

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Committee Substitute**

**for**

**Senate Bill 461**

BY SENATORS PHILLIPS AND SMITH

[Originating in the Committee on Energy, Industry and  
Mining; reported on January 25, 2022]

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 30 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~~ State Treasury on July 1, 1994. The net proceeds of all fees  
48 collected pursuant to this section shall be deposited in the environmental laboratory certification  
49 fund. Upon line item appropriation by the Legislature, the director shall expend the proceeds,  
50 including the interest thereon, of the environmental laboratory certification fund solely for the  
51 administration of 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 11 of this chapter; Hazardous Waste Management Act, article 18 of  
55 this chapter; Hazardous Waste Emergency Response Fund Act, article 19 of this chapter;  
56 Underground Storage Tank Act, article 17 of this chapter; the Solid Waste Management Act,  
57 article 15 of this chapter; or the Groundwater Protection Act, article 12 of this chapter.

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

62 (k) The provisions of this section apply only to tests and analyses of waste or wastewater  
63 subject to regulation by the Division of Environmental Protection. The provisions of this section  
64 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.