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H. B. 4295

(By Delegates Faircloth, Kump and Folk)
[Introduced January 24, 2014; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §22-1-3a of the Code of West Virginia,
1931, as amended, relating to environmental rules making and
enforcement; and requiring uniform enforcement of
environmental rules against all affected entities.

Be it enacted by the Legislature of West Virginia:

That §22-1-3a of the Code of West Virginia, 1931, as amended,
be amended and reenacted to read as follows:

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-3a. Rules -- New or amended environmental provisions.

Except for legislative rules promulgated for the purpose of
implementing the provisions of section four, article twelve,
section six, article seventeen, and section six, article eighteen,
all of this chapter, and notwithstanding the provisions of section
four, article five of this chapter, legislative rules promulgated

1 by the director which become effective on or after July 1, 1994,
2 may include new or amended environmental provisions which are more
3 stringent than the counterpart federal rule or program to the
4 extent that the director first provides specific written reasons
5 which demonstrate that such provisions are reasonably necessary to
6 protect, preserve or enhance the quality of West Virginia's
7 environment or human health or safety, taking into consideration
8 the scientific evidence, specific environmental characteristics of
9 West Virginia or an area thereof, or stated legislative findings,
10 policies or purposes relied upon by the director in making such
11 determination. In the case of specific rules which have a
12 technical basis, the director shall also provide the specific
13 technical basis upon which the director has relied.

14 In the event that legislative rules promulgated by the
15 director which become effective on or after July 1, 1994, include
16 new or amended environmental provisions which are less stringent
17 than a counterpart federal rule which recommends, but does not
18 require, a particular standard or any federally recommended
19 environmental standard whether or not there be a counterpart
20 federal rule, the division shall first provide specific written
21 reasons which demonstrate that such provisions are not reasonably
22 necessary to protect, preserve or enhance the quality of West
23 Virginia's environment or human health or safety, taking into
24 consideration the scientific evidence, specific environmental

1 characteristic of West Virginia or an area thereof, or stated
2 legislative findings, policies or purposes relied upon by the
3 director in making such determination. In the case of specific
4 rules which have a technical basis, the director shall also provide
5 the specific technical basis upon which the director has relied.

6 In the absence of a federal rule, the adoption of a state rule
7 shall not be construed to be more stringent than a federal rule,
8 unless the absence of a federal rule is the result of a specific
9 federal exemption.

10 For any rule promulgated by the director implementing the
11 provisions of this chapter, enforcement must be uniform against all
12 affected entities. No entity may be shown any exemption due to
13 size or any other factor.

NOTE: The purpose of this bill is to compel uniform enforcement of environmental rules against all affected entities.

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