules under this section shall be adopted in  
5 accordance with §29A-3-1 et seq. of this code. All prior existing legislative rules, policies, and  
6 licenses shall be transferred and remain effective until amended or terminated pursuant to the  
7 provisions of §29A-3-1 et seq. of this code.

8 (b) The Secretary shall adopt rules:

9 (1) Establishing criteria and procedures to be followed in issuing and renewing licenses to  
10 radon testers, mitigation specialists, or mitigation contractors, as well as the fees for the licenses.

11 The criteria may include a requirement that applicants be listed as a professional by the National  
12 Radon Proficiency Program, the National Radon Safety Board, or meet any other proficiency  
13 measures deemed acceptable by the U.S. Environmental Protection Agency or the Department  
14 for the purpose of offering such screening, testing, or mitigation. The rules may require that all  
15 applicants for licensure as a radon tester or mitigation specialist pass an examination. If an

16 examination is required, the rules may require applicants to pass an examination conducted by the  
17 Department or by a training center accredited by the Department;

18 (2) Establishing criteria and procedures to be followed in approving and accrediting  
19 training courses under this article. The rules shall require the participants in training courses to  
20 pass an examination conducted by the operator of the course;

21 (3) Establishing criteria and procedures in approving and licensing radon laboratories;

22 (4) Establishing standards to be followed by licensed radon testers, mitigation specialists,  
23 mitigation contractors, and radon laboratories for the prevention of hazards to the environment  
24 and public health, including standards for worker protection, record keeping, and the training of  
25 employees, radon testers, and mitigation contractors. The standards shall, at a minimum, comply  
26 with the radon testing standards outlined by the U.S. Environmental Protection Agency, the radon  
27 mitigation standards outlined by the American Society for Testing and Materials, or any other  
28 radon testing and mitigation standards deemed acceptable by virtue of reference by the U.S.  
29 Environmental Protection Agency or the Department;

30 (5) Establishing procedures to be followed by an individual, business entity, or government  
31 entity licensed by another state to practice as a radon tester, mitigation specialist, mitigation  
32 contractor or radon laboratory in providing notice to the Secretary prior to commencing practice in  
33 this state pursuant to this article; and

34 (6) That require licensed radon testers and mitigation specialists to report to the Secretary,  
35 by street address, radon test results. The rules shall require the reporting of the identity of the  
36 radon laboratory involved, screening measurements, follow-up measurements, post-mitigation  
37 measurements, and, if it is known that mitigation was performed, the methods of mitigation that  
38 were used. Any information required to be reported to the Secretary under the rules is not a public  
39 record and shall not be released except in aggregate statistical form.

**§22-35-7. Complaints.**

1        (a) Any individual, business entity, or government entity may file a complaint with the  
2 Secretary concerning any radon tester, mitigation specialist, mitigation contractor or a radon  
3 laboratory or a training course approved under this article. The complainant's name shall be  
4 confidential and shall not be released without his or her written consent. The Secretary shall  
5 investigate complaints and take action under this article.

6        (b) If a radon tester, mitigation specialist, mitigation contractor, or radon laboratory violates  
7 any rules promulgated pursuant to this article and as a result of the violation harms or injures in  
8 any manner an individual or business entity, that radon tester, mitigation specialist, mitigation  
9 contractor or radon laboratory shall be considered to have committed an unfair act or practice  
10 within the meaning of §46A-6-104 of this code.

**§22-35-8. Licensed tester, mitigator and contractor list.**

1        The Secretary shall maintain a publicly available list of all licensed radon testers, mitigation  
2 specialists, mitigation contractors, and radon laboratories located in the state. On request, the  
3 Secretary shall provide a copy of all or part of the list to any individual, business entity or  
4 government entity. The Secretary shall not impose a charge for providing the copy that exceeds  
5 the actual and necessary expense of copying it.

