

1 **H. B. 2593**

2
3 (By Delegates Eldridge, Phillips, R., Stowers, Tomblin,
4 White, Marcum, Nelson, E., Nelson, J., Raines, Skaff and Craig)

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6 [Introduced February 21, 2013; referred to the
7 Committee on the Judiciary.]

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10 A BILL to amend and reenact §22-11-6 of the Code of West Virginia,
11 1931, as amended, relating to establishing a water
12 quality-based effluent limit for selenium discharges from coal
13 mining operations into waters supporting aquatic life to 30
14 ppb, or .030 mg/L

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

16 That §22-11-6 of the Code of West Virginia, 1931, as amended,
17 be amended and reenacted to read as follows:

18 **ARTICLE 11. WATER POLLUTION CONTROL ACT.**

19 **§22-11-6. Requirement to comply with standards of water quality
20 and effluent limitations.**

21 All persons affected by rules establishing water quality
22 standards and effluent limitations shall promptly comply therewith:

23 *Provided, That:*

24 (1) Where necessary and proper, the secretary may specify a
25 reasonable time for persons not complying with such standards and

1 limitations to comply therewith, and upon the expiration of any
2 such period of time, the secretary shall revoke or modify any
3 permit previously issued which authorized the discharge of treated
4 or untreated sewage, industrial wastes or other wastes into the
5 waters of this state which result in reduction of the quality of
6 such waters below the standards and limitations established
7 therefor by rules of the board or secretary;

8 (2) Notwithstanding any rule or permit condition to the
9 contrary, and except for any standard imposed under section 307 of
10 the federal Water Pollution Control Act for a toxic pollutant
11 injurious to human health, compliance with a permit issued pursuant
12 to this article shall be deemed compliance for purposes of both
13 this article and sections 301, 302, 306, 307 and 403 of the federal
14 Water Pollution Control Act. Nothing in this section, however,
15 prevents the secretary from modifying, reissuing or revoking a
16 permit during its term. The provisions of this section addressing
17 compliance with a permit are intended to apply to all existing and
18 future discharges and permits without the need for permit
19 modifications. However, should any such modification be necessary
20 under the terms of this article, then the secretary shall
21 immediately commence the process to effect such modifications; and

22 (3) The Legislature finds that there are concerns within West
23 Virginia regarding the applicability of the research underlying the
24 federal selenium criteria to a state such as West Virginia which

1 has high precipitation rates and free-flowing streams and that the
2 alleged environmental impacts that were documented in applicable
3 federal research have not been observed in West Virginia and,
4 further, that considerable research is required to determine if
5 selenium is having an impact on West Virginia streams, to validate
6 or determine the proper testing methods for selenium and to better
7 understand the chemical reactions related to selenium mobilization
8 in water.

9 (A) For existing NPDES permits, the department may extend the
10 time period for achieving water quality-based effluent limits for
11 selenium discharges into waters supporting aquatic life uses to
12 July 1, 2012, upon compliance with all federally required public
13 notice requirements for such modifications, upon a finding that the
14 permittee cannot comply with its existing compliance schedule and
15 that an extension is not in violation of any state or federal laws,
16 rules or regulations.

17 (B) The West Virginia Department of Environmental Protection
18 is hereby directed to undertake a comprehensive study relating to
19 selenium and prepare a report detailing such findings and
20 submitting the report to the Joint Committee on Government and
21 Finance no later than January 1, 2010. In conducting such study,
22 the West Virginia Department of Environmental Protection shall
23 consult with, among others, West Virginia University and the West
24 Virginia Water Research Institute.

1 (C) Notwithstanding any other provision in this code or in the
2 regulations to the contrary, there is hereby established a water
3 quality-based effluent limit for selenium discharges from coal
4 mining operations into waters supporting aquatic life of 30 ppb,
5 or, .030 mg/L.

NOTE: The purpose of this bill is to establish a water quality-based effluent limit for selenium discharges from coal mining operations into waters supporting aquatic life of 30 ppb, or, .30 mg/L.

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