



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.