

1 **H. B. 4255**

2
3 (By Delegates Manypenny, Barrett, Perdue,
4 Ambler and Hamilton)

5 [Introduced January 22, 2014; referred to the
6 Committee on the Judiciary.]

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10 A BILL to amend and reenact §22-26-1, §22-26-2, §22-26-3, §22-26-6,
11 §22-26-7 and §22-26-8 of the Code of West Virginia, 1931, as
12 amended, all relating to the Water Resources Protection and
13 Management Act; amending the definition of "Large-quantity
14 user"; eliminating the ten percent variance provision;
15 requiring certain information regarding private wells be
16 submitted to the secretary; adopting the State Water Resources
17 Management Plan; requiring DEP to report biennially to
18 commission regarding implementation of plan and survey
19 results; and requiring large-quantity users to submit certain
20 report annually.

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

22 That §22-26-1, §22-26-2, §22-26-3, §22-26-6, §22-26-7 and
23 §22-26-8 of the Code of West Virginia, 1931, as amended, be amended
24 and reenacted, all to read as follows:

1 **ARTICLE 26. WATER RESOURCES PROTECTION ACT.**

2 **§22-26-1. Short title; legislative findings.**

3 (a) *Short title.* -- This article may be known and cited as the
4 Water Resources Protection and Management Act.

5 (b) *Legislative findings.* --

6 (1) The West Virginia Legislature finds that it is the public
7 policy of the State of West Virginia to protect and conserve the
8 water resources for the state and to provide for the public
9 welfare. The state's water resources are vital natural resources
10 of the state that are essential to maintain, preserve and promote
11 quality of life and economic vitality of the state.

12 (2) The West Virginia Legislature further finds that it is the
13 public policy of the state that the water resources of the state be
14 available for the benefit of the citizens of West Virginia,
15 consistent with and preserving all other existing rights and
16 remedies recognized in common law or by statute, while also
17 preserving the resources within its sovereign powers for the common
18 good.

19 (3) The West Virginia Legislature further finds that the water
20 use survey conducted by the department of ~~Environmental Protection~~
21 is a valuable tool for water resources assessment, protection and
22 management.

23 (4) The West Virginia Legislature further finds that the water
24 resources of this state have not been fully measured or assessed

1 and that a program to accurately measure and assess the state's
2 water resources is necessary to protect, conserve and better
3 ~~utilize~~ use the water resources of this state.

4 (5) The West Virginia Legislature further finds that the
5 survey information collected and analyzed by the ~~West Virginia~~
6 ~~department of Environmental Protection~~ has identified the need for
7 a statewide water resources management plan.

8 (6) The West Virginia Legislature further finds that the
9 development of a state water resources management plan is in the
10 best interest of the state and its citizens and will promote the
11 protection of this valuable natural resource; promote its use for
12 the public good; and enhance its use and development for tourism,
13 industry and other economic development for the benefit of the
14 state and its citizens.

15 (7) The West Virginia Legislature further finds that
16 incomplete data collection from an inadequate groundwater
17 monitoring system continues to hamper efforts to study, develop and
18 protect the state's water resources and will be a major obstacle in
19 the development of a water resources management plan.

20 **§22-26-2. Definitions.**

21 For purposes of this article, the following words have the
22 meanings assigned unless the context indicates otherwise:

23 (a) "Baseline average" means the average amount of water
24 withdrawn by a large-quantity user over a representative historical

1 time period as defined by the secretary.

2 (b) "Beneficial use" means uses that include, but are not
3 limited to, public or private water supplies, agriculture, tourism,
4 commercial, industrial, coal, oil and gas and other mineral
5 extraction, preservation of fish and wildlife habitat, maintenance
6 of waste assimilation, recreation, navigation and preservation of
7 cultural values.

8 (c) "Commercial well" means a well that serves small
9 businesses and facilities in which water is the prime ingredient of
10 the service rendered, including wells drilled to support horizontal
11 well operations.

12 (d) "Community water system" means a public water system that
13 pipes water for human consumption to at least fifteen service
14 connections used by year-round residents or one that regularly
15 serves at least twenty-five residents.

