

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 276

BY SENATORS KARNES, AZINGER, AND RUCKER

[Introduced January 15, 2018; Referred
to the Committee on Natural Resources; and then to the
Committee on the Judiciary]

1 A BILL to amend and reenact §22-1-6 of the Code of West Virginia, 1931, as amended, relating
 2 to limiting employees of the Department of Environmental Protection from entering private
 3 lands for environmental protection purposes to only when there is probable cause to
 4 believe a violation exists on the property, a warrant has been obtained for the entry, or the
 5 express permission of the property owner has been granted.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-6. Secretary of the Department of Environmental Protection.

1 (a) The secretary is the chief executive officer of the department. Subject to §22-1-7 of
 2 this code and other provisions of law, the secretary shall organize the department into such
 3 offices, sections, agencies and other units of activity as may be found by the secretary to be
 4 desirable for the orderly, efficient and economical administration of the department and for the
 5 accomplishment of its objects and purposes. The secretary may appoint a deputy secretary, chief
 6 of staff, assistants, hearing officers, clerks, stenographers and other officers, technical personnel
 7 and employees needed for the operation of the department and may prescribe their powers and
 8 duties and fix their compensation within amounts appropriated.

9 (b) The secretary ~~has the power to~~ and may designate supervisory officers or other officers
 10 or employees of the department to substitute for him or her on any board or commission
 11 established under this code or to sit in his or her place in any hearings, appeals, meetings or other
 12 activities with such substitute having the same powers, duties, authority and responsibility as the
 13 secretary. The secretary ~~has the power to~~ may delegate, as he or she considers appropriate, to
 14 supervisory officers or other officers or employees of the department his or her powers, duties,
 15 authority and responsibility relating to issuing permits, hiring and training inspectors and other
 16 employees of the department, conducting hearings and appeals and such other duties and
 17 functions set forth in this chapter or elsewhere in this code.

18 (c) The secretary has responsibility for the conduct of the intergovernmental relations of

19 the department, including assuring:

20 (1) That the department carries out its functions in a manner which supplements and
21 complements the environmental policies, programs and procedures of the federal government,
22 other state governments and other instrumentalities of this state; and

23 (2) That appropriate officers and employees of the department consult with individuals
24 responsible for making policy relating to environmental issues in the federal government, other
25 state governments and other instrumentalities of this state concerning differences over
26 environmental policies, programs and procedures and concerning the impact of statutory law and
27 rules upon the environment of this state.

28 (d) In addition to other powers, duties and responsibilities granted and assigned to the
29 secretary by this chapter, the secretary is authorized and empowered to:

30 (1) Sign and execute in the name of the state by the Department of Environmental
31 Protection any contract or agreement with the federal government or its departments or agencies,
32 subdivisions of the state, corporations, associations, partnerships or individuals: *Provided*, That
33 the powers granted to the secretary to enter into agreements or contracts and to make
34 expenditures and obligations of public funds under this subdivision may not exceed or be
35 interpreted as authority to exceed the powers granted by the Legislature to the various
36 commissioners, directors or board members of the various departments, agencies or boards that
37 comprise and are incorporated into each secretary's department pursuant to the provisions of
38 chapter 5F of this code;

39 (2) Conduct research in improved environmental protection methods and disseminate
40 information to the citizens of this state;

41 (3) (A) Notwithstanding any other provision of this code or federal law, enter private lands
42 to make surveys and inspections for environmental protection purposes only if:

43 (i) A determination has been made that there is probable cause to believe a violation of a
44 provision of this chapter exists on the property;

45 (ii) A warrant has been obtained for the entry; or

46 (iii) The express permission of the property owner has been granted;

47 (B) To investigate for violations of statutes or rules which the department is charged with
48 enforcing;

49 (C) To serve and execute warrants and processes;

50 (D) To make arrests;

51 (E) Issue orders, which for the purposes of this chapter include consent agreements; and

52 (F) To otherwise enforce the statutes or rules which the department is charged with
53 enforcing;

