

Appendix G – Hazard Mitigation Legislative Initiatives

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MEMORANDUM

TO: Senator Robert H. Plymale
FROM: Stephen S. Kappa
DATE: December 8, 2003
SUBJECT: Hazard Mitigation Initiatives

In consultation with my staff, I have developed a prioritized list of hazard mitigation measures that should be implemented in the state. This list, outlined below, includes flood hazards as well as others that may be equally destructive, public and private partnerships, and legislative initiatives designed to minimize the impact of disasters on West Virginians, their possessions, and the state as a whole.

1. Amend the West Virginia State Code:
 - a. Legally create a special account titled the “Flood Loss Reduction Fund.”
 - b. Allow up to \$1 million in funds appropriated to the Governor’s Civil Contingency Fund to be deposited into the Flood Loss Reduction Fund.
 - c. Funds will be allowed to capitalize year-to-year if not utilized.
 - d. Funds will only be used as matching money for hazard mitigation activities selected and approved by the primary funding agency or organization.
2. Initiate an All-Hazards Public Education Program:
 - a. Coordinate an outreach campaign for the general public that offers a consistent message of how to mitigate the natural and technological hazards that threaten West Virginia.
 - b. Incorporate hazard education information into schools either through curricular or extra-curricular programs.
 - c. Develop an internet-based educational website.
 - d. Develop a multi-media state-level program to raise preparedness and mitigation awareness.

3. Pass legislation that requires internal review of capital projects:
 - a. A capital project for the purpose of this legislation is any expenditure equal to or exceeding \$500 thousand, having a useful life of one year or more, and not undertaken as an emergency measure.
 - b. Ensure that expenditures of state capital are made with consideration given to the possible hazards associated to such investments.
 - c. Require that if the review process reveals that a capital project's assets are imperiled by a known or likely hazard, that the project must:
 - i. Relocate outside the threatened area – even if such action would result in additional cost; or,
 - ii. If relocation is not possible, the project must be reformulated to incorporate hazard resistant construction techniques and materials.
 - d. Division of Highways projects are exempted from this requirement.
 - e. Division of Natural Resources stream access projects are also exempted from this requirement.
 - f. The agency, commission or board responsible for financial management of the project will complete reviews.
 - g. Copies of reviews will be forwarded to the West Virginia Office of Emergency Services.
4. Promote urban and wildfire mitigation:
 - a. Adopt legislation requiring the installation of fire/smoke detection systems in all buildings.
 - b. Resolve conflicting local/county/state regulations that govern burning.
 - c. Install dry fire hydrants in rural areas.
 - d. Increase funding for wild land fire detection and suppression.
 - e. Advertise the prosecution of arsonists.
 - f. Offer incentives for the capture of arsonists.
5. Create a “Data Clearinghouse” for all hazard related information:
 - a. Employ database to document known and likely risks for the purpose of predicting and preventing loss of life, injury and damages.
 - b. Identify all critical infrastructure locations, whether public or private, to access their unique vulnerabilities and to focus future mitigation activities.

- c. Identify all water impoundments that do not currently fall under dam control regulations.
 - d. Inventory existing/future hydrogeology, hydrology and geology study data.
 - e. Devise a maintenance schedule of all data to include applied mitigation measures.
6. Improve programs for mitigation of In-Stream Disturbances:
- a. Develop uniform guidelines for removal of stream obstructions and debris, whether pre-flood or post-flood in origin.
 - b. Develop guidelines for sizing, installation, and maintenance of culverts, drainage structures, and stream/river crossings.
 - c. Require that individuals keep potential obstructions clear of the floodplain. Examples include: garbage, tires and other automotive parts, drums and barrels, lumber and woody debris, appliances, etc.

Senate Bill 160

(By Senator Bailey)

[Introduced January 19, 2007; referred to the Committee on Government Organization; and then to the Committee on Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §29-29-1, §29-29-2, §29-29-3, §29-29-4, §29-29-5 and §29-29-6, all relating to state flood protection planning; providing legislative findings; defining terms; establishing the State Flood Protection Planning Council and authorizing certain duties; establishing State Flood Protection Planning Advisory Committee and setting forth its duties; and reporting to the Joint Legislative Oversight Commission on Water Resources.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §29-29-1, §29-29-2, §29-29-3, §29-29-4, §29-29-5 and §29-29-6, all to read as follows:

ARTICLE 29. FLOOD PROTECTION PLANNING ACT.**§29-29-1. Short title; legislative findings; purpose.**

(a) This article may be known and cited as the Flood Protection Planning Act.

(b) The West Virginia Legislature finds that:

(1) Flooding has affected each of the fifty-five counties and thirty-two major watersheds within the state;

(2) Over the past forty years, more than two hundred fifty West Virginians have died in floods;

(3) Between January, one thousand nine hundred ninety-six, and September, two thousand four, there have been sixteen federal disaster declarations in West Virginia involving flooding for a total cost to the Federal Emergency Management Agency of five hundred million dollars; and

(4) Despite the many state and federal flood protection programs and projects, flooding continues to be West Virginia's most common and widespread natural disaster.

