

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 2896

FISCAL
NOTE

By Delegates Anderson, Zatezalo, Hanshaw (Mr. Speaker), Smith, Riley, Foster, Steele, Tully, Young, Summers, and Hott

[Introduced January 20, 2023; Referred to the Committee on Energy and Manufacturing then the Judiciary then Finance]

1 A BILL to repeal §16-27-1, §16-27-2, §16-27-3, and §16-27-4 of the Code of West Virginia, 1931,
2 as amended; to repeal §16-34-1, §16-34-2, §16-34-3, §16-34-4, §16-34-5, §16-34-6, §16-
3 34-7, §16-34-8, §16-34-9, §16-34-10, §16-34-11, §16-34-12, §16-34-13, and §16-34-14 of
4 said code; to amend and reenact §18-9E-3 of said code; to amend said code by adding
5 thereto a new section, designated §22-34-1, §22-34-2, §22-34-3, §22-34-4, §22-34-5, §22-
6 34-6, §22-34-7, §22-34-8, §22-34-9, §22-34-10, §22-34-11, §22-34-12, §22-34-13, §22-
7 34-14, §22-34-15, §22-34-16, §22-34-17, §22-34-18, §22-34-19, §22-34-20, and §22-34-
8 21; to amend said code by adding thereto a new section, designated §22-35-1, §22-35-2,
9 §22-35-3, §22-35-4, §22-35-5, §22-35-6, §22-35-7, §22-35-8, §22-35-9, §22-35-10, §22-
10 35-11, §22-35-12, §22-35-13 and §22-35-14; and to amend and reenact §29-1H-3 and
11 §29-1H-5 of said code, all relating to the creation of the Radiation Control Act; providing for
12 declaration of policy and purpose; providing for certain definitions; providing for an
13 exemption; providing for the creation of a Radiation Advisory Board and the composition,
14 compensation, and duties associated with the Board; providing that the Department of
15 Environmental Protection shall be designated as the State Radiation Control Agency;
16 providing for Radon education, screening, testing, and mitigation; providing for inspections
17 of X-ray machines, and providing for reports, fees, and qualifications of such inspectors;
18 defining the costs of inspection conducted by the Department of Environmental Protection
19 and the fees to be used to support the program; clarifying the licensing of radioactive
20 material; providing for surety requirements; creating the Radiation Site Closure and
21 Reclamation Fund; creating the Radiation Licensure and Inspection Fund; allowing for
22 impounding sources of ionizing radiation; providing authority for the Governor to enter into
23 agreements with the federal government; defining the authority of the Department to enter
24 into agreements with the federal government, other states or interstate agencies, and
25 providing training programs for personnel; defining the effect on local ordinances;
26 providing for administrative procedure and judicial review; creating an enforcement section

27 with civil penalties; defining criminal and civil penalties; providing for the licensure of radon
 28 mitigators, testers, contractors and laboratories; providing for legislative findings and
 29 definitions; requiring a license and providing for exemptions; providing for special licensure
 30 requirements; creating powers and duties of the secretary; defining rules; providing for a
 31 complain mechanism; creating a licensed tester, mitigator and contractor list; providing for
 32 record keeping and confidentiality; creating a special revenue account; providing for
 33 reciprocity; creating a records review; providing for reprimands; suspension or revocation
 34 of a license with a process for orders and hearings; defining criminal penalties; and
 35 providing that the Secretary of the Department of Environmental Protection shall have
 36 authority over the Appalachian States Low-Level Radioactive Waste Compact.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 27. STORAGE AND DISPOSAL OF RADIOACTIVE WASTE MATERIALS.

§16-27-1. Definitions.

1 [Repealed.]

§16-27-2. Storage or disposal of radioactive waste material within the state prohibited; exceptions.

1 [Repealed.]

§16-27-3. Authority of director of health.

1 [Repealed.]

§16-27-4. Penalties.

1 [Repealed].

ARTICLE 34. LICENSURE OF RADON MITIGATORS, TESTERS, CONTRACTORS AND LABORATORIES.

§16-34-1. Legislative finding.

1 [Repealed].

§16-34-2. Definitions.

1 [Repealed].

§16-34-3. License required and exemptions.

1 [Repealed].

§16-34-4. Special licensure requirements.

1 [Repealed].

§16-34-5. Powers and duties of the director of the division of health.

1 [Repealed].

§16-34-6. Rules.

1 [Repealed].

§16-34-7. Complaints.

1 [Repealed].

§16-34-8. Licensed tester, mitigator and contractor list.

1 [Repealed].

§16-34-9. Record keeping and confidentiality.

1 [Repealed].

§16-34-10. Special revenue account.

1 [Repealed].

§16-34-11. Reciprocity.

1 [Repealed].

§16-34-12. Records review.

1 [Repealed].

§16-34-13. Reprimands; suspension or revocation of license; orders; hearings.

1 [Repealed].

§16-34-14. Penalties.

1 [Repealed].

CHAPTER 18. EDUCATION.

ARTICLE 9E. AIR QUALITY IN NEW SCHOOLS ACT.

§18-9E-3. Air quality in new schools.

1 (a) In an effort to create well-ventilated school environments and notwithstanding any other
2 provision of this code to the contrary, any new school building designed and constructed in the
3 state by a county board, regardless of the funding source, shall be designed and constructed in
4 compliance with the current standards of the American society of heating, refrigerating and air
5 conditioning engineers handbook (ASHRAE), the national fire protection association code (NFPA)
6 and the code of the building officials and code administrators (BOCA).

7 (b) Upon notice from the School Building Authority that a new public school building is
8 occupied, the ~~division of health~~ Department of Environmental Protection shall perform radon
9 testing in the school within the first year after occupancy and at least every five years thereafter.
10 The county board shall provide any reasonable assistance to the ~~division of health~~ Department of
11 Environmental Protection that is necessary to perform the radon testing. The radon testing shall
12 include all major student-occupied areas at or below grade level. If it is determined that radon is
13 present in amounts greater than the amount determined to be acceptable by the rules and
14 standards promulgated by the ~~School Building Authority, pursuant to subsection (d) of this section~~
15 Department of Environmental Protection, any industry accepted mitigation technique shall be
16 used to reduce the radon level to the level at or below the level ~~determined acceptable by the~~
17 ~~School Building Authority~~ acceptable level.

18 (c) If the School Building Authority determines that it is feasible to test for radon prior to the
19 construction of a school building, the School Building Authority may cause preconstruction site
20 testing for radon to be performed.

21 (d) The School Building Authority shall promulgate rules pursuant to §29A-3a-1 *et seq.* of

22 this code to ensure that any new school building designed after the effective date of this article is
23 designed and constructed in accordance with the current ASHRAE, NFPA and BOCA standards.
24 ~~The School Building Authority shall promulgate rules, pursuant to article three-a, chapter twenty-~~
25 ~~nine-a of this code, that establish standards for safe levels of radon for public school buildings.~~ The
26 rules shall include the requirement that county boards submit all new school designs to the School
27 Building Authority for review and approval for compliance with current education standards and
28 design efficiencies prior to preparation of final bid documents.

29 (e) On or before July 1, 2002, the School Building Authority shall promulgate rules to
30 establish a process for independent testing, adjusting and balancing (TABS) heating, ventilation
31 and air conditioning (HVAC) systems in new school buildings or renovated schools when the
32 HVAC system has been replaced prior to occupancy. The process shall be consistent with current
33 ASHRAE standards and shall include, but not be limited to, the following:

34 (1) Requiring HVAC designers to be professional engineers registered in this state in the
35 specific discipline associated with the system being designed;

36 (2) Requiring a process to ensure that the HVAC system has been installed in the
37 prescribed manner and will operate within the performance guidelines as designed;

38 (3) Requiring participation of the design engineer who designed the system to verify the
39 intent of the design;

40 (4) Requiring the TAB agent to be qualified to perform the desired services and perform
41 testing and balancing procedures, or qualified to perform other School Building Authority-
42 approved certification according to the procedures contained in the associated air balance council
43 (AABC) national standards, the national environmental balancing bureau (NEBB) procedural
44 standards and the environment engineering consultants (EEC) standards for testing, adjusting
45 and balancing of environmental systems;

46 (5) Requiring that the independent TAB agent directly represent the building owner and is
47 under contract with the building owner and paid from project funds;

48 (6) Requiring that sufficient documentation is provided to the owner to facilitate control and
49 maintenance of the systems in accordance with the manufacturer's requirements;

50 (7) Requiring that sufficient training is provided by the equipment manufacturer or an agent
51 of the manufacturer to those persons who will operate and maintain the systems prior to
52 occupation of the facility, including at least one full day follow-up training between six and eight
53 months after the facility has been occupied; and

54 (8) Requiring certification upon successful completion of the TAB process by the
55 independent TAB agent.

