

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 329

SENATOR MAYNARD, *original sponsor*

[Originating in the Committee on Judiciary; reported
on February 21, 2020]

1 A BILL to amend and reenact §64-3-1 *et seq.* of the Code of West Virginia, 1931, as amended,
2 relating generally to authorizing certain agencies of the Department of Environmental
3 Protection to promulgate legislative rules; authorizing the rules as filed, as modified by the
4 Legislative Rule-Making Review Committee and as amended by the Legislature;
5 authorizing the Department of Environmental Protection to promulgate a legislative rule
6 relating to ambient air quality standards; authorizing the Department of Environmental
7 Protection to promulgate a legislative rule relating to standards of performance for new
8 stationary sources; authorizing the Department of Environmental Protection to promulgate
9 a legislative rule relating to control of air pollution from hazardous waste treatment,
10 storage, and disposal facilities; authorizing the Department of Environmental Protection to
11 promulgate a legislative rule relating to emission standards for hazardous air pollutants;
12 authorizing the Department of Environmental Protection to promulgate a legislative rule
13 relating to control of ozone season nitrogen oxides emissions; authorizing the Department
14 of Environmental Protection to promulgate a legislative rule relating to West Virginia
15 surface mining reclamation rule; authorizing the Department of Environmental Protection
16 to promulgate a legislative rule relating to groundwater protection rules for coal mining
17 operations; authorizing the Department of Environmental Protection to promulgate a
18 legislative rule relating to hazardous waste management system; authorizing the
19 Department of Environmental Protection to promulgate a legislative rule relating to
20 voluntary remediation and redevelopment rule; and authorizing the Oil and Gas
21 Conservation Commission to promulgate a legislative rule relating to rules of the
22 commission.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. AUTHORIZATION FOR DEPARTMENT OF ENVIRONMENTAL PROTECTION TO PROMULGATE LEGISLATIVE RULES.

§64-3-1. Department of Environmental Protection.

1 (a) The legislative rule filed in the State Register on July 19, 2019, authorized under the
2 authority of §22-5-4 of this code, relating to the Department of Environmental Protection (ambient
3 air quality standards, 45 CSR 08), is authorized.

4 (b) The legislative rule filed in the State Register on July 19, 2019, authorized under the
5 authority of §22-5-4 of this code, relating to the Department of Environmental Protection
6 (standards of performance for new stationary sources, 45 CSR 16), is authorized.

7 (c) The legislative rule filed in the State Register on July 19, 2019, authorized under the
8 authority of §22-5-4 of this code, modified by the Department of Environmental Protection to meet
9 the objections of the Legislative Rule-Making Review Committee and refiled in the State Register
10 on October 2, 2019, relating to the Department of Environmental Protection (control of air pollution
11 from hazardous waste treatment, storage, and disposal facilities, 45 CSR 25), is authorized.

12 (d) The legislative rule filed in the State Register on July 19, 2019, authorized under the
13 authority of §22-5-4 of this code, relating to the Department of Environmental Protection (emission
14 standards for hazardous air pollutants, 45 CSR 34), is authorized.

15 (e) The legislative rule filed in the State Register on July 19, 2019, authorized under the
16 authority of §22-5-4 of this code, relating to the Department of Environmental Protection (control
17 of ozone season nitrogen oxides emissions, 45 CSR 40), is authorized.

18 (f) The legislative rule filed in the State Register on July 25, 2019, authorized under the
19 authority of §22-3-4 of this code, relating to the Department of Environmental Protection (West
20 Virginia surface mining reclamation rule, 38 CSR 02), is authorized with the following
21 amendments:

22 On page 120, subdivision 11.3.a.3, by striking out paragraph 11.3.a.3 and inserting in lieu
23 thereof a new paragraph 11.3.a.3 to read as follows:

24 "11.3.a.3. Any company that executes surety bonds in the State after July 1, 2001, must:
25 (i) be recognized by the treasurer to the state as holding a current certificate of authority from the
26 United States Department of the Treasury as an acceptable surety on federal bonds by being
27 included on the Treasury Department's listing of approved sureties (Department Circular 570); or
28 (ii) submit proof to the secretary that it holds a valid license issued by the West Virginia Insurance
29 Commissioner, and agree to submit to the secretary on at least a quarterly basis a certificate of
30 good standing from the West Virginia Insurance Commissioner and such other evidence from the
31 insurance regulator of its domiciliary state, if other than West Virginia, demonstrating that it is also
32 in good standing in that state: ~~Companies not included on the United States Treasury~~
33 ~~Department's listing of approved sureties~~ Provided, That those companies electing to execute
34 bonds under the provisions of subparagraph (i) of this paragraph must diligently pursue
35 application for listing, submit evidence on a semi-annual basis demonstrating that they are
36 pursuing such listing, and within four (4) years, obtain a certificate of authority from the United
37 States Department of the Treasury as an acceptable surety on federal bonds."

38 And,

39 On page 183, paragraph 16.2.c.2, by striking out paragraph 16.2.c.2 and inserting in lieu
40 thereof a new paragraph 16.2.c.2 to read as follows:

41 "16.2.c.2. ~~Either~~ At the owner's election, either correct material damage resulting from
42 subsidence caused to any structures or facilities by ~~repairing the damage~~ compensating the
43 owner in an amount not to exceed 120 percent of the replacement cost or compensate the owner
44 of such structures or facilities in the full amount of the diminution in value resulting from the
45 subsidence. Repair of damage includes rehabilitation, restoration, or replacement of damaged
46 structures or facilities. Compensation may also be accomplished by the purchase prior to mining
47 of a non-cancelable premium-prepaid insurance policy. The requirements of this paragraph only

48 apply to subsidence related damage caused by underground mining activities conducted after
49 October 24, 1992: Provided, That this paragraph does not create additional property rights nor
50 may it be construed as vesting in the secretary the jurisdiction to adjudicate property rights
51 disputes. and”

52 (g) The legislative rule filed in the State Register on July 25, 2019, authorized under the
53 authority of §22-12-6 of this code, relating to the Department of Environmental Protection
54 (groundwater protection rules for coal mining operations, 38 CSR 02F), is authorized.

55 (h) The legislative rule filed in the State Register on July 25, 2019, authorized under the
56 authority of §22-18-6 of this code, relating to the Department of Environmental Protection
57 (hazardous waste management system, 33 CSR 20), is authorized.

58 (i) The legislative rule filed in the State Register on July 25, 2019, authorized under the
59 authority of §22-22-3 of this code, relating to the Department of Environmental Protection
60 (voluntary remediation and redevelopment rule, 60 CSR 03), is authorized.

§64-3-2. Oil and Gas Conservation Commission.

1 The legislative rule filed in the State Register on July 25, 2019, authorized under the
2 authority of §22C-9-5 of this code, modified by the Oil and Gas Conservation Commission to meet
3 the objections of the Legislative Rule-Making Review Committee and refiled in the State Register
4 on January 3, 2020, relating to the Oil and Gas Conservation Commission (rules of the
5 commission, 39 CSR 01), is authorized.