

1 **H. B. 4572**

2
3 (By Delegates Skinner and Manchin)

4 [Introduced February 17, 2014; referred to the
5 Committee on the Judiciary.]

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10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new article, designated §22-30-1, relating to
12 creating the Citizen Enforcement of Clean Water Act; making
13 findings; granting actions by citizens; setting forth
14 jurisdiction and venue; permitting citizens to sue the state,
15 its departments, agencies and political subdivisions;
16 establishing standing; providing that exhaustion of remedies
17 is not required; permitting citizens to intervene in actions
18 by the state; setting forth consent decree requirements;
19 providing for court costs and attorney fees; setting forth
20 interpretation requirements; providing that the actions under
21 common law are not precluded; and providing for severability.

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

23 That the Code of West Virginia, 1931, as amended, be amended
24 by adding thereto a new article, designated §22-30-1, to read as

1 follows:

2 **ARTICLE 30. CITIZEN ENFORCEMENT OF CLEAN WATER ACT.**

3 **§22-30-1. Citizen Enforcement of Clean Water Act; findings;**
4 **jurisdiction; consent to sue; standing; exhaustion**
5 **of remedies; intervention; consent decree; costs and**
6 **attorney fees; review; interpretation; severability;**
7 **common law.**

8 (a) Legislative findings. -- The Legislature finds that
9 vigorous citizen enforcement is necessary and appropriate as a
10 means of insuring the enforcement of the law and the health and
11 well being of the citizens of this state. The Legislature further
12 finds that citizen enforcement will reduce the costs of the
13 enforcement of the laws of this state.

14 (b) Citizen action. -- Citizens of this state may commence on
15 their own behalf, or as a class action, a civil action, for
16 equitable or monetary relief, against any person or entity,
17 including any governmental instrumentality or agency of the state,
18 who is alleged to be in violation of any law enacted by the United
19 States or this state to protect the air, water or any other natural
20 resource of this state or the United States.

21 (c) Jurisdiction and venue. -- The circuit courts of this
22 state have original jurisdiction of the actions permitted by this
23 section without regard to the amount in controversy. Venue for an

1 action lies in the county a plaintiff or defendant resides or has
2 a principal place of business, the county where the cause of action
3 arose, or Kanawha County.

4 (d) Consent to sue. -- The state consents to suits against an
5 agency, department, political subdivision or instrumentality of
6 this state exclusively under article twelve-a, chapter twenty-nine
7 of this code to the extent of any available insurance, for any and
8 all suits against the state, any county or municipality and any
9 state agency or instrumentality, with respect to a violation of any
10 law enacted by the United States or the State Legislature to
11 protect the air, water or any other natural resource of the United
12 States or this state, notwithstanding any contrary provision of the
13 Eleventh Amendment to the United States Constitution which would
14 otherwise bar such suit or section thirty-five, article VI of the
15 state Constitution. The exclusive consent to suit in article
16 twelve-a, chapter twenty-nine of this code replaces in its entirety
17 the common law with respect to governmental liability generally,
18 including, but not limited to, the "public duty doctrine," which is
19 hereby abolished. It is the intent of this section to insure the
20 citizen ability to enforce the law against any offender, including
21 the state, its agencies, departments, political subdivisions and
22 instrumentalities.

23 (e) Standing. -- Citizen or class of citizens are not required
24 to demonstrate standing by any means other than their status as a

1 citizen of this state, and citizenship shall confer standing, for
2 any and all purposes, without regard to any showing of personal
3 bodily injury, trespass, damage to real or personal property,
4 nuisance or other injury or economic loss.

5 (f) Exhaustion and bond not required. -- A citizen is not
6 required, as a condition of the commencement of an action as
7 permitted by this section, to exhaust any administrative remedies
8 at the West Virginia Department of Environmental Protection or any
9 other government body vested with enforcement of any law, nor shall
10 any citizen be required to post any bond in connection with an
11 action.

12 (g) Intervention of right. -- A citizen of this state has
13 standing to intervene, as a matter of right, in any civil action,
14 administrative or judicial, commenced by the West Virginia
15 Department of Environmental Protection, at any stage of the
16 proceeding, including, but not limited to, a timely appeal thereof
17 in the manner accorded all other parties to the proceeding.

18 (h) Consent decree. -- No civil enforcement proceeding
19 commenced by the West Virginia Department of Environmental
20 Protection or other government instrumentality or agency, whether
21 administrative or judicial, may be terminated by consent decree or
22 by other action of the department, instrumentality or agency to
23 which a defendant has joined, or by unilateral action on the part
24 of the department instrumentality or agency:

1 (1) Without first publishing, sixty days in advance of its
2 entry, notice of the proposed termination, and a meaningful summary
3 thereof, along with information how citizens may obtain a copy of
4 the full terms of the proposed termination, in a local newspaper of
5 general circulation in the county where the action is pending, and
6 simultaneously publishing notice and the full terms thereof in a
7 conspicuous manner on the Internet web page maintained by the
8 department;

9 (2) With respect to the termination of any judicial
10 proceeding, without a judicial determination by the presiding
11 judge, after notice and hearing at which any citizen may appear and
12 be heard, that the proposed termination is in the public interest;
13 and

14 (3) Upon timely appeal, the terms of the termination shall be
15 reviewed de novo by a court of competent jurisdiction.

16 (i) Mandatory Award of Costs and Attorney Fees. -- A court, in
17 issuing any final order in any action brought pursuant to this
18 section, shall award a citizen who commences, intervenes in, or
19 appeals from, a civil action as permitted by this section, and who
20 prevails or substantially prevails in that action, all costs in the
21 action, including, but not limited to, expert witness fees, and the
22 court shall also award a prevailing, or substantially prevailing
23 citizen, reasonable attorneys fees.

24 (j) Judicial review; severability. -- No court of this state

1 has jurisdiction to review: (1) The standing of a citizen who has
2 commenced or intervened in an action to enforce or remedy the
3 violation of the laws as provided by this section, except as to the
4 determination of citizenship; or (B) of the validity of this
5 section. Notwithstanding the foregoing, if any provision of this
6 section or its application to any person or circumstance is held
7 invalid by a court of competent jurisdiction, the remainder of the
8 section and the application of those provisions to other persons
9 not similarly situated or to other circumstances are not affected
10 by that invalidation, and to this end the provisions of this
11 section are declared to be severable.

12 (k) Interpretation. -- Because the vigorous enforcement of the
13 laws of this state is critical to the legislative objectives
14 identified in this section the courts of this state shall interpret
15 the terms of this section liberally to insure citizen participation
16 in such litigation to the maximum extent possible, and any
17 ambiguity in this section or any other applicable law shall be
18 resolved in favor of citizen participation and the reimbursement of
19 costs and fees as referenced above.

20 (l) Common law. -- This section does not restrict any right
21 which any person, or class of persons, may have under any other
22 statute or the common law to seek enforcement of any law enacted by
23 the United States or this state to protect the air, water or any
24 other natural resource of the United States or this state, or to

1 seek any other relief, including, but not limited to, relief
2 against the West Virginia Department of Environmental Protection or
3 any other governmental instrumentality, department or agency.

NOTE: The purpose of this bill is to create the Citizen Enforcement of Clean Water Act. The bill makes findings. The bill permits actions by citizens. The bill sets forth jurisdiction and venue. The bill permits citizens to sue the state, its departments, agencies and political subdivisions. The bill establishes standing. The bill provides that exhaustion of remedies not required. The bill permits citizens to intervene in actions by the state. The bill sets forth consent decree requirements. The bill provides for court costs and attorney fees. The bill requires that it be liberally construed. The bill provides that the actions under common law are not precluded. The bill provides for severability.

This section is new; therefore, it has been completely underscored.