

# **WEST VIRGINIA LEGISLATURE**

**2017 REGULAR SESSION**

**ENROLLED**

**Committee Substitute**

**for**

**House Bill 2506**

BY DELEGATES ZATEZALO, G. FOSTER, KESSINGER,  
SUMMERS, ATKINSON, AMBLER, PHILLIPS, WESTFALL AND  
MILEY

[Passed March 28, 2017; in effect ninety days from passage]



1 AN ACT to amend and reenact §22-11-7b of the Code of West Virginia, 1931, as amended, all  
2 relating to requiring permit limits to be calculated using the design flows recommended by  
3 the United States Environmental Protection Agency for the protection of human health;  
4 allowing overlapping mixing zones for calculating permit limits for drinking water criteria;  
5 and clarifying posted signage requirements.

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

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

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

**§22-11-7b. Water quality standards; implementation of antidegradation procedures;  
procedure to determine compliance with the biologic component of the narrative  
water quality standard.**

1 (a) All authority to propose rules for legislative approval and implement water quality  
2 standards is vested in the Secretary of the Department of Environmental Protection.

3 (b) All meetings with the secretary or any employee of the department and any interested  
4 party which are convened for the purpose of making a decision or deliberating toward a decision  
5 as to the form and substance of the rule governing water quality standards or variances thereto  
6 shall be held in accordance with article nine-a, chapter six of this code. When the secretary is  
7 considering the form and substance of the rules governing water quality standards, the following  
8 are not meetings pursuant to article nine-a, chapter six of this code: (i) Consultations between the  
9 department's employees or its consultants, contractors or agents; (ii) consultations with other  
10 state or federal agencies and the department's employees or its consultants, contractors or  
11 agents; or (iii) consultations between the secretary, the department's employees or its  
12 consultants, contractors or agents with any interested party for the purpose of collecting facts and  
13 explaining state and federal requirements relating to a site specific change or variance.

14 (c) In order to carry out the purposes of this chapter, the secretary shall propose rules for  
15 legislative approval in accordance with article three, chapter twenty-nine-a of this code setting  
16 standards of water quality applicable to both the surface waters and groundwaters of this state.  
17 Standards of quality with respect to surface waters shall protect the public health and welfare,  
18 wildlife, fish and aquatic life and the present and prospective future uses of the water for domestic,  
19 agricultural, industrial, recreational, scenic and other legitimate beneficial uses thereof. The water  
20 quality standards of the secretary may not specify the design of equipment, type of construction  
21 or particular method which a person shall use to reduce the discharge of a pollutant. For  
22 implementing human health criteria for the protection of drinking water, the Secretary shall  
23 calculate permit limits using the harmonic mean flow and may determine the point of compliance  
24 for a permittee's discharge pursuant to the mixing zone provisions of the Legislative rule entitled  
25 Requirements Governing Water Quality Standards, 47 C.S.R. 2: *Provided*, That the Secretary  
26 may allow mixing zones to overlap, but not to go beyond a point one-half mile upstream of a public  
27 water supply. At locations where mixing zones are allowed to overlap, the Secretary shall require  
28 permittees to indicate on their required signage an indication that mixing zones overlap in a  
29 particular vicinity.

30 (d) The secretary shall establish the antidegradation implementation procedures as  
31 required by 40 C. F. R. 131.12(a) which apply to regulated activities that have the potential to  
32 affect water quality. The secretary shall propose for legislative approval, pursuant to article three,  
33 chapter twenty-nine-a of the code, legislative rules to establish implementation procedures which  
34 include specifics of the review depending upon the existing uses of the water body segment that  
35 would be affected, the level of protection or "tier" assigned to the applicable water body segment,  
36 the nature of the activity and the extent to which existing water quality would be degraded. Any  
37 final classification determination of a water as a Tier 2.5 water (Water of Special Concern) does  
38 not become effective until that determination is approved by the Legislature through the legislative  
39 rule-making process as provided in article three, chapter twenty-nine-a of the code.

40 (e) All remaining variances shall be applied for and considered by the secretary and any  
41 variance granted shall be consistent with 33 U. S. C. Section 1311(p) of the Federal Water Control  
42 Act. At a minimum, when considering an application for a remaining variance the secretary shall  
43 consider the data and information submitted by the applicant for the variance; and comments  
44 received at a public comment period and public hearing. The secretary may not grant a variance  
45 without requiring the applicant to improve the instream water quality as much as is reasonably  
46 possible by applying best available technology economically achievable using best professional  
47 judgment. Any such requirement shall be included as a permit condition. The secretary may not  
48 grant a variance without a demonstration by the applicant that the coal remaining operation will  
49 result in the potential for improved instream water quality as a result of the remaining operation.  
50 The secretary may not grant a variance where he or she determines that degradation of the  
51 instream water quality will result from the remaining operation.

52 (f) The secretary shall propose rules measuring compliance with the biologic component  
53 of West Virginia's narrative water quality standard requires evaluation of the holistic health of the  
54 aquatic ecosystem and a determination that the stream: (i) Supports a balanced aquatic  
55 community that is diverse in species composition; (ii) contains appropriate trophic levels of fish,  
56 in streams that have flows sufficient to support fish populations; and (iii) the aquatic community is  
57 composed of benthic invertebrate assemblages sufficient to perform the biological functions  
58 necessary to support fish communities within the assessed reach, or, if the assessed reach has  
59 insufficient flows to support a fish community, in those downstream reaches where fish are  
60 present. The secretary shall propose rules for legislative approval in accordance with article three,  
61 chapter twenty-nine-a of this code that implement the provisions of this subsection. Rules  
62 promulgated pursuant to this subsection may not establish measurements for biologic  
63 components of West Virginia's narrative water quality standards that would establish standards  
64 less protective than requirements that exist at the time of enactment of the amendments to this  
65 subsection by the Legislature during the 2012 regular session.



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

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

In effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

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The within ..... this the.....  
day of ....., 2017.

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*Governor*