16 (e) "Consumptive withdrawal" means any withdrawal of water
17 which returns less water to the water body than is withdrawn.

18 (f) "Department" means the West Virginia Department of
19 Environmental Protection.

20 ~~(f)~~ (g) "Farm use" means irrigation of any land used for
21 general farming, forage, aquaculture, pasture, orchards, nurseries,
22 the provision of water supply for farm animals, poultry farming or
23 any other activity conducted in the course of a farming operation.

24 ~~(g)~~ (h) "Industrial well" means a well used in industrial

1 processing, fire protection, washing, packing or manufacturing of
2 a product excluding food and beverages or similar nonpotable uses.

3 ~~(h)~~ (i) "Interbasin transfer" means the permanent removal of
4 water from the watershed from which it is withdrawn.

5 ~~(i)~~ (j) "Large-quantity user" means any person who withdraws
6 over ~~seven~~ three hundred ~~fifty~~ thousand gallons of water in ~~a~~ any
7 ~~calendar month~~ thirty-day period from the state's waters and any
8 person who bottles water for resale regardless of quantity
9 withdrawn.

10 ~~(j)~~ (k) "Maximum potential" means the maximum designed
11 capacity of a facility to withdraw water under its physical and
12 operational design.

13 ~~(k)~~ (l) "Noncommunity nontransient water system" means a
14 public water system that serves at least twenty-five of the same
15 persons over six months per year. (l) "Nonconsumptive withdrawal"
16 means any withdrawal of water which is not a consumptive withdrawal
17 as defined in this section.

18 (m) "Person", "persons" or "people" means an individual,
19 public and private business or industry, public or private water
20 service and governmental entity.

21 (n) "Secretary" means the Secretary of the West Virginia
22 Department of Environmental Protection or his or her designee.

23 (o) "Transient water system" means a public water system that
24 serves at least twenty-five transient people at least sixty days a

1 year.”

2 (p) “Test well” means a well that is used to obtain
3 information on groundwater quantity, quality, aquifer
4 characteristics and availability of production water supply for
5 manufacturing, commercial and industrial facilities.

6 (q) “Water resources”, “water” or “waters” means any and all
7 water on or beneath the surface of the ground, whether percolating,
8 standing, diffused or flowing, wholly or partially within this
9 state, or bordering this state and within its jurisdiction and
10 includes, without limiting the generality of the foregoing, natural
11 or artificial lakes, rivers, streams, creeks, branches, brooks,
12 ponds, impounding reservoirs, springs, wells, watercourses and
13 wetlands: *Provided*, That farm ponds, industrial settling basins
14 and ponds and waste treatment facilities are excluded from the
15 waters of the state.

16 (r) “Watershed” means a hydrologic unit ~~utilized~~ used by the
17 United States Department of Interior’s geological survey, adopted
18 in 1974, as a framework for detailed water and related
19 land-resources planning.

20 (s) “Withdrawal” means the removal or capture of water from
21 water resources of the state regardless of whether it is
22 consumptive or nonconsumptive: *Provided*, That water encountered
23 during coal, oil, gas, water well drilling and initial testing of
24 water wells, or other mineral extraction and diverted, but not used

1 for any purpose and not a factor in low-flow conditions for any
2 surface water or groundwater, is not deemed a withdrawal.

3 **§22-26-3. Waters claimed by state; water resources protection**
4 **survey; registration requirements; agency**
5 **cooperation; information gathering.**

6 (a) The waters of the State of West Virginia are hereby
7 claimed as valuable public natural resources held by the state for
8 the use and benefit of its citizens. The state shall manage the
9 quantity of its waters effectively for present and future use and
10 enjoyment and for the protection of the environment. Therefore, it
11 is necessary for the state to determine the nature and extent of
12 its water resources, the quantity of water being withdrawn or
13 otherwise used and the nature of the withdrawals or other uses:
14 *Provided,* That no provisions of this article may be construed to
15 amend or limit any other rights and remedies created by statute or
16 common law in existence on the date of the enactment of this
17 article.