(c) It is the purpose of this article to provide a comprehensive and coordinated statewide flood protection planning program to save lives and reduce or mitigate flood damage while supporting economic growth and protecting the environment.

§29-29-2. Definitions.

For purposes of this article:

(1) "Advisory Committee" means the State Flood Protection Planning Advisory Committee; and

(2) "Council" means the State Flood Protection Planning Council.

§29-29-3. State Flood Protection Planning Council.

(a) The State Flood Protection Planning Council is established. The council consists of five members: The Director of the Division of Natural Resources or his or her designee; the Secretary of the Department of Environmental Protection or his or her designee; the Executive Director of the West Virginia Conservation Agency or his or her designee; the Secretary of the Department of Military Affairs and Public Safety or his or her designee; and the Secretary of Transportation or his or her designees.

(b) (1) The council designates one of its members in rotation to be chair for a term of two years. In the absence of the chair, any member designated by the members present may act as chair.

(2) The Executive Director of the West Virginia Conservation Agency or his or her designee is designated as the temporary chair and he or she shall call the members together for an organizational meeting on or after the effective date of this article.

(c) The council shall meet no less than quarterly at the time and place designated by the chair. All decisions of the council shall be decided by a majority vote of the members.

§29-29-4. Powers and duties.

The council:

(1) Serves as coordinator of all flood protection programs and activities in the state;

(2) Annually reviews the state flood protection plan and updates the plan no less than biannually;

- (3) Recommends legislation to reduce and mitigate flood damage;
- (4) Reviews and implements recommendations of the advisory committee;
- (5) Reports to the Legislative Oversight Commission on Water Resources at least quarterly;
- (6) Catalogs, maintains and monitors a listing of current and proposed capital expenditures to reduce and mitigate flood damage;
- (7) Coordinates planning of flood projects with federal agencies;
- (8) Improves professional management of floodplains;
- (9) Provides education and outreach on flooding issues to the citizens of this state;
- (10) Establishes a single website integrating all agency flood information; and
- (11) Takes all other actions necessary and proper to effectuate the purposes of this article.

§29-29-5. State Flood Protection Planning Advisory Committee; members; meetings; duties.

(a) The State Flood Protection Planning Advisory Committee is established. The purpose of the advisory committee is to create a comprehensive group of state and federal agencies working together to assist the council in the performance of its duties as stated in section four of this article.

(b) The members of the advisory committee are appointed by the council for their technical and policy expertise and experience in flooding issues and include a representative of each of the following agencies: U. S. Army Corps of Engineers, Natural Resources Conservation Service, National Weather Service, U. S. Geological Survey, Federal Emergency Management Agency, West Virginia Division of Forestry, West Virginia Department of Environmental Protection, West Virginia Division of Highways, West Virginia Development Office, West Virginia Division of Natural Resources, West Virginia Housing Development Fund, West Virginia Insurance Commission, Division of Homeland Security and Emergency Management, West Virginia Board of Risk and Insurance Management and West Virginia Bureau for Public Health. Two members of the advisory committee shall be floodplain managers. One member shall be from the West Virginia Association of Counties. One member shall be from the West Virginia Municipal League. Two members shall represent public or nonprofit organizations.

(c) The advisory committee elects a chair from its membership for a term of two years. The advisory committee shall meet regularly at the time and place

designated by the chair or by call of a majority of the advisory committee members. All decisions of the advisory committee are made by a majority vote of the members.

(d) The chair of the advisory committee may appoint subcommittees, prescribe their jurisdiction and designate a subcommittee chair.

§29-29-6. Joint legislative oversight.

(a) The Joint Legislative Oversight Commission on Water Resources oversees the council.

(b) The expenses of the commission are to be approved by the Joint Committee on Government and Finance and paid from legislative appropriations.

(c) The chair of the council reports to the commission no less than quarterly on the status of all comprehensive and coordinated statewide flood protection planning activities and proposed legislative recommendations. The chair of the council shall submit an annual report to the commission by the thirty-first day of December each year.

NOTE: The purpose of this bill is to establish the State Flood Protection Planning Council to coordinate flood protection programs and review and update state flood protection plan. The bill also establishes the Legislative Oversight Commission on Flooding.

This article is new; therefore, strike-throughs and underscoring have been omitted.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 465

(Senators Unger, Jenkins, Prezioso and Plymale, original sponsors)

[Passed March 9, 2007; in effect ninety days from passage.]

AN ACT to amend and reenact §22-14-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22-14-19, all relating to deficient dams; establishing the Dam Safety Rehabilitation Revolving Fund for deficient dams; and providing for promulgation of rules.

Be it enacted by the Legislature of West Virginia:

That §22-14-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §22-14-19, all to read as follows:

ARTICLE 14. DAM CONTROL ACT.

§22-14-3. Definition of terms used in article.

As used in this article, unless used in a context that clearly requires a different meaning, the term:

- (a) "Alterations" or "repairs" means only those changes in the structure or integrity of a dam that may affect its safety to be determined by the secretary.
- (b) "Application for a certificate of approval" