

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Introduced

Senate Bill 461

FISCAL
NOTE

BY SENATORS PHILLIPS AND SMITH

[Introduced January 21, 2022; referred
to the Committee on Energy, Industry, and Mining;
and then to the Committee on Finance]

1 A BILL to amend and reenact §22-1-15 of the Code of West Virginia, 1931, as amended, relating
2 to removing the statutory limit of \$300,000 for the Environmental Laboratory Certification
3 Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

**§22-1-15. Laboratory certification; rules; fees; revocation and suspension; environmental
laboratory certification fund; programs affected; and appeals.**

1 (a) The director shall promulgate rules to require the certification of laboratories
2 conducting waste and wastewater tests and analyses to be used for purposes of demonstrating
3 compliance under the covered statutory programs, including reasonable annual certification fees
4 based upon the type or classification of tests or analyses being conducted by laboratories, ~~not to~~
5 ~~exceed an annual program aggregate of \$300,000~~ to be assessed against laboratory owners or
6 operators in an amount necessary to cover the actual costs of administration of this program and
7 the processing of certification applications, to be deposited in the state environmental laboratory
8 certification fund created pursuant to this section. By July 1, of each year, the director shall provide
9 to the secretary a written report reflecting funds collected, how the funds were expended, and an
10 assessment of the adequacy of the funding to administer the program.

11 (b) After the effective date of the rules promulgated pursuant to this section, waste and
12 wastewater tests and analyses conducted in laboratories that are not certified for the parameters
13 or toxicity being tested or analyses shall not be accepted by the division, except as otherwise
14 provided, as being in compliance with the requirements, rules or orders of the division issued
15 under authority of one or more of the covered statutory programs: *Provided*, That field tests and
16 remote monitoring or testing equipment which is conducted or located away from any laboratory
17 shall not be considered a laboratory for purposes of assessing the fee, but shall be subject to
18 such quality assurance and quality control standards as may be established by the director in
19 rules promulgated pursuant to this section. The director shall provide by rule for the granting of

20 certification for laboratories located outside of West Virginia pursuant to this section if the
21 laboratories provide written documentation that approval has been received under requirements
22 in their state and determined by the director to be equivalent to the West Virginia laboratory
23 certification program. The reciprocal certification shall be granted only for testing methods and
24 parameters for which the laboratory holds a valid authorization in the other state and only for
25 laboratories in states which allow reciprocity with respect to laboratories located in this state.

26 (c) Application shall be made to the director for approval or certification by laboratories on
27 forms and in a manner prescribed by the director.

28 (d) Certification shall be renewed on an annual basis. The existing certification remains in
29 effect until the director notifies the applicant for renewal that renewal of certification has been
30 granted or denied.

31 (e) Certification shall be granted for those tests or parameters for which the laboratory
32 demonstrates adequate performance on performance evaluation tests based on the criteria
33 established in rules by the director. The director shall, by rule, establish criteria governing what
34 shall be considered in any decision to deny or issue a certification.

35 (f) Failure to comply with the requirements of the applicable analytical methods and
36 procedures or standards specified in the rules of the director is grounds for revocation or
37 suspension of certification for the affected test procedures or parameters.

38 (g) No person subject to the covered statutory programs shall be allowed to use data or
39 test results from waste and wastewater tests and analyses conducted at laboratories lacking
40 certification for purposes of demonstrating compliance under the covered statutory programs:
41 *Provided, That any person whose data or test results are invalidated because that person had*
42 *relied upon a laboratory which loses its certification, shall be granted thirty days after notice of the*
43 *invalidated test results by the director during which data or test results may be repeated or*
44 *reanalyzed by a certified laboratory for purposes of demonstrating compliance under the covered*
45 *statutory programs.*

46 (h) A special revenue fund designated the "environmental laboratory certification fund"
47 shall be continued in the state Treasury on July 1, 1994. The net proceeds of all fees collected
48 pursuant to this section shall be deposited in the environmental laboratory certification fund. Upon
49 line item appropriation by the Legislature, the director shall expend the proceeds, including the
50 interest thereon, of the environmental laboratory certification fund solely for the administration of
51 the requirements of this section.

52 (i) For purposes of this section, "covered statutory program" means one of the regulatory
53 programs developed under statutory authority of one of the following acts of the Legislature: Water
54 Pollution Control Act, article eleven of this chapter; Hazardous Waste Management Act, article
55 eighteen of this chapter; Hazardous Waste Emergency Response Fund Act, article nineteen of
56 this chapter; Underground Storage Tank Act, article seventeen of this chapter; the Solid Waste
57 Management Act, article fifteen of this chapter; or the Groundwater Protection Act, article twelve
58 of this chapter.

59 (j) Any person adversely affected by an order or action by the director pursuant to this
60 section or aggrieved by the failure or refusal of the director to act within a reasonable time, or by
61 the action of the director in granting or denying a certification or renewal of a certification, may
62 appeal to the environmental quality board pursuant to §22B-1-1 *et seq.* of this code.

63 (k) The provisions of this section apply only to tests and analyses of waste or wastewater
64 subject to regulation by the Division of Environmental Protection. The provisions of this section
65 do not apply to tests or analyses of potable or drinking water.

NOTE: The purpose of this bill is to remove the limitation on laboratory certification by the Department of Environmental Protection in order to cover the costs of administration of the program.

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