18 (b) The secretary shall conduct an ongoing water resources
19 survey of consumptive and nonconsumptive surface water and
20 groundwater withdrawals by large-quantity users in this state. The
21 secretary shall determine the form and format of the information
22 submitted, including the use of electronic submissions. The
23 secretary shall establish and maintain a statewide registration

1 program to monitor large-quantity users of water resources of this
2 state beginning in 2006.

3 (c) Large quantity users, except those who purchase water from
4 a public or private water utility or other service that is
5 reporting its total withdrawal, shall register with the department
6 ~~of Environmental Protection~~ and provide all requested survey
7 information regarding withdrawals of the water resources. Multiple
8 withdrawals from state water resources that are made or controlled
9 by a single person and used at one facility or location shall be
10 considered a single withdrawal of water. Water withdrawals for
11 self-supplied farm use and private households will be estimated.
12 Water utilities regulated by the Public Service Commission pursuant
13 to article two, chapter twenty-four of this code are exempted from
14 providing information on interbasin transfers to the extent those
15 transfers are necessary to provide water utility services within
16 the state.

17 (d) Except as provided in subsection (f) of this section,
18 large-quantity users who withdraw water from a West Virginia water
19 resource shall comply with the survey and registration requirements
20 of this article. Registration shall be maintained annually by
21 every large-quantity user ~~by certifying,~~ on forms and in a manner
22 prescribed by the secretary. ~~that the amount withdrawn in the~~
23 ~~previous calendar year varies by no more than ten percent from the~~
24 ~~users' baseline average or by certifying the change in usage.~~

1 (e) The secretary shall maintain a listing of all large-
2 quantity users and each such user's baseline average water
3 withdrawal.

4 (f) The secretary shall make a good faith effort to obtain
5 survey and registration information from persons who are
6 withdrawing water from in-state water resources, but who are
7 located outside the state borders.

8 (g) All state agencies and local governmental entities that
9 have a regulatory, research, planning or other function relating to
10 water resources, including, but not limited to, the State
11 Geological and Economic Survey, the Division of Natural Resources,
12 the Public Service Commission, the Bureau for Public Health, the
13 Commissioner of the Department of Agriculture, the Division of
14 Homeland Security and Emergency Management, Marshall University,
15 West Virginia University and regional, county and municipal
16 planning authorities may enter into interagency agreements with the
17 secretary and shall cooperate by: (i) Providing information
18 relating to the water resources of the state; (ii) providing any
19 necessary assistance to the secretary in effectuating the purposes
20 of this article; and (iii) assisting in the development of a state
21 water resources management plan. The secretary shall determine the
22 form and format of the information submitted by these agencies.

23 (h) Persons required to participate in the survey and
24 registration shall provide any reasonably available information on

1 stream flow conditions that impact withdrawal rates.

2 (i) Persons required to participate in the survey and
3 registration shall provide the most accurate information available
4 on water withdrawal during seasonal conditions and future potential
5 maximum withdrawals or other information that the secretary
6 determines is necessary for the completion of the survey or
7 registration: *Provided*, That a coal-fired electric generating
8 facility shall also report the nominal design capacity of the
9 facility, which is the quantity of water withdrawn by the
10 facility's intake pumps necessary to operate the facility during a
11 calendar day.

12 (j) The secretary shall, to the extent reliable water
13 withdrawal data is reasonably available from sources other than
14 persons required to provide data and participate in the survey and
15 registration, ~~utilize~~ use that data to fulfill the requirements of
16 this section. If the data is not reasonably available to the
17 secretary, persons required to participate in the survey and
18 registration are required to provide the data. Altering locations
19 of intakes and discharge points that result in an impact to the
20 withdrawal of the water resources ~~by an amount of ten percent or~~
21 ~~more from the consecutive baseline average~~ shall also be reported.

22 (k) The secretary shall report annually to the Joint
23 Legislative Oversight Commission on State Water Resources on the
24 survey results. The secretary shall also make a progress report

1 ~~every three years~~ annually on the ~~development~~ implementation of the
2 state water resources management plan and any significant changes
3 that may have occurred since the ~~survey report~~ State Water
4 Resources Management Plan was submitted in ~~2006~~ 2014.