56 (f) To ensure proper maintenance and operation of new and replacement HVAC
57 equipment, the Department of Education, using existing staff, shall provide county maintenance
58 personnel additional training on the equipment and its controls at the site of the installation. The
59 training shall occur within one year after student occupation of any new school facility or at any
60 existing school facility where the HVAC system has been replaced or generally rehabilitated.
61 Additionally, the Department of Education's facility staff shall provide on-site training to the county
62 maintenance staff on the county's HVAC equipment at any facility that has been determined to
63 have problematic indoor air quality as identified through the complaint procedure set forth in state
64 board policy 6202.

65 (g) Upon completion of the required training, the Department of Education's facility staff
66 shall provide the county board a report summarizing the training that was completed and a plan for
67 continuing education of the county's HVAC staff. If sufficient staff is not available to the county to
68 perform maintenance on HVAC systems, the Department of Education's staff shall assist the
69 county in the development of an immediate and long range maintenance plan to ensure that HVAC
70 systems are maintained and operated according to the manufacturer's recommendations.

71 (h) Beginning July 1, 2002, and every three months thereafter, the Department of
72 Education shall forward to the School Building Authority copies of any complaints received by the
73 Department of Education of indoor air quality problems which require system repair or

74 replacement and are identified through the complaint procedure established in state board policy
75 6202.

76 (i) The state board shall promulgate rules, pursuant to ~~article three-b, chapter twenty-nine-~~
77 ~~a §29A-3B-1 et seq.~~ of this code, in consultation with the division of health, that authorize the use
78 of any appropriate floor covering in public school buildings, based on user needs and performance
79 specifications.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 34. RADIATION CONTROL ACT.

§22-34-1. Declaration of policy.

1 It is the policy of the state in furtherance of its responsibility to protect the occupational and
2 public health and safety of the environment:

3 (1) To institute and maintain a regulatory program for sources of ionizing and nonionizing
4 radiation so as to provide for compatibility and equivalency with the standards and regulatory
5 programs of the federal government, a single effective system of regulation within the state, and a
6 system consonant insofar as possible with those of other states.

7 (2) To institute and maintain a program to permit development and use of sources of
8 radiation for peaceful purposes consistent with the health and safety of the public.

9 (3) To provide for the availability of capacity outside the state for the disposal of low-level
10 radioactive waste generated within the state except for waste generated as a result of defense or
11 federal research and development activities and to recognize that such radioactive waste can be
12 most safely and efficiently managed on a regional basis.

§22-34-2. Declaration of purpose.

1 This article is enacted to provide:

2 (1) A program of effective regulation of sources of radiation for the protection of the
3 occupational and public health and safety.

4 (2) A program to promote an orderly regulatory pattern within the state, among the states,
5 and between the federal government and the state and facilitate intergovernmental cooperation
6 with respect to use and regulation of sources of radiation to the end that duplication of regulation
7 may be minimized.

8 (3) A program to establish procedures for assumption and performance of certain
9 regulatory responsibilities with respect to byproduct, source and special nuclear materials, and
10 radiation generating equipment.

11 (4) A program to permit use of sources of radiation consistent with the health and safety of
12 the _____ public.

§22-34-3. Definitions.

1 As used in this article unless the context requires a different meaning:

2 (1) "Board" means the Radiation Advisory Board which is hereby created and shall be
3 composed of four voting appointed members and three voting ex officio members as provided in
4 this article.

5 (2) "By-product material" means:

6 (A) Any radioactive material, except special nuclear material, yielded in or made
7 radioactive by exposure to the radiation incident to the process of producing or utilizing special
8 nuclear material;

9 (B) The tailings or wastes produced by the extraction or concentration of uranium or
10 thorium from any ore processed primarily of its source material content;

11 (C) Any discrete source of radium-226 that is produced, extracted, or converted after
12 extraction for use for a commercial, medical, or research activity;

13 (D) Any material that has been made radioactive by use of a particle accelerator and is
14 produced, extracted, or converted after extraction for use for a commercial, medical, or research
15 activity; and

16 (E) Any discrete source of naturally occurring radioactive material (NORM), other than

17 source material that the United States Nuclear Regulatory Commission, in consultation with the
18 Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of
19 Homeland Security, and the head of any other appropriate federal agency, determines would pose
20 a threat similar to the threat posed by a discrete source of radium-226 to the public health and
21 safety or the common defense and security, that is extracted, or converted after extraction, for use
22 for a commercial, medical, or research activity.

23 (3) "Civil penalty" means any monetary penalty levied on a licensee or registrant because
24 of violations of statutes, regulations, licenses, or registration certificates, but does not include
25 criminal penalties.

26 (4) "Decommissioning" means final operational activities at a facility to dismantle site
27 structures, to decontaminate site surfaces and remaining structures, to stabilize and contain
28 residual radioactive material, and to carry out any other activities to prepare the site for post-
29 operational care.

30 (5) "Department" means the West Virginia Department of Environmental Protection.

31 (6) "General license" means a license effective under rules promulgated by the
32 Department without the filing of an application with the Department or the issuance of licensing
33 documents to particular persons to transfer, acquire, own, possess, or use quantities of, or devices
34 or equipment utilizing, radioactive material.

35 (7) "High-level radioactive waste" means:

36 (A) Irradiated reactor fuel;

37 (B) Liquid wastes resulting from the operation of the first cycle solvent extraction system, or
38 equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a
39 facility for reprocessing irradiated reactor fuel; or

40 (C) Solids into which such liquid wastes have been converted.

41 (8) "Ionizing radiation" means gamma rays and X-rays, alpha and beta particles, high-
42 speed electrons, neutrons, protons, and other nuclear particles; but not sound or radio waves, or

43 visible, infrared, or ultraviolet light.

44 (9) "Licensing" means licensing with the Department in accordance with rules and
45 regulations adopted pursuant to this article.

46 (10) "Low-level radioactive waste" means radioactive waste not classified as high-level
47 radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material.

48 (11) "Non-ionizing radiation" means:

49 (A) Any electromagnetic radiation, other than ionizing electromagnetic radiation or

50 (B) Any sonic, ultrasonic, or infrasonic wave.

51 (12) "Person" means any individual, corporation, LLC, partnership, firm, association, trust,
52 estate, public or private institution, group, agency of this state, other than the Department of
53 Environmental Protection, political subdivision of this state, any other state or political subdivision
54 or Department thereof, and any legal successor, representative, agent, or Department of the
55 foregoing, but not including federal government agencies.

56 (13) "Radiation" means ionizing radiation and nonionizing radiation.

57 (14) "Radiation emergency" means any situation, excluding events resulting from nuclear
58 warfare, which involves the possibility of accidental release of ionizing radiation that may pose a
59 threat to the safety and health of any citizen of this state.

60 (15) "Radiation generating equipment" means any manufactured product or device, or
61 component part of such a product or device, or any machine or system which during operation can
62 generate or emit radiation except those which emit radiation only from radioactive material.

63 (16) "Radioactive material" means any material (solid, liquid, or gas) which emits ionizing
64 radiation spontaneously. It includes accelerator-produced, byproduct, naturally occurring, or
65 source and special nuclear materials.

66 (17) "Registration" means registration with the Department in accordance with rules and
67 regulations adopted pursuant to this article.

68 (18) "Secretary" means the secretary of the West Virginia Department of Environmental

69 Protection or his or her designee.

70 (19) "Source material" means uranium or thorium, or any combination thereof, in any
71 physical or chemical form; or ores that contain by weight one-twentieth of one percent (0.05
72 percent) or more of uranium, thorium, or any combination thereof. Source material does not
73 include special nuclear material.

74 (20) "Sources of radiation" means, collectively, radioactive material and radiation
75 generating equipment.

