

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

Originating

Senate Bill 713

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[Originating in the Committee on Energy, Industry,
and Mining; reported on February 23, 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; and allowing field tests and remote monitoring or testing equipment to be certified
4 by the laboratory certification program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DIVISION 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~~ Environmental Laboratory Certification Fund created pursuant to this section. By
9 July 1, of each year, the director shall provide to the secretary a written report reflecting funds
10 collected, how the funds were expended, and an assessment of the adequacy of the funding to
11 administer the program.

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

19 be subject to such quality assurance and quality control standards as may be established by the
20 director in rules promulgated pursuant to this section. The director shall provide by rule for the
21 granting of certification for laboratories located outside of West Virginia pursuant to this section if
22 the laboratories provide written documentation that approval has been received under
23 requirements in their state and determined by the director to be equivalent to the West Virginia
24 laboratory certification program. The reciprocal certification shall be granted only for testing
25 methods and parameters for which the laboratory holds a valid authorization in the other state
26 and only for laboratories in states which allow reciprocity with respect to laboratories located in
27 this state.

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

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

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

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

40 (g) No person subject to the covered statutory programs shall be allowed to use data or
41 test results from waste and wastewater tests and analyses conducted at laboratories lacking
42 certification for purposes of demonstrating compliance under the covered statutory programs:
43 *Provided*, That any person whose data or test results are invalidated because that person had
44 relied upon a laboratory which loses its certification, shall be granted ~~thirty~~ 30 days after notice of

45 the invalidated test results by the director during which data or test results may be repeated or
46 reanalyzed by a certified laboratory for purposes of demonstrating compliance under the covered
47 statutory programs.

48 (h) A special revenue fund designated the “~~environmental laboratory certification fund~~”
49 Environmental Laboratory Certification Fund shall be continued in the State Treasury on July 1,
50 1994. The net proceeds of all fees collected pursuant to this section shall be deposited in the
51 environmental laboratory certification fund. Upon line-item appropriation by the Legislature, the
52 director shall expend the proceeds, including the interest thereon, of the environmental laboratory
53 certification fund solely for the administration of the requirements of this section.

54 (i) For purposes of this section, “covered statutory program” means one of the regulatory
55 programs developed under statutory authority of one of the following acts of the Legislature: Water
56 Pollution Control Act, ~~article eleven of this chapter~~ §22-11-1 et seq. of this code; Hazardous Waste
57 Management Act, ~~article eighteen of this chapter~~ §22-18-1 et seq. of this code; Hazardous Waste
58 Emergency Response Fund Act, ~~article nineteen of this chapter~~ §22-19-1 et seq. of this code;
59 Underground Storage Tank Act, ~~article seventeen of this chapter~~ §22-17-1 et seq. of this code;
60 the Solid Waste Management Act, ~~article fifteen of this chapter~~ §22-15-1 et seq. of this code; or
61 the Groundwater Protection Act, ~~article twelve of this chapter~~ §22-12-1 et seq. of this code.

62 (j) Any person adversely affected by an order or action by the director pursuant to this
63 section, or aggrieved by the failure or refusal of the director to act within a reasonable time, or by
64 the action of the director in granting or denying a certification or renewal of a certification, may
65 appeal to the environmental quality board pursuant to ~~article one, chapter twenty-two b of this~~
66 ~~code~~ §22B-1-1 et seq. of this code.

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