5 (l) In addition to any requirements for completion of the
6 survey established by the secretary, the survey must accurately
7 reflect both actual and maximum potential water withdrawal. Actual
8 withdrawal shall be established through metering, measuring or
9 alternative accepted scientific methods to obtain a reasonable
10 estimate or indirect calculation of actual use.

11 (m) The secretary shall make recommendations to the Joint
12 Legislative Oversight Commission created in section five of this
13 article relating to the implementation of a water quantity
14 management strategy for the state or regions of the state where the
15 quantity of water resources are found to be currently stressed or
16 likely to be stressed due to emerging beneficial or other uses,
17 ecological conditions or other factors requiring the development of
18 a strategy for management of these water resources.

19 (n) The secretary may propose rules pursuant to article three,
20 chapter twenty-nine-a of this code as necessary to implement the
21 survey registration or plan requirements of this article.

22 (o) The secretary is authorized to enter into cooperative
23 agreements with local, state and federal agencies and private
24 policy or research groups to obtain federal matching funds, conduct

1 research and analyze survey and registration data and other
2 agreements as may be necessary to carry out his or her duties under
3 this article.

4 (p) The department, the Division of Natural Resources, the
5 Division of Highways, and the West Virginia Conservation Agency
6 (cooperating state agencies) shall continue providing matching
7 funds for the United States Geological Survey's (USGS) stream
8 gaging network to the maximum extent practicable. Should a
9 cooperating state agency become unable to maintain its contribution
10 level, it should notify the USGS and the commission of its
11 inability to continue funding for the subsequent federal fiscal
12 year by July 1, in order to allow for the possible identification
13 of alternative funding resources.

14 **§22-26-6. Mandatory survey and registration compliance.**

15 (a) The water resources survey and subsequent registry will
16 provide critical information for protection of the state's water
17 resources and, thus, mandatory compliance with the survey and
18 registry is necessary.

19 (b) All large-quantity users who withdraw water from a West
20 Virginia water resource shall complete the survey and register ~~such~~
21 the use with the department ~~of Environmental Protection~~. Any
22 person who fails to complete the survey or register, provides false
23 or misleading information on the survey or registration, or fails
24 to provide other information as required by this article may be

1 subject to a civil administrative penalty not to exceed \$5,000 to
2 be collected by the secretary consistent with the secretary's
3 authority pursuant to this chapter. Every thirty days after the
4 initial imposition of the civil administrative penalty, another
5 penalty may be assessed if the information is not provided. The
6 secretary shall provide written notice of failure to comply with
7 this section thirty days prior to assessing the first
8 administrative penalty.

9 **§22-26-7. Secretary authorized to log wells; collect data.**

10 (a) In order to obtain important information about the state's
11 surface and groundwater, the secretary is authorized to collect
12 scientific data on surface and groundwater and to enter into
13 agreements with local and state agencies, the federal government
14 and private entities to obtain this information.

15 ~~(1)~~ (b) Any person who installs a community water system,
16 noncommunity nontransient water system, transient water system,
17 commercial well, industrial or test well shall notify the secretary
18 of his or her intent to drill a water well no less than ten days
19 prior to commencement of drilling. The ten-day notice is the
20 responsibility of the owner, but may be given by the drilling
21 contractor.

22 ~~(2)~~ (c) The secretary has the authority to gather data,
23 including driller and geologist logs, run electric and other
24 remote-sensing logs and devices and perform physical

1 characteristics tests on nonresidential and multifamily water
2 wells.

3 ~~(3)~~ (d) The drilling contractor shall submit to the secretary
4 a copy of the well completion forms submitted to the Division of
5 Health for a community water system, noncommunity nontransient
6 water system, transient water system, commercial well, industrial
7 or test well. The drilling contractor shall also provide the well
8 GPS location and depth to groundwater on the well report submitted
9 to the secretary.

10 ~~(4)~~ (e) Any person who fails to notify the secretary prior to
11 drilling a well or impedes collection of information by the
12 secretary under this section is in violation of the Water Resources
13 Protection and Management Act and is subject to the civil
14 administrative penalty authorized by section six of this article.