76 (21) "Special nuclear material" means (i) plutonium, uranium 233, uranium enriched in the
77 isotope 233 or in the isotope 235, and any other material which the United States Nuclear
78 Regulatory Commission or any successor thereto has determined to be such but does not include
79 source material; or (ii) any material artificially enriched by any of the foregoing but not including
80 source material.

81 (22) "Specific license" means a license, issued to a named person upon application filed
82 under the rules promulgated pursuant to this article, to use, manufacture, produce, transfer,
83 receive, acquire, or possess quantities of, or devices utilizing, radioactive material.

84 (23) "Spent nuclear fuel" means irradiated nuclear fuel that has undergone at least one
85 year's decay since being used as a source of energy in a power reactor. Spent fuel includes the
86 special nuclear material, byproduct material, source material, and other radioactive material
87 associated with fuel assemblies.

88 (24) "Transuranic waste" means radioactive waste containing alpha emitting transuranic
89 elements, with radioactive half-lives greater than five years, in excess of 10 nanocuries per gram.

§22-34-4. Exemption.

1 The provisions of this article shall not apply to radioactive materials or facilities, including
2 nuclear reactors, that are subject to exclusive licensing and regulation by the United States
3 Nuclear Regulatory Commission.

§22-34-5. Radiation Advisory Board; composition; compensation, duties generally.

1 (a) The Radiation Advisory Board shall consist of four voting appointive members and
2 three voting ex officio members specified below. The Governor shall appoint to the Board
3 individuals from industry and academia with training in one or more of the following fields:
4 radiology, medicine, radiation, health physics, physics, related sciences with specialization in
5 ionizing radiation, law, management of nuclear materials, or emergency management. Not more
6 than two individuals shall be specialists in any one of the above-named fields. Members of the
7 Board shall serve at the pleasure of the Governor. The Secretary of the Department of
8 Environmental Protection, or his or her designee, shall be an ex officio member and preside as
9 Chair of the Board. The Secretary of the Department of Homeland Security, or his or her designee,
10 and the Secretary of the Department of Health and Human Resources, or his or her designee,
11 shall all be ex officio members of the Board. All members are voting members.

12 (b) The Board shall meet at least annually and shall:

13 (1) Review and evaluate policies and programs of the state relating to ionizing radiation;
14 and

15 (2) Make recommendations to the Department, and furnish such advice as may be
16 requested, on matters relating to development, utilization, and regulation of sources of ionizing
17 radiation.

18 (c) Each appointed member is entitled to receive, and the Department shall pay to each
19 member, compensation in the amount of \$250 for each day on which the member attends a
20 meeting of the Board. In addition, all appointed members shall receive reasonable and necessary
21 expenses actually incurred in discharging the member's duties pursuant to this article.

22 (d) The Secretary shall provide compensation, office space, staff, and office equipment as
23 may be necessary to discharge the responsibilities imposed by this article.

§22-34-6. Powers and duties of the Board.

1 (a) The Board may make recommendations to the Secretary to:

2 (1) Establish and oversee programs of effective regulation of sources of radiation for the

3 protection of the public health and safety, including programs of education and technical
4 assistance relating to radon that is targeted to those areas of the state known to have high radon
5 levels.

6 (2) Establish and oversee a program to promote the orderly regulation of radiation within
7 the state, among the states and between the federal government and the state and to facilitate
8 intergovernmental cooperation with respect to use and regulation of sources of radiation to the end
9 that duplication of regulation may be minimized.

10 (3) Establish and oversee a program to permit maximum utilization of sources of radiation
11 consistent with the public health and safety.

12 (4) Establish fee schedules for licensures required pursuant to this article.

13 (5) Establish fee schedules for the registrations required pursuant to this article.

14 (6) Encourage, participate in, and conduct studies, investigations, training, research, and
15 demonstrations relating to control of sources of radiation.

§22-34-7. Department designated state radiation control agency; powers and duties.

1 (a) The Department of Environmental Protection is hereby designated as the State
2 Radiation Control Agency.

3 (b) The Secretary shall designate the director of the State Radiation Control Agency who
4 shall perform the functions vested in the State Radiation Control Agency under the provisions of
5 this article.

6 (c) In accordance with the laws of the state, the State Radiation Control Agency may
7 employ, compensate, and prescribe the powers and duties of such individuals as may be
8 necessary to carry out the provisions of this article.

9 (d) The State Radiation Control Agency, for the protection of the occupational and public
10 health and safety and the environment, shall:

11 (1) Develop programs for evaluation and control of hazards associated with use of sources
12 of radiation.

13 (2) Develop programs with due regard for compatibility with federal programs for regulation
14 of byproduct, source, and special nuclear materials.

15 (3) Develop programs with due regard for consistency with federal programs for regulation
16 of radiation generating equipment.

17 (4) Formulate, adopt, promulgate, and repeal rules, and regulations, which may provide for
18 licensing and/or registration, relating to control of sources of radiation with due regard for
19 compatibility with the regulatory programs of the federal government.

20 (5) Advise, consult, and cooperate with other agencies of the state, the federal
21 government, other states and interstate agencies, political subdivisions, and other organizations
22 concerned with control of sources of radiation.

23 (6) Have the authority to accept and administer loans, grants, or other funds or gifts,
24 conditional or otherwise, in furtherance of its functions, from the federal government and from
25 sources, public or private.

26 (7) Encourage, participate in, or conduct studies, investigations, training, research, and
27 demonstrations relating to control of sources of radiation.

28 (8) Collect and disseminate information relating to control of sources of radiation,
29 including:

30 (A) Establish and maintain a file of all license applications, issuances, denials,
31 amendments, transfers, renewals, modifications, suspensions, and revocations;

32 (B) Establish and maintain a file of registrants possessing sources of radiation requiring
33 registration under the provisions of this article and any administrative or judicial action pertaining
34 thereto; and

35 (C) Establish and maintain a file of all agency rules related to regulation of sources of
36 radiation, pending or promulgated, and proceedings thereon.

37 (9) Establish a database of registered and certified X-ray machines, which shall include but
38 not be limited to the name of the owner or operator and the location of the machine.

39 (10) Pursuant to its powers enumerated in §22-34-9 of this code, provide for scheduled
40 and random unannounced inspections of facilities and physicians' offices that provide relevant
41 services to ensure compliance with laws, rules, licenses, or conditions.

42 (11) Establish forms including the periodic radiation inspection reports.

43 (12) Develop programs for responding adequately to radiation emergencies and
44 coordinate such programs with the emergency management agencies.

45 (13) Publish and make available a list of qualified inspectors of X-rays and X-ray machines.

46 (14) Ensure compliance with all requirements under the Appalachian States Low-Level
47 Radioactive Waste Compact pursuant to §29-1H-1 of this code and all federal laws.

48 (15) Promulgate all rules necessary under this article, in accordance with the provisions of
49 §29A-1-1 et seq. of this code, including providing for (i) general or specific licenses to use, store,
50 dispose, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or
51 devices or equipment utilizing, by-product, source, special nuclear materials, or other radioactive
52 material occurring naturally or produced artificially, (ii) registration of the possession of a source of
53 radiation and of information with respect thereto, (iii) regulation of by-product, source and special
54 nuclear material and (iv) compliance with Appalachian States Low-Level Radioactive Waste
55 Compact pursuant to §29-1H-1 of this code and all federal laws. All prior existing legislative rules,
56 policies, and licenses shall be transferred to the Department and remain effective until amended or
57 terminated pursuant to the provisions of §29A-3-1 et seq. of this code.

58 (16) Issue such orders or modifications thereof as may be necessary in connection with
59 proceedings under this article.

60 (e) The Department is authorized to require by rule, regulation, or order, the keeping of
61 such records with respect to activities under licenses and registration certificates issued under this
62 article as may be necessary to effectuate the purpose of this article. These records shall be made
63 available for inspection by, or copies thereof shall be submitted to, the Department on request.

64 (f) The Secretary, subject to the approval of the Governor, may:

65 (1) Acquire by purchase, exercise of the right of eminent domain, grant, gift, devise or
66 otherwise, the fee simple title to or any acceptable lesser interest in any lands necessary,
67 desirable, or acceptable sites for ionizing radiation control projects, including any and all lands
68 adjacent to a project site as may be necessary or suitable for restricted areas; but in all instances
69 lands which are to be designated as radioactive waste material sites shall be acquired in fee
70 simple absolute and dedicated in perpetuity to such purpose.