**§22-35-9. Record keeping and confidentiality.**

1        (a) The Secretary, any employee of the Department of Environmental Protection, any  
2 individual, business entity, or government entity with which the Secretary enters into an agreement  
3 under §22-35-5(k)(3) of this article, shall not release information collected pursuant to this article  
4 concerning a specific building used as a private residence or the real property upon which it is  
5 located to anyone other than the owner or occupant of the building or real property without his or  
6 her consent: *Provided*, That the Secretary may release information if he or she determines that the  
7 release is necessary for use in conducting legitimate scientific studies or the information is  
8 released in summary statistical or other form that does not reasonably tend to disclose the address  
9 of the building or real property or the identity of the owner or occupant.

10           (b) The Department shall maintain information pursuant to this article and the rules  
11 adopted under this article for at least three years. The Department may destroy any information  
12 that it has maintained for three years.

**§22-35-10. Special revenue account.**

1           (a) There is hereby continued in the State Treasury a special revenue fund known as the  
2 Radon Licensure Fund. The fund shall be administered by and under the control of the Secretary  
3 of Department of Environmental Protection. Expenditures from the fund shall be solely for the  
4 purposes of this article which include, but are not limited to, administration, education, licensing,  
5 training, enforcement, and program development for radon for the protection of the environment,  
6 public health, safety, and welfare.

7           (b) The fund shall consist of moneys appropriated by the Legislature, moneys received  
8 from the federal government, moneys received from licensing and registration fees, civil penalties  
9 and fines, and from private donations, grants, bequests, and all other moneys received from all  
10 sources for the purposes stated herein.

11           (c) Any funds remaining in the Fund at the end of the fiscal year shall not revert to the  
12 general revenue but shall remain in the fund solely for the purposes stated in this article.

13           (d) The moneys accrued in this fund, any earnings thereon, and yield from investments by  
14 the State Treasurer or West Virginia Investment Management Board are reserved solely and  
15 exclusively for the purposes set forth in this code article.

**§22-35-11. Reciprocity.**

1           The Secretary may set standards for accepting licenses issued by other states. The  
2 Secretary may grant licenses to individuals from other states if that other state has licensing  
3 requirements which are as stringent as the licensing requirements in this state.

**§22-35-12. Records review.**

1           If the Secretary requests to examine records, no licensed radon tester, mitigation  
2 specialist, mitigation contractor, or operator of a radon laboratory or a training course approved



3 under this article shall fail to make available to the Secretary any records pertinent to the activities  
4 regulated by this article and rules adopted under it.

**§22-35-13. Reprimands; suspension or revocation of license; orders; hearings.**

1 (a) The Secretary shall suspend, revoke the license of, or reprimand a radon tester,  
2 mitigator, contractor, or laboratory if the licensee:

3 (1) Fraudulently or deceptively obtains or attempts to obtain a license;

4 (2) Fails at any time to meet the qualifications for a license or to comply with the  
5 requirements of this article or any applicable rules adopted by the Secretary;

6 (3) Fails to meet applicable federal or state standards for radon testing or radon mitigation;

7 or

8 (4) Employs or permits an individual without a radon tester's license or a radon mitigator's  
9 license to supervise work on a radon project.

10 (b) The Secretary shall investigate all alleged violations reported to the Department. Upon  
11 the finding of a violation in connection with any project involving radon testing or mitigation, the  
12 Secretary shall issue a cease and desist order directing that all work be halted immediately. Where  
13 practicable, the Secretary shall deliver a copy of the order by certified mail, return receipt  
14 requested, to the radon tester and radon mitigator.

15 (c) Hearings regarding violations of this article shall be conducted in accordance with the  
16 administrative procedures act of chapter 29A of this code.

**§22-35-14. Misdemeanor created; criminal penalties.**

1 Any person violating any of the provisions of this article, or any of the rules or orders issued  
2 pursuant to this article, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not  
3 more than \$500 for each violation.

**CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.**

