

H. B. 4275

(By Delegates R. Phillips, Barker, Caputo,
Craig, Marcum, Moore, Skaff, R. Smith, Sumner,
Tomblin and White)

[Introduced January 23, 2014; referred to the Committee on the Judiciary.]

FISCAL NOTE

10 A BILL to amend and reenact §22-11-6 of the Code of West Virginia,
11 1931, as amended, relating to making West Virginia's Water
12 Pollution Control Act consistent with the federal Water
13 Pollution Act, also known as the Clean Water Act, by
14 clarifying that water quality standards may be used to
15 calculate effluent standards or limitations, but may not
16 themselves be used as effluent standards or limitations in a
17 National Pollutant Discharge Elimination System permit for
18 purposes of the federal Water Pollution Control Act.

19 Be it enacted by the Legislature of West Virginia:

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

22 ARTICLE 11. WATER POLLUTION CONTROL ACT.

23 §22-11-6. Requirement to comply with standards of water quality
24 and effluent limitations

1 All persons affected by rules establishing water quality
2 standards and effluent limitations shall promptly comply therewith:
3 *Provided*, That:

4 (1) Where necessary and proper, the secretary may specify a
5 reasonable time for persons not complying with such standards and
6 limitations to comply therewith, and upon the expiration of any
7 such period of time, the secretary shall revoke or modify any
8 permit previously issued which authorized the discharge of treated
9 or untreated sewage, industrial wastes or other wastes into the
10 waters of this state which result in reduction of the quality of
11 such waters below the standards and limitations established
12 therefor by rules of the board or secretary;

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

1 under the terms of this article, then the secretary shall
2 immediately commence the process to effect such modifications; and
3 (3) Water quality standards may be used to calculate water
4 quality based limitations in National Pollutant Discharge
5 Elimination System permits issued pursuant to this article, but
6 water quality standards shall not themselves be considered effluent
7 standards or limitations. No existing or future rule or permit may
8 impose or include water quality standards as effluent standards or
9 limitations in a National Pollutant Discharge Elimination System
10 permit. It is the intent of this subdivision that no modification
11 to existing permits be required to remove any permit conditions
12 that make water quality standards into effluent standards or limits
13 in National Pollutant Discharge Elimination System permits.
14 However, to the extent that a modification of any existing permit
15 is required to give effect to this provision, then the director is
16 directed to modify or reissue such permit as soon as possible so
17 that it is in compliance with this article. To the extent that any
18 rule either provides that water quality standards are effluent
19 standards or limitations or provides that permits issued under this
20 chapter require that water quality standards are effluent standards
21 or limitations for any purpose under the federal Water Pollution
22 Control Act, that rule is nullified and no longer of any force or
23 effect; and

24 (3) (4) The Legislature finds that there are concerns within

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

11 (4) (5) The Legislature finds that EPA has been contemplating
12 a revision to the federally recommended criteria for several years
13 but has yet to issue a revised standard.

14 (5) (6) Because of the uncertainty regarding the applicability
15 of the current selenium standard, the secretary is hereby directed
16 to develop within six months of the effective date of this
17 subdivision an implementation plan for the current selenium
18 standard that will include, at minimum, the following:

19 (A) Implementing the criteria as a threshold standard;
20 (B) A monitoring plan that will include chemical speciation of
21 any selenium discharge;
22 (C) A fish population survey and monitoring plan that will be
23 implemented at a representative location to assess any possible
24 impacts from selenium discharges if the threshold criteria are

1 exceeded; and

2 (D) The results of the monitoring will be reported to the
3 department for use in the development of state-specific selenium
4 criteria.

5 (6) Within twenty-four months of the effective date of this
6 subdivision, the secretary shall propose rules for legislative
7 approval in accordance with the provisions of article three,
8 chapter twenty-nine of this code which establish a state-specific
9 selenium standard that protects aquatic life. Concurrent with
10 proposing a legislative rule, the secretary shall also submit the
11 proposed standard and supporting documentation to the Administrator
12 of the Environmental Protection Agency. The secretary shall also
13 consult with and consider research and data from the West Virginia
14 Water Research Institute at West Virginia University, the regulated
15 community, and other appropriate groups in developing the state-
16 specific selenium standard.

NOTE: The purpose of this bill is to clarify, consistent with the federal Water Pollution Control Act, that water quality standards established standards for waters of the state but are not directly enforceable as effluent standards or limitations in permits under the federal Water Pollution Control Act until and unless the director calculates discharge-specific water quality-based effluent limits based on the expected concentrations of pollutants from a discharge point and in the receiving water. The bill declares that the director may not convert water quality standards into effluent limits by simply making compliance with water quality standards a condition of an NPDES permit, but must actually calculate and assign limits on an outlet by outlet basis.

The bill also nullifying any rule that requires otherwise.

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