71 (2) Convey or lease, for such term as may be in the public interest, any lands so acquired,
72 either for a fair and reasonable consideration or solely or partly as an inducement to the
73 establishment or location in the state of any scientific or technological facility, project, satellite
74 project or nuclear storage area; but subject to such restraints as may be deemed proper to bring
75 about a reversion of title or termination of any lease in the event the grantee or lessee, as the case
76 may be, shall cease to use the premises or facilities in the conduct of business or activities
77 consistent with the purposes of this article; *Provided*, That radioactive waste material sites may be
78 leased but may not otherwise be disposed of except to another department, agency or institution
79 of the state or to the United States.

80 (3) Assume responsibility for perpetual custody and maintenance of radioactive materials
81 held for custodial purposes at any publicly or privately operated facility located within the state in
82 the event the parties operating such facilities abandon their responsibility and whenever the
83 federal government or any of its agencies has not assumed the responsibility. In such event, the
84 Secretary may oversee collections of fees, penalties, and sureties from private or public parties
85 holding radioactive materials for perpetual custodial purposes to finance such perpetual custody
86 and maintenance as the Secretary may undertake; *Provided*, That the fees and required sureties
87 shall be sufficient in each individual case to defray the estimated cost of the Department's
88 custodial management activities for that individual case. All such fees, penalties, and forfeited
89 sureties, when received by the Department, shall be deposited in the fund established in §22-34-
90 13 of this code, and shall be used exclusively for maintenance costs or for otherwise satisfying

91 custodial and maintenance obligations.

92 (4) Enter into an agreement with the federal government or any of its authorized agencies
93 to assume perpetual maintenance of lands donated, leased, or purchased from the federal
94 government or any of its authorized agencies and used for development of atomic energy
95 resources or used as custodial sites for radioactive material.

96 (g) The Secretary shall establish fee schedules for licensures, registrations, inspections,
97 and modifications thereto required pursuant to this article. All such fees collected shall be paid to
98 the Department for deposit in a special fund called the Radiation Licensure and Inspection Fund
99 created pursuant to §22-34-14 of this code.

100 (h) The Secretary shall provide compensation, office space, staff, and office equipment as
101 may be necessary to discharge the responsibilities imposed by this article.

§22-34-8. Radon education, screening, testing, and mitigation.

1 The Department shall take into consideration recommendations of the Board and establish
2 and administer programs for radon education, screening, testing, and mitigation pursuant to §22-
3 35-1 et seq. of this code.

§22-34-9. Inspections of X-ray machines required; Radiation Inspection Reports; fees; qualification of inspectors.

1 (a) All X-ray machines shall be registered with the Department.

2 (b) Every owner or operator of an X-ray machine shall request an initial inspection by a
3 private inspector or a Department inspector no later than 30 days after the installation of the
4 equipment. Inspections shall be performed periodically on a schedule prescribed by the rules
5 promulgated by the Department. The Department may also require random, unannounced, follow-
6 up inspections of machines that were inspected by private inspectors to maintain quality control. In
7 the event of changes in or installations of new equipment during the last 90 days of a period for
8 which an inspection has been made, no interim inspection shall be required. In addition, the
9 Department may require the inspection and certification of other machines emitting radiation or

10 utilizing radiation for patients, consumers, workers, or the public. Inspections shall be performed
11 by Department personnel or by private inspectors only. Inspections conducted by private
12 inspectors shall be conducted in conformance with the rules of the Department and reports on
13 these inspections shall be filed by the registrant with the Department on forms prescribed by the
14 Department. Results of all inspections shall be reviewed by the Department.

15 (c) The Department shall issue a certificate for a diagnostic or therapeutic X-ray machine,
16 or X-ray machine not used in the healing arts, when the results of the inspection indicate the
17 machine meets the Department's standards. If the machine does not meet the Department's
18 standards, the certification may be denied. If the certification is denied, the machine shall not be
19 used for treatment, diagnosis, evaluation of patients, whether human or animal, or any other use
20 until the standards of the Department have been met. A copy of the certificate shall be displayed
21 by the registrant in a conspicuous place in close proximity to the X-ray machine.

22 (d) The Department shall, in accordance with the provisions of §29A-1-1 et seq. of this
23 code, timely promulgate all such rules as the Department deems necessary to protect the health
24 and safety of health care workers, patients, and the general public, including but not limited to:

25 (1) Fee schedules for licensing and registration of X-ray machines;

26 (2) Schedule for inspections of X-ray machines;

27 (3) Fee schedules for inspections of X-ray machines by Department personnel; however,
28 no fee shall be charged for inspections initiated by the Department;

29 (4) Standards for certification of X-ray machines; and

30 (5) Qualifications for private inspectors of X-ray machines required for inclusion on a list of
31 qualified inspectors of X-ray machines published pursuant to §22-34-7 of this code, a requirement
32 for annual registration as a private inspector of X-ray machines for inclusion on such list, and a fee
33 not to exceed \$250.00 for such registration.

34 (e) All prior existing legislative rules, policies, and licenses shall be transferred to the
35 Department and remain effective until amended or terminated pursuant to the provisions of §29A-

36 3-1 et seq. of this code.

37 (f) The provisions of this section and of §22-34-7 and §22-34-9 of this code relating to X-ray
38 machines and machines emitting or utilizing radiation shall not apply to devices purchased or used
39 primarily for personal, family, or household purposes.

§22-34-10. Costs of inspection conducted by the Department of Environmental Protection;
fees to be used to support program.

1 In order to minimize competition with the private sector, the fee schedule developed for
2 routine inspections of X-ray machines by the Department's inspectors shall include all reasonable
3 costs of such inspections.

§22-34-11. Licensing of radioactive material.

1 (a) All radioactive material not under the authority of the United States Nuclear Regulatory
2 Commission, and devices or equipment utilizing such material, shall be licensed by the
3 Department under the rules promulgated by the Department.

4 (b) Rules promulgated under this article should provide for recognition of other Agreement
5 State or federal licenses, subject to such requirements as the Department may prescribe.

6 (c) It shall be unlawful for any person to use, store, dispose, manufacture, produce,
7 distribute, sell, transport, transfer, install, repair, receive, acquire, own, or possess any source of
8 radiation unless licensed by or registered with the Department in conformance with this article and
9 any rules promulgated by the Department pursuant to this article. The disposal of radioactive
10 waste material in a solid waste facility or in a commercial solid waste facility, as defined in §22-15-
11 2 of this code, is prohibited.

12 (d) The Department shall provide by rule or regulation for general or specific licensing of
13 radioactive material or devices or equipment utilizing such material. Such rule or regulation shall
14 provide for amendment, suspension, or revocation of licenses.

15 (e) The Department is authorized to require registration or licensing of other sources of
16 radiation.

17 (f) The Department is authorized to exempt certain sources of radiation or kinds of uses or
18 users from the licensing or registering requirements set forth in this section when the Department
19 makes a finding that the exemption of such sources of radiation or kinds of use or users will not
20 constitute a significant risk to the environment or health and safety to the public.

21 (g) Rules and regulations promulgated under this article may provide for recognition of
22 other state or federal licenses as the Department may deem desirable, subject to such registration
23 requirements as the Department may prescribe.

§22-34-12. Surety requirements.

1 (a) For licensed activities involving source material milling, source material mill tailing and
2 disposal of low-level radioactive waste the Department shall, and for other classes of licensed
3 activity the Department may, establish by rule or regulation standards and procedures to ensure
4 that the licensee will provide an adequate surety or other financial arrangement to permit the
5 completion of all requirements established by the Department for the decontamination, closure,
6 decommissioning and reclamation of sites, structures, and equipment used in conjunction with
7 such licensed activity, in case the licensee should default for any reason in performing such
8 requirements.

9 (b) All sureties required under subsection (a) which are forfeited shall be paid to the
10 Department for deposit in a special fund called the Radiation Site Closure and Reclamation Fund
11 created pursuant to §22-34-13 of this code.