54 (4) Require any applicant or holder of a permit to install, establish, modify, operate or close
55 a solid waste facility to furnish the fingerprints of the applicant or permittee; any officer, director
56 or manager of the applicant or permittee; any person owning a five percent or more interest,
57 beneficial or otherwise, in the applicant's or permittee's business; or any other person conducting
58 or managing the affairs of the applicant or permittee or of the proposed licensed premises, in
59 whole or in part. These fingerprints may be used to obtain and review any police record for the
60 purposes set may be relevant pursuant to §22-15-5 of this code, and to use the fingerprints
61 furnished to conduct a criminal records check through the Criminal Identification Bureau of the
62 West Virginia State Police and a national criminal history check through the Federal Bureau of
63 Investigation. The results of the checks shall be provided to the secretary.

64 (5) Acquire for the state in the name of the Department of Environmental Protection by
65 purchase, condemnation, lease or agreement, or accept or reject for the state, in the name of the
66 Department of Environmental Protection, gifts, donations, contributions, bequests or devises of
67 money, security or property, both real and personal, and any interest in property;

68 (6) Provide for workshops, training programs and other educational programs, apart from
69 or in cooperation with other governmental agencies, necessary to ensure adequate standards of
70 public service in the department. The secretary may provide for technical training and specialized

71 instruction of any employee. Approved educational programs, training and instruction time may
72 be compensated for as a part of regular employment. The secretary is authorized to pay out of
73 federal or state funds, or both, as such funds are available, fees and expenses incidental to the
74 educational programs, training and instruction. Eligibility for participation by employees shall be
75 in accordance with guidelines established by the secretary;

76 (7) Issue certifications required under 33 U.S.C. §1341 of the federal Clean Water Act and
77 enter into agreements in accordance with the provisions of §22-11-7a of this code. Prior to issuing
78 any certification the secretary shall solicit from the Division of Natural Resources reports and
79 comments concerning the possible certification. The Division of Natural Resources shall direct
80 the reports and comments to the secretary for consideration; and

81 (8) Notwithstanding any provisions of this code to the contrary, employ in-house counsel
82 to perform all legal services for the secretary and the department, including, but not limited to,
83 representing the secretary, any chief, the department or any office thereof in any administrative
84 proceeding or in any proceeding in any state or federal court. Additionally, the secretary may call
85 upon the Attorney General for legal assistance and representation as provided by law.

86 (e) The secretary shall be appointed by the Governor, by and with the advice and consent
87 of the Senate, and serves at the will and pleasure of the Governor.

88 (f) At the time of his or her initial appointment, the secretary must be at least thirty years
89 old and shall be selected with special reference and consideration given to his or her
90 administrative experience and ability, to his or her demonstrated interest in the effective and
91 responsible regulation of the energy industry and the conservation and wise use of natural
92 resources. The secretary must have at least a bachelor's degree in a related field and at least
93 three years of experience in a position of responsible charge in at least one discipline relating to
94 the duties and responsibilities for which the secretary will be responsible upon assumption of the
95 office. The secretary may not be a candidate for or hold any other public office, may not be a
96 member of any political party committee and shall immediately forfeit and vacate his or her office

97 as secretary in the event he or she becomes a candidate for or accepts appointment to any other
98 public office or political party committee.

99 (g) The secretary shall receive an annual salary as provided in §6-7-2a of this code and
100 is allowed and shall be paid necessary expenses incident to the performance of his or her official
101 duties. Prior to the assumption of the duties of his or her office, the secretary shall take and
102 subscribe to the oath required of public officers prescribed by section five, article IV of the
103 Constitution of West Virginia and shall execute a bond, with surety approved by the Governor, in
104 the penal sum of \$10,000, which executed oath and bond ~~will~~ shall be filed in the Office of the
105 Secretary of State. Premiums on the bond shall be paid from ~~the~~ department funds.

NOTE: The purpose of this bill is to limit employees of the Department of Environmental Protection from entering private lands for environmental protection purposes to only when there is probable cause to believe a violation exists on the property, a warrant has been obtained for the entry, or the express permission of the property owner has been granted.

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