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HB 4550

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OFFICE WEST VIRGINIA
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WEST VIRGINIA LEGISLATURE

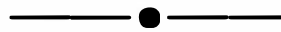
SECOND REGULAR SESSION, 2006



ENROLLED

House Bill No. 4550

(By Delegates Amores and Mahan)



Passed March 10, 2006

In Effect Ninety Days from Passage

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

E N R O L L E D

H. B. 4550

(BY DELEGATES AMORES AND MAHAN)

[Passed March 10, 2006; in effect ninety days from passage.]

AN ACT to amend and reenact §22-11-7b of the Code of West Virginia, 1931, as amended, relating to designation of streams as waters of special concern; and clarifying current law requiring legislative approval of final designation of streams of special concern.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 11. WATER POLLUTION CONTROL ACT.

§22-11-7b. Water quality standards; implementation of anti-degradation procedures.

- 1 (a) All authority to promulgate rules and implement water
- 2 quality standards vested in the Environmental Quality Board is
- 3 hereby transferred from the Environmental Quality Board to the
- 4 Secretary of the Department of Environmental Protection as of
- 5 the effective date of the amendment and reenactment of this

6 section during the two thousand five regular session of the
7 Legislature: *Provided*, That the legislative rule containing the
8 state's water quality standards shall remain in force and effect
9 as if promulgated by the Department of Environmental Protec-
10 tion until the Secretary amends the rule in accordance with the
11 provisions of article three, chapter twenty-nine-a of this code.
12 Any proceedings, including notices of proposed rulemaking
13 pending before the Environmental Quality Board, and any other
14 functions, actions or authority transferred to the Secretary shall
15 continue in effect as actions of the Secretary.

16 (b) All meetings with the Secretary or any employee of the
17 Department and any interested party which are convened for the
18 purpose of making a decision or deliberating toward a decision
19 as to the form and substance of the rule governing water quality
20 standards or variances thereto shall be held in accordance with
21 the provisions of article nine-a, chapter six of this code. When
22 the Secretary is considering the form and substance of the rule
23 governing water quality standards, the following are not
24 meetings pursuant to article nine-a, chapter six of this code: (i)
25 Consultations between the Department's employees or its
26 consultants, contractors or agents; (ii) consultations with other
27 state or federal agencies and the Department's employees or its
28 consultants, contractors or agents; or (iii) consultations between
29 the Secretary, the Department's employees or its consultants,
30 contractors or agents with any interested party for the purpose
31 of collecting facts and explaining state and federal requirements
32 relating to a site specific change or variance.

33 (c) In order to carry out the purposes of this chapter, the
34 Secretary shall promulgate legislative rules in accordance with
35 the provisions of article three, chapter twenty-nine-a of this
36 code setting standards of water quality applicable to both the
37 surface waters and groundwaters of this state. Standards of
38 quality with respect to surface waters shall protect the public
39 health and welfare, wildlife, fish and aquatic life and the present

40 and prospective future uses of the water for domestic, agricul-
41 tural, industrial, recreational, scenic and other legitimate
42 beneficial uses thereof. The water quality standards of the
43 Secretary may not specify the design of equipment, type of
44 construction or particular method which a person shall use to
45 reduce the discharge of a pollutant.

46 (d) The Secretary shall establish the antidegradation
47 implementation procedures as required by 40 C.F.R. 131.12(a)
48 which apply to regulated activities that have the potential to
49 affect water quality. The Secretary shall propose for legislative
50 approval, pursuant to article three, chapter twenty-nine-a of the
51 code, legislative rules to establish implementation procedures
52 which include specifics of the review depending upon the
53 existing uses of the water body segment that would be affected,
54 the level of protection or "tier" assigned to the applicable water
55 body segment, the nature of the activity and the extent to which
56 existing water quality would be degraded. Any final classifica-
57 tion determination of a water as a Tier 2.5 water (Water of
58 Special Concern) does not become effective until that determi-
59 nation is approved by the Legislature through the legislative
60 rulemaking process as provided for in article three, chapter
61 twenty-nine-a of the code.

62 (e) All remaining variances shall be applied for and consid-
63 ered by the Secretary and any variance granted shall be consis-
64 tent with 33 U.S.C. Section 1311(p) of the Federal Water
65 Control Act. At a minimum, when considering an application
66 for a remaining variance the Secretary shall consider the data and
67 information submitted by the applicant for the variance; and
68 comments received at a public comment period and public
69 hearing. The Secretary may not grant a variance without
70 requiring the applicant to improve the instream water quality as
71 much as is reasonably possible by applying best available
72 technology economically achievable using best professional
73 judgment. Any such requirement will be included as a permit

74 condition. The Secretary may not grant a variance without a
75 demonstration by the applicant that the coal remining operation
76 will result in the potential for improved instream water quality
77 as a result of the remining operation. The Secretary may not
78 grant a variance where he or she determines that degradation of
79 the instream water quality will result from the remining
80 operation.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy White
Chairman Senate Committee

W. Berry
Chairman House Committee

Originating in the House.

In effect ninety days from passage.

Darrell Holman
Clerk of the Senate

Bugs W. Bay
Clerk of the House of Delegates

Carl Ray Tomblin
President of the Senate

John A. ...
Speaker of the House of Delegates

The within *is approved* this the *28th*
day of *March*, 2006.

[Signature]
Governor

PRESENTED TO THE
GOVERNOR

MAR 22 2006

Time 3:45 pm