12 (c) For licensed activities involving the disposal of source material mill tailings and disposal
13 of low-level radioactive waste the Department shall, and for other classes of licensed activity when
14 radioactive material which will require surveillance or care is likely to remain at the site after the
15 licensed activities cease the Department may, establish by rule or regulation standards and
16 procedures to ensure that the licensee, before termination of the license, will make available such
17 funding arrangements as may be necessary to provide for long-term site surveillance and care.

18 (d) All funds collected from licensees under subsection (c) shall be paid to the Department

19 for deposit in a special fund called Radiation Site Closure and Reclamation Fund created under
20 §22-34-13 of this code.

21 (e) The sureties or other financial arrangements and funds required by subsections (a) and
22 (c) shall be established in amounts sufficient to ensure compliance with those standards, if any,
23 established by the United States Nuclear Regulatory Commission pertaining to closure,
24 decommissioning, reclamation, and long-term site surveillance and care of such facilities and
25 sites.

26 (f) In order to provide for the proper care and surveillance of sites subject to subsection (c)
27 the Department may acquire by gift or transfer from another government agency or private person,
28 any land and appurtenances necessary to fulfill the purposes of this section. Any such gift or
29 transfer is subject to approval and acceptance by the Department.

30 (g) The Department may by contract, agreement, lease, or license with any person,
31 including another state agency, provide for the decontamination, closure, decommissioning,
32 reclamation, surveillance, or other care of a site subject to this section as needed to carry out the
33 purposes of this section.

34 (h) In the event a person licensed by any governmental agency other than the West
35 Virginia Department of Environmental Protection desires to transfer a site to the state for the
36 purpose of administering or providing long-term care, a lump sum deposit shall be made to the
37 radiation long-term care fund. The amount of such deposit shall be determined by the Department
38 taking into account the factors stated in subsections (c) and (e) of this section.

39 (i) All federal, state, local, or other governmental agencies, shall be exempt from the
40 requirements of subsection (a) and (c).

§22-34-13. Radiation Site Closure and Reclamation Fund.

1 (a) There is hereby created in the State Treasury a special revenue fund known as the
2 Radiation Site Closure and Reclamation Fund. The fund shall be administered by and under the
3 control of the Secretary of Department of Environmental Protection. Expenditures from the fund

4 shall be solely for the purposes under this article of administration, acquisition, construction,
5 decommission, decontamination, maintenance, surveillance, remediation, reclamation, closure,
6 or other care on sites containing or associated with licensable radioactive material for the
7 protection of the environment, public health, safety, and welfare.

8 (b) The fund shall consist of moneys appropriated by the Legislature, moneys received
9 from the federal government, moneys received from forfeited sureties, moneys received under
10 §22-34-12(d) of this code, and from private donations, grants, bequests, and all other moneys
11 received from all sources for the purposes stated herein.

12 (c) Any funds remaining in the Fund at the end of the fiscal year shall not revert to the
13 general revenue but shall remain in the fund solely for the purposes stated in this article.

14 (d) The moneys accrued in this fund, any earnings thereon, and yield from investments by
15 the State Treasurer or West Virginia Investment Management Board are reserved solely and
16 exclusively for the purposes set forth in this code section.

§22-34-14. Radiation Licensure and Inspection Fund.

1 (a) There is hereby created in the State Treasury a special revenue fund known as the
2 Radiation Licensure and Inspection Fund. The fund shall be administered by and under the control
3 of the Secretary of Department of Environmental Protection. Expenditures from the fund shall be
4 solely for the purposes under this article of administration, registration, licensing, and inspection of
5 radioactive materials facilities for the protection of the environment, public health, safety, and
6 welfare.

7 (b) The fund shall consist of moneys appropriated by the Legislature, moneys received
8 from the federal government, moneys received from licensing and registration fees, and from
9 private donations, grants, bequests, and all other moneys received from all sources for the
10 purposes stated herein. Moneys from forfeited sureties and any interest earned thereon shall not
11 be deposited into this fund or used for normal operating expenses.

12 (c) Any funds remaining in the Fund at the end of the fiscal year shall not revert to the

13 general revenue but shall remain in the fund solely for the purposes stated in this article.

14 (d) The moneys accrued in this fund, any earnings thereon, and yield from investments by
15 the State Treasurer or West Virginia Investment Management Board are reserved solely and
16 exclusively for the purposes set forth in this code section.

§22-34-15. Impounding sources of ionizing radiation.

1 The Department is authorized, in the event of an emergency or under other circumstances
2 constituting a hazard to health and safety, to impound or order the impounding of sources of
3 ionizing radiation in the possession of any person who is not equipped to observe or fails to
4 observe the provisions of this article, federal law, or any rules or regulations promulgated or issued
5 thereunder.

§22-34-16. Authority of Governor to enter into agreements with federal government; effect on federal license.

1 (a) The Governor is authorized to enter into agreements with the U.S. Nuclear Regulatory
2 Commission under Section 274b of the Atomic Energy Act of 1954, as amended, providing for
3 discontinuance of certain of the U.S. Nuclear Regulatory Commission's licensing and related
4 regulatory authority with respect to byproduct, source and special nuclear materials, and the
5 assumption of regulatory authority therefore by this state.

6 (b) Any person who, on the effective date of an agreement under subsection (a) above,
7 except those exempted under §22-34-4 of this code, possesses a license issued by the U.S.
8 Nuclear Regulatory Commission for radioactive materials subject to the agreement shall be
9 deemed to possess a like license issued under this article, which shall expire either 90 days after
10 receipt from the Department of a notice of expiration of such license, or on the date of expiration
11 specified in the U.S. Nuclear Regulatory Commission license, whichever is earlier.

§22-34-17. Authority of Department to enter into agreements with federal government, other states or interstate agencies; training programs for personnel.

1 (a) The Department, with the prior approval of the Governor, is authorized to enter into an

2 agreement or agreements with the federal government, other states or interstate agencies,
3 whereby this state will perform, on a cooperative basis with the federal government, other states or
4 interstate agencies, inspections or other functions relating to control of sources of ionizing
5 radiation.

6 (b) The Department, from funds provided by law, may institute programs for the purpose of
7 training personnel to carry out the provisions of this article and, with the prior approval of the
8 Governor, may make such personnel available for participation in any program or programs of the
9 federal government, other states, or interstate agencies in furtherance of this article.

§22-34-18. Effect upon local ordinances, etc.

1 Ordinances, resolutions, or rules, now or hereafter in effect, of the governing body of a
2 county, political subdivision, municipality, other state agencies, or other local government body
3 relating to by-product, source, and special nuclear materials shall not be superseded by this
4 article, provided that such ordinances or rules are and continue to be consistent with the
5 provisions of this article, amendments thereto and rules thereunder.

§22-34-19. Administrative procedure and judicial review.

2 (a) In any proceeding for the issuance or modification of rules or regulations relating to
3 control of sources of radiation, the Department shall provide an opportunity for public participation
4 through written comment or a public hearing.

5 (b) In any proceeding for the denial of an application for license or for revocation,
6 suspension, or modification of a license, the Department shall provide to the applicant or licensee
7 an opportunity for a hearing on the record.

8 (c) Whenever the Department finds that an emergency exists requiring immediate action to
9 protect the environment and the public health and safety, the Department may, without notice or
10 hearing, issue a regulation or order reciting the existence of such emergency and requiring that
11 such action be taken as is necessary to meet the emergency. Notwithstanding any provision of
12 this article, such regulation or order shall be effective immediately. Any person to whom such

13 regulation or order is directed shall comply therewith immediately, but on application to the
14 Department shall be afforded a hearing within five business days. On the basis of such hearing,
15 the emergency regulation or order shall be continued, modified, or revoked within 30 days after
16 such hearing.

17 (d) Any final Department action or order entered in any proceeding under subsections (a),
18 (b), and (c) above shall be subject to appeal to the Environmental Quality Board within 30 days
19 after receipt of written notice of a final action or order. The provisions of §22B-1-1 et seq. of this
20 code shall apply to such appeals.

§22-34-20. Enforcement; civil penalties.

1 (a) Any person who violates any licensing or registration provision of this article or any rule,
2 regulation, or order issued thereunder, or any term, condition, or limitation of any license or
3 registration certificate issued thereunder or commits any violation for which a license or
4 registration certificate may be revoked under rules or regulations issued under this article may be
5 subject to a civil penalty, to be imposed by the Department, not to exceed \$10,000. If any violation
6 is a continuing one, each day of such violation shall constitute a separate violation for the
7 purposes of computing the applicable civil penalty. The Department shall have the power to
8 compromise, mitigate, or remit such penalties.

9 (b) Whenever the agency proposes to subject a person to the imposition of a civil penalty
10 under the provisions of this section, it shall notify such person in writing:

11 (1) Setting forth the date, facts, and nature of each act or omission with which the person is
12 charged;

13 (2) Specifically identifying the particular provision or provisions of the section, rule,
14 regulation, order, license, or registration certificate involved in the violation; and

15 (3) Advising of each penalty which the Department proposes to impose and its amount.

16 Such written notice shall be sent by registered or certified mail by the Department to the
17 last known address of such person. The person so notified shall be granted an opportunity to

18 show in writing, within such reasonable period as the Department shall by rule prescribe, why such
19 penalty should not be imposed. The notice shall also advise such person that upon failure to pay
20 the civil penalty subsequently determined by the Department, if any, the penalty may be collected
21 by civil action. Any person upon whom a civil penalty is imposed may appeal such action under
22 §29A-1-1 et seq. of this code.

23 (c) The Department, or upon the request of the Department, the Attorney General, is
24 authorized in the name of the state to institute a civil action to collect a penalty imposed pursuant to
25 this section. The Department, or upon the request of the Department, the Attorney General, shall
26 have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred for
27 collection.

28 (d) All moneys collected from civil penalties shall be deposited in the Radiation Licensure
29 and Inspection Fund created pursuant to §22-34-14 of this code.

30 (e) In addition to the provisions of §22-34-7 of this code, the Department shall have the
31 power to enter at all reasonable times, or in cases of an emergency, upon any private or public
32 property for the purpose of determining whether or not there is compliance with or violation of the
33 provisions of this article and rules issued thereunder, except that entry into areas under the
34 jurisdiction of the federal government shall be effected only with the concurrence of the federal
35 government or its duly designated representative.

§22-34-21. Felony created; criminal penalties; injunctions; civil penalties; charges for violations.

1 (a) Any person who willfully violates any of the provisions of the rules, regulations, or
2 orders of the Department or Secretary or any provision under this article is guilty of a felony, and,
3 upon conviction thereof, shall be fined not less than \$1,000 nor more than \$25,000, for each day of
4 such violation, or imprisoned not less than one nor more than five years, or both fined and
5 imprisoned. If the conviction is for a violation committed after a first conviction of such person, the
6 person shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than \$5,000

7 nor more than \$50,000 for each day of such violation, or imprisoned not less than two nor more
8 than ten years, or both fined and imprisoned.

9 (b) Any person who violates or intends to violate, or fails, neglects, or refuses to obey any
10 law, lawful rule, or order of the Department or Secretary or any provision of this article may be
11 compelled in a proceeding instituted in an appropriate court by the Department or Secretary to
12 obey such rule, order or provision of this article and to comply therewith by injunction, mandamus,
13 or other appropriate remedy.

14 (c) Without limiting the remedies which may be obtained in subsection (b) of this section,
15 any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other
16 remedy obtained pursuant to subsection (b) shall be subject, in the discretion of the court, to a civil
17 penalty not to exceed \$25,000 for each violation, which shall be paid to the Radiation Licensure
18 and Inspection Fund created pursuant to §22-34-14 of this code. Each day of violation shall
19 constitute a separate offense.

20 (d) With the consent of any person who has violated or failed, neglected, or refused to obey
21 any rule or order of the Department or Secretary or any provision of this article, the Department or
22 Secretary may provide, in an order issued by the Department or Secretary against such person,
23 for the payment of civil charges for past violations in specific sums, not to exceed the limits
24 specified in §22-34-20 of this code. Such civil charges shall be instead of any appropriate civil
25 penalty which could be imposed under §22-34-20 of this code.

ARTICLE 35. LICENSURE OF RADON MITIGATORS, TESTERS, CONTRACTORS

AND

LABORATORIES.

§22-35-1. Legislative finding.

1 The Legislature hereby finds and declares that radon is a dangerous toxic substance and
2 harmful to the citizens of this state. Therefore, to help ensure the protection of the citizens of this
3 state, persons who come into contact with radon through remediation or testing should be trained

4 and licensed professionals who know how to deal with radon.

§22-35-2. Definitions.

1 As used in this article unless context requires a different meaning:

2 (1) "Building" means a publicly or privately owned structure consisting of any combination
3 of foundations, walls, columns, girders, beams, floors and roofs, with or without other elements of
4 appurtenances.

5 (2) "Business entity" means a corporation, llc, partnership, association, firm, sole
6 proprietorship, or other entity engaged in business.

7 (3) "Mitigate" means to repair or alter an existing building or design for the purpose, in
8 whole or in part, of reducing the concentration of radon in the indoor atmosphere.

9 (4) "Radon" means the radioactive noble gas radon-222 and the short-lived radionuclides
10 which are products of radon-222 decay, including polonium-218, lead-214, bismuth-214 and
11 polonium-214.

12 (5) "Radon laboratory" means a business entity that offers its laboratory services for the
13 purpose of studying air, soil samples or passive radon detection devices to determine the
14 concentration of radon.

15 (6) "Radon mitigation contractor" means a business entity having at least one person
16 licensed as a radon mitigation specialist.

17 (7) "Radon mitigation specialist" means a person holding a license to install or apply
18 methods or materials to reduce airborne radon concentrations in a building or to prevent the entry
19 of radon into the indoor atmosphere.

20 (8) "Radon testers" means a business entity or person licensed to examine a building, air,
21 soil or water for the presence of radon, including taking air, soil or water samples, or the act of
22 diagnosing the cause of radon contamination in a building.

23 (9) "Secretary" means the secretary of the Department of Environmental Protection or his
24 or her designee.

25 (10) "Test" means the act of examining a building, soil or air for the presence of radon,
26 including taking air or soil samples, or the act of diagnosing the cause of radon contamination in a
27 building.

§22-35-3. License required and exemptions.

1 (a) Except as otherwise provided in subsection (b) of this section:

2 (1) No individual may perform radon testing or hold himself or herself out as performing
3 radon testing without a valid radon tester or mitigation specialist license;

4 (2) No individual may provide professional or expert advice on radon testing, radon
5 exposure or the health risks related to radon exposure or hold himself or herself out as providing
6 such advice without a valid radon tester or mitigation specialist license;

7 (3) No individual may provide on-site supervision of radon mitigation or hold himself or
8 herself out as providing such supervision without a valid radon mitigation specialist license;

9 (4) No individual may provide professional or expert advice on radon mitigation or radon
10 entry routes or hold himself or herself out as providing such advice without a valid radon mitigation
11 specialist license;

12 (5) No business or government entity may perform or authorize any individual employed by
13 it to perform radon mitigation or hold itself out as performing radon mitigation without a valid radon
14 mitigation contractor license; and

15 (6) No laboratory shall perform analyses of radon air and soil samples or radon detection
16 devices for the purpose of assessing radon content without a valid radon laboratory license.

17 (b) Subsection (a) of this section does not apply to any of the following:

18 (1) An individual, business entity or government entity performing its own radon tests or
19 mitigation on a building or real property that the individual, business entity, or government entity
20 owns or leases;

21 (2) An individual, business entity, or government entity conducting research regarding
22 radon testing or mitigation in accordance with section four of this article; or

23 (3) Authorized employees of the Department of Environmental Protection in performance
24 of their official duties.

§22-35-4. Special licensure requirements.

1 (a) No licensed radon mitigation contractor may do any of the following:

2 (1) Perform radon mitigation without the direct on-site supervision of a licensed radon
3 mitigation specialist;

4 (2) Provide radon testing other than through the employment of a licensed radon tester or
5 mitigation specialist;

6 (3) Provide advice regarding radon testing, radon exposure or the health risks associated
7 with radon exposure other than through the employment of a licensed radon tester or mitigation
8 specialist; or

9 (4) Provide advice regarding radon mitigation or radon entry routes other than through the
10 employment of a licensed radon mitigation specialist.

11 (b) (1) No licensed radon tester, licensed radon mitigation specialist, or licensed radon
12 mitigation contractor involved in the testing of a particular building, or in the provision of advice
13 with respect to a particular building, may be involved in the performance of mitigation on that
14 building unless the contract for mitigation is in writing and clearly and conspicuously states both of
15 the following in language approved by the Secretary:

16 (A) That the radon tester, mitigation specialist, or mitigation contractor was involved in the
17 testing or provision of advice that led to the mitigation contract; and

18 (B) The advantage of long-term testing and the value of a second opinion as ways to verify
19 testing results and to assure that the proposed mitigation is appropriate, especially when the
20 mitigation is to be performed by the tester, mitigation specialist, or mitigation contractor that was
21 involved in the testing or provision of advice that led to the mitigation contract.

22 (2) For purposes of this subsection, a radon tester, mitigation specialist, or mitigation
23 contractor involved in testing or providing advice with respect to a particular building will be

24 considered to be "involved in the performance of mitigation on that building" if he or she has any
25 ownership interest in, or has any contractual or employment relationship with, the individual or
26 entity providing the mitigation.

27 (c) No licensed radon tester, licensed radon mitigation specialist, or licensed radon
28 mitigation contractor may perform radon testing or mitigation or provide any advice related to
29 radon, radon testing or radon mitigation unless it is performed in accordance with the requirements
30 of this article and the rules adopted under this article.

31 (d) No licensed radon tester, licensed radon mitigation specialist, licensed radon mitigation
32 contractor or licensed radon laboratory may violate any requirement of this article or any rule
33 adopted _____ hereunder.

§22-35-5. Powers and duties of the secretary.

1 (a) The Secretary shall license radon testers, mitigation specialists, mitigation contractors
2 and radon laboratories located within the state. Each applicant for a license shall submit a
3 completed application to the Secretary on a form prescribed and furnished by the Secretary.

4 (b) The Secretary shall issue the appropriate license to each applicant who pays the
5 license fee, meets the licensing criteria, and complies with any other licensing and training
6 requirements established by the Secretary. An individual business entity or government entity may
7 hold more than one license issued under this section, but a separate application is required for
8 each license.

9 (c) Notwithstanding §22-35-3(a)(1) of this code, the Secretary shall issue a radon
10 mitigation contractor license on request to the holder of a radon mitigation specialist license if the
11 license holder is the owner or chief stockholder of a business entity for which he or she is the only
12 individual who will work as a radon mitigation specialist. The licensing criteria and any other
13 licensing and training requirements that the individual was required to meet to qualify for the radon
14 mitigation specialist license are hereby considered to satisfy any and all criteria and requirements
15 for a radon mitigation contractor license. A license issued under this section expires at the same

16 time as the individual's radon mitigation specialist license.

17 (d) A license issued under this section expires annually and may be renewed by the
18 Secretary in accordance with criteria and procedures established by the Secretary under this
19 article and upon payment of the prescribed license renewal fee.

20 (e) The Secretary may:

21 (1) Refuse to issue a license to an individual, business entity, or government entity that
22 does not meet the requirements of this article or the rules adopted under this article or that has
23 violated the provisions of this article or of any rules promulgated under this article; or

24 (2) Suspend, revoke, or refuse to renew the license of an individual, business entity, or
25 government entity that is or has been in violation of the requirements of this article or the rules
26 adopted under this article.

27 (f) The Secretary shall approve and assess fees for all of the following:

28 (1) Licenses for radon testers, mitigation specialists, mitigation contractors, and radon
29 laboratories;

30 (2) Accredited training courses for radon testers and mitigation specialists; and

31 (3) Training courses for employees of mitigation contractors.

32 (g) Each applicant for approval shall submit a completed application to the Secretary on a
33 form the Secretary shall prescribe and furnish.

34 (h) In accordance with rules adopted under section six of this article, the Secretary shall
35 issue the appropriate approval to each applicant that pays the approval fee and meets the criteria
36 for approval.

37 (i) The Secretary may refuse to issue an approval and may revoke or suspend an approval
38 issued under this section if the operator of the course or laboratory fails to meet the established
39 criteria.

40 (j) The Secretary shall do all of the following:

41 (1) Administer the radon licensing program established by this article and enforce the

42 requirements of this article and the rules adopted under this article;

43 (2) Examine the records of radon testers, mitigation specialists, mitigation contractors, and
44 radon laboratories and training courses approved under this article as he or she considers
45 necessary to determine whether they are in compliance with the requirements of this article and
46 the rules adopted under this article;

47 (3) Coordinate the radon licensing program with any radon programs in schools;

48 (4) Collect and disseminate information relating to radon in this state; and

49 (5) Conduct research on indoor radon contamination, which may include a statewide
50 survey on radon contamination.

51 (k) The Secretary may do any of the following:

52 (1) Conduct inspections as he or she considers necessary to determine whether the
53 requirements of this article and the rules adopted under this article have been met;

54 (2) Conduct training programs and establish and collect fees to cover the cost of
55 conducting them;

56 (3) Advise, consult, cooperate with, and, with the consent of the Secretary, enter into
57 contracts or grant agreements with any individual business entity, government entity, interstate
58 agency, or the federal government as he or she considers appropriate to fulfill the requirements of
59 this article and the rules adopted under this article; and

60 (4) Collect the information required to be reported to him or her under any rules adopted
61 under this article.

62 (l) Nothing in this article shall be construed to allow the Secretary to:

63 (1) Require the performance of a test for radon;

64 (2) Regulate construction practices; or

65 (3) Regulate the retail sales of radon test kits for use by individuals to do their own radon
66 testing in buildings owned by them.

§22-35-6. Rules.

1 (a) To protect the health of individuals inhabiting, occupying, or frequenting buildings, the
2 Department of Environmental Protection shall timely promulgate rules, taking into consideration
3 recommendations of the Radiation Advisory Board created by §22-34-1 et seq. of this code, to
4 implement the requirements of this article. All rules under this section shall be adopted in
5 accordance with §29A-3-1 et seq. of this code. All prior existing legislative rules, policies, and
6 licenses shall be transferred and remain effective until amended or terminated pursuant to the
7 provisions of §29A-3-1 et seq. of this code.

8 (b) The Secretary shall adopt rules:

9 (1) Establishing criteria and procedures to be followed in issuing and renewing licenses to
10 radon testers, mitigation specialists, or mitigation contractors, as well as the fees for the licenses.
11 The criteria may include a requirement that applicants be listed as a professional by the National
12 Radon Proficiency Program, the National Radon Safety Board, or meet any other proficiency
13 measures deemed acceptable by the U.S. Environmental Protection Agency or the Department
14 for the purpose of offering such screening, testing, or mitigation. The rules may require that all
15 applicants for licensure as a radon tester or mitigation specialist pass an examination. If an
16 examination is required, the rules may require applicants to pass an examination conducted by the
17 Department or by a training center accredited by the Department;

18 (2) Establishing criteria and procedures to be followed in approving and accrediting
19 training courses under this article. The rules shall require the participants in training courses to
20 pass an examination conducted by the operator of the course;

21 (3) Establishing criteria and procedures in approving and licensing radon laboratories;

22 (4) Establishing standards to be followed by licensed radon testers, mitigation specialists,
23 mitigation contractors, and radon laboratories for the prevention of hazards to the environment
24 and public health, including standards for worker protection, record keeping, and the training of
25 employees, radon testers, and mitigation contractors. The standards shall, at a minimum, comply
26 with the radon testing standards outlined by the U.S. Environmental Protection Agency, the radon

27 mitigation standards outlined by the American Society for Testing and Materials, or any other
28 radon testing and mitigation standards deemed acceptable by virtue of reference by the U.S.
29 Environmental Protection Agency or the Department;

30 (5) Establishing procedures to be followed by an individual, business entity, or government
31 entity licensed by another state to practice as a radon tester, mitigation specialist, mitigation
32 contractor or radon laboratory in providing notice to the Secretary prior to commencing practice in
33 this state pursuant to this article; and

34 (6) That require licensed radon testers and mitigation specialists to report to the Secretary,
35 by street address, radon test results. The rules shall require the reporting of the identity of the
36 radon laboratory involved, screening measurements, follow-up measurements, post-mitigation
37 measurements, and, if it is known that mitigation was performed, the methods of mitigation that
38 were used. Any information required to be reported to the Secretary under the rules is not a public
39 record and shall not be released except in aggregate statistical form.

§22-35-7. Complaints.

1 (a) Any individual, business entity, or government entity may file a complaint with the
2 Secretary concerning any radon tester, mitigation specialist, mitigation contractor or a radon
3 laboratory or a training course approved under this article. The complainant's name shall be
4 confidential and shall not be released without his or her written consent. The Secretary shall
5 investigate complaints and take action under this article.

6 (b) If a radon tester, mitigation specialist, mitigation contractor, or radon laboratory violates
7 any rules promulgated pursuant to this article and as a result of the violation harms or injures in
8 any manner an individual or business entity, that radon tester, mitigation specialist, mitigation
9 contractor or radon laboratory shall be considered to have committed an unfair act or practice
10 within the meaning of §46A-6-104 of this code.

§22-35-8. Licensed tester, mitigator and contractor list.

1 The Secretary shall maintain a publicly available list of all licensed radon testers, mitigation

2 specialists, mitigation contractors, and radon laboratories located in the state. On request, the
3 Secretary shall provide a copy of all or part of the list to any individual, business entity or
4 government entity. The Secretary shall not impose a charge for providing the copy that exceeds
5 the actual and necessary expense of copying it.

§22-35-9. Record keeping and confidentiality.

1 (a) The Secretary, any employee of the Department of Environmental Protection, any
2 individual, business entity, or government entity with which the Secretary enters into an agreement
3 under §22-35-5(k)(3) of this article, shall not release information collected pursuant to this article
4 concerning a specific building used as a private residence or the real property upon which it is
5 located to anyone other than the owner or occupant of the building or real property without his or
6 her consent: *Provided*, That the Secretary may release information if he or she determines that the
7 release is necessary for use in conducting legitimate scientific studies or the information is
8 released in summary statistical or other form that does not reasonably tend to disclose the address
9 of the building or real property or the identity of the owner or occupant.

10 (b) The Department shall maintain information pursuant to this article and the rules
11 adopted under this article for at least three years. The Department may destroy any information
12 that it has maintained for three years.

§22-35-10. Special revenue account.

1 (a) There is hereby continued in the State Treasury a special revenue fund known as the
2 Radon Licensure Fund. The fund shall be administered by and under the control of the Secretary
3 of Department of Environmental Protection. Expenditures from the fund shall be solely for the
4 purposes of this article which include, but are not limited to, administration, education, licensing,
5 training, enforcement, and program development for radon for the protection of the environment,
6 public health, safety, and welfare.

7 (b) The fund shall consist of moneys appropriated by the Legislature, moneys received
8 from the federal government, moneys received from licensing and registration fees, civil penalties

9 and fines, and from private donations, grants, bequests, and all other moneys received from all
10 sources for the purposes stated herein.

11 (c) Any funds remaining in the Fund at the end of the fiscal year shall not revert to the
12 general revenue but shall remain in the fund solely for the purposes stated in this article.

13 (d) The moneys accrued in this fund, any earnings thereon, and yield from investments by
14 the State Treasurer or West Virginia Investment Management Board are reserved solely and
15 exclusively for the purposes set forth in this code article.

§22-35-11. Reciprocity.

1 The Secretary may set standards for accepting licenses issued by other states. The
2 Secretary may grant licenses to individuals from other states if that other state has licensing
3 requirements which are as stringent as the licensing requirements in this state.

§22-35-12. Records review.

1 If the Secretary requests to examine records, no licensed radon tester, mitigation
2 specialist, mitigation contractor, or operator of a radon laboratory or a training course approved
3 under this article shall fail to make available to the Secretary any records pertinent to the activities
4 regulated by this article and rules adopted under it.

§22-35-13. Reprimands; suspension or revocation of license; orders; hearings.

1 (a) The Secretary shall suspend, revoke the license of, or reprimand a radon tester,
2 mitigator, contractor, or laboratory if the licensee:

3 (1) Fraudulently or deceptively obtains or attempts to obtain a license;

4 (2) Fails at any time to meet the qualifications for a license or to comply with the
5 requirements of this article or any applicable rules adopted by the Secretary;

6 (3) Fails to meet applicable federal or state standards for radon testing or radon mitigation;

7 or

8 (4) Employs or permits an individual without a radon tester's license or a radon mitigator's
9 license to supervise work on a radon project.

10 (b) The Secretary shall investigate all alleged violations reported to the Department. Upon
 11 the finding of a violation in connection with any project involving radon testing or mitigation, the
 12 Secretary shall issue a cease and desist order directing that all work be halted immediately. Where
 13 practicable, the Secretary shall deliver a copy of the order by certified mail, return receipt
 14 requested, to the radon tester and radon mitigator.

15 (c) Hearings regarding violations of this article shall be conducted in accordance with the
 16 administrative procedures act of chapter 29A of this code.

§22-35-14. Misdemeanor created; criminal penalties.

1 Any person violating any of the provisions of this article, or any of the rules or orders issued
 2 pursuant to this article, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not
 3 more than \$500 for each violation.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

**ARTICLE 1H. APPALACHIAN STATES LOW-LEVEL RADIOACTIVE WASTE
 COMPACT.**

§29-1H-3. Powers of commission, duties of state officers, departments, etc.

1 There is hereby granted to the Commission and members of the Commission all of the
 2 powers provided for in the Compact and all the powers necessary or incidental to the carrying out
 3 of the Compact in every particular. All officers of this state are hereby authorized and directed to do
 4 all things falling within their respective provinces and jurisdiction necessary to or incidental to the
 5 carrying out of the Compact in every particular, it being hereby declared to be the policy of this
 6 state to perform and carry out the Compact and to accomplish the purposes thereof. The ~~director~~
 7 ~~of health~~ Secretary of the Department of Environmental Protection shall have the primary
 8 responsibility therefor.

§29-1H-5. Cooperation of state agencies, boards, departments, subdivisions, etc.

1 The departments, boards, agencies, commissions, officers and employees of the state and

- 2 its subdivisions are authorized and directed to cooperate with the ~~director of health~~ Secretary of
3 the Department of Environmental Protection in the furtherance of any of his activities pursuant to
4 the Appalachian States Low-Level Radioactive Waste Compact and the provisions of this article.

NOTE: The purpose of this bill is to create the Radiation Control Act. The bill provides for declaration of policy and purpose. The bill provides for certain definitions. The bill provides for an exemption. The bill creates the Radiation Advisory Board and the composition, compensation, and duties associated with the Board. The bill provides that the Department of Environmental Protection shall be designated as the State Radiation Control Agency. The bill provides for Radon education, screening, testing, and mitigation. The bill provides for inspections of X-ray machines, and providing for reports, fees, and qualifications of such inspectors. The bill defines costs of inspection conducted by the Department of Environmental Protection and the fees to be used to support the program. The bill provides for the licensing of radioactive material. The bill provides for surety requirements. The bill creates the Radiation Site Closure and Reclamation Fund. The bill creates the Radiation Licensure and Inspection Fund. The bill allows for impounding sources of ionizing radiation. The bill provides authority for the Governor to enter into agreements with the federal government. The bill provides for the authority of the Department to enter into agreements with the federal government, other states or interstate agencies, and provides training programs for personnel. The bill defines the effect on local ordinances. The bill provides for administrative procedure and judicial review. The bill creates an enforcement section with civil penalties. The bill defines criminal and civil penalties. The bill provides for the licensure of radon mitigators, testers, contractors and laboratories. The bill provides for legislative findings and definitions. The bill requires a license and provides for exemptions. The bill provides for special licensure requirements. The bill creates powers and duties of the secretary. The bill defines rules. The bill provides for a complain mechanism. The bill provides a licensed tester, mitigator and contractor list. The bill provides for record keeping and confidentiality. The bill creates a special revenue account. The bill provides for reciprocity. The bill provides a records review. The bill provides for reprimands, suspension or revocation of a license with a process for orders and hearings. The bill provides for criminal penalties. Finally, the bill clarifies that the Secretary of the Department of Environmental Protection shall have authority over the Appalachian States Low-Level Radioactive Waste Compact.

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