15 ~~(5)~~ (f) Any well contracted for construction by the secretary
16 for groundwater or geological testing must be constructed at a
17 minimum to well design standards as promulgated by the Division of
18 Health. Any wells contracted for construction by the secretary for
19 groundwater or geological testing that would at a later date be
20 converted to a public use water well must be constructed to comport
21 to state public water design standards.

22 **§22-26-8. State Water Resources Management Plan; powers and duty**
23 **of secretary.**

24 (a) The secretary ~~of the Department of Environmental~~

1 ~~Protection~~ shall oversee the development of a State Water Resources
2 Management Plan to be completed no later than November 30, ~~2013~~
3 2014. The plan shall be reviewed and revised as needed after its
4 initial adoption. The plan shall be developed with the cooperation
5 and involvement of local and state agencies with regulatory,
6 research or other functions relating to water resources including,
7 but not limited to, those agencies and institutions of higher
8 education set forth in section three of this article and a
9 representative of large-quantity users. The State Water Resources
10 Management Plan shall be developed ~~utilizing~~ using the information
11 obtained pursuant to said section and any other relevant
12 information available to the secretary.

13 (b) The secretary shall develop definitions for use in the
14 State Water Resources Management Plan for terms that are defined
15 differently by various state and federal governmental entities as
16 well as other terms necessary for implementation of this article.

17 (c) The secretary shall continue to develop and obtain the
18 following:

19 (1) An inventory of the surface water resources of each region
20 of this state, including an identification of the boundaries of
21 significant watersheds and an estimate of the safe yield of ~~such~~
22 the sources for consumptive and nonconsumptive uses during periods
23 of normal conditions and drought.

24 (2) A listing of each consumptive or nonconsumptive withdrawal

1 by a large-quantity user, including the amount of water used,
2 location of the water resources, the nature of the use, location of
3 each intake and discharge point by longitude and latitude where
4 available and, if the use involves more than one watershed or
5 basin, the watersheds or basins involved and the amount
6 transferred.

7 (3) A plan for the development of the infrastructure necessary
8 to identify the groundwater resources of each region of this state,
9 including an identification of aquifers and groundwater basins and
10 an assessment of their safe yield, prime recharge areas, recharge
11 capacity, consumptive limits and relationship to stream base flows.

12 (4) After consulting with the appropriate state and federal
13 agencies, assess and project the existing and future nonconsumptive
14 use needs of the water resources required to serve areas with
15 important or unique natural, scenic, environmental or recreational
16 values of national, regional, local or statewide significance,
17 including national and state parks; designated wild, scenic and
18 recreational rivers; national and state wildlife refuges; and the
19 habitats of federal and state endangered or threatened species.

20 (5) Assessment and projection of existing and future
21 consumptive use demands.

22 (6) Identification of potential problems with water
23 availability or conflicts among water uses and users including, but
24 not limited to, the following:

1 (A) A discussion of any area of concern regarding historical
2 or current conditions that indicate a low-flow condition or where
3 a drought or flood has occurred or is likely to occur that
4 threatens the beneficial use of the surface water or groundwater in
5 the area; and

6 (B) Current or potential in-stream or off-stream uses that
7 contribute to or are likely to exacerbate natural low-flow
8 conditions to the detriment of the water resources.

9 (7) Establish criteria for designation of critical water
10 planning areas comprising any significant hydrologic unit where
11 existing or future demands exceed or threaten to exceed the safe
12 yield of available water resources.

13 (8) An assessment of the current and future capabilities of
14 public water supply agencies and private water supply companies to
15 provide an adequate quantity and quality of water to their service
16 areas.

17 (9) An assessment of flood plain and stormwater management
18 problems.

19 (10) Efforts to improve data collection, reporting and water
20 monitoring where prior reports have found deficiencies.

21 (11) A process for identifying projects and practices that are
22 being, or have been, implemented by water users that reduce the
23 amount of consumptive use, improve efficiency in water use, provide
24 for reuse and recycling of water, increase the supply or storage of

1 water or preserve or increase groundwater recharge and a
2 recommended process for providing appropriate positive recognition
3 of such projects or practices in actions, programs, policies,
4 projects or management activities.

5 (12) An assessment of both structural and nonstructural
6 alternatives to address identified water availability problems,
7 adverse impacts on water uses or conflicts between water users,
8 including potential actions to develop additional or alternative
9 supplies, conservation measures and management techniques.

10 (13) A review and evaluation of statutes, rules, policies and
11 institutional arrangements for the development, conservation,
12 distribution and emergency management of water resources.

13 (14) A review and evaluation of water resources management
14 alternatives and recommended programs, policies, institutional
15 arrangements, projects and other provisions to meet the water
16 resources needs of each region and of this state.

17 (15) Proposed methods of implementing various recommended
18 actions, programs, policies, projects or management activities.

19 (d) The State Water Resources Management Plan shall consider:

20 (1) The interconnections and relationships between groundwater
21 and surface water as components of a single hydrologic resource.

22 (2) Regional or watershed water resources needs, objectives
23 and priorities.

24 (3) Federal, state and interstate water resource policies,

1 plans, objectives and priorities, including those identified in
2 statutes, rules, regulations, compacts, interstate agreements or
3 comprehensive plans adopted by federal and state agencies and
4 compact basin commissions.

5 (4) The needs and priorities reflected in comprehensive plans
6 and zoning ordinances adopted by a county or municipal government.

7 (5) The water quantity and quality necessary to support
8 reasonable and beneficial uses.

9 (6) A balancing and encouragement of multiple uses of water
10 resources, recognizing that all water resources of this state are
11 capable of serving multiple uses and human needs, including
12 multiple uses of water resources for reasonable and beneficial
13 uses.

14 (7) The distinctions between short-term and long-term
15 conditions, impacts, needs and solutions to ensure appropriate and
16 cost-effective responses to water resources issues.

17 (8) Application of the principle of equal and uniform
18 treatment of all water users that are similarly situated without
19 regard to established political boundaries.

20 (e) In November of each year, the secretary shall report to
21 the Joint Legislative Oversight Commission on State Water Resources
22 on the implementation of the State Water Resources Management Plan.
23 ~~The report on the water resources plan shall include benchmarks for~~
24 ~~achieving the plan's goals and time frames for meeting them.~~

1 (f) ~~Upon adoption of the state Water Resources Management Plan~~
2 ~~by the Legislature, the report requirements of this article shall~~
3 ~~be superceded by the plan and subsequent reports shall be on the~~
4 ~~survey results and the water resources plan. If the plan is not~~
5 ~~adopted a detailed report discussing the provisions of this section~~
6 ~~as well as progress reports on the development of the plan shall be~~
7 ~~submitted every three years. The State Water Resources Management~~
8 ~~Plan is hereby adopted. Persons identified as large-quantity users~~
9 ~~prior to the effective date of this subsection shall report actual~~
10 ~~monthly water withdrawals for the previous calendar year by March~~
11 ~~31 of each succeeding year. Persons identified as large-quantity~~
12 ~~users on or after the effective date of this subsection shall~~
13 ~~submit their initial annual report no later than March 31, 2017,~~
14 ~~and subsequent annual reports by March 31 of each year thereafter.~~

NOTE: This bill was recommended for introduction and passage by the Joint Legislative Oversight Commission on State Water Resources. The purpose of this bill is to amend the Water Resources Protection and Management Act to incorporate recommendations from the State Water Resources Management Plan (Plan). Those recommendations include: Changing the definition of a large-quantity user to a person who uses at least 300,000 gallons of water in any thirty-day period; Requiring large-quantity users to report actual water withdrawals or usage for a calendar year on an annual basis; Requiring any agency that contributes to funding the stream gage network to notify the Commission and the USGS if the agency cannot maintain its level of funding; Requiring drilling contractors or well owners to report the depth to groundwater of drilled wells; adopting the Plan; and Requiring the Department of Environmental Protection to report annually to the Commission on the implementation of the Plan and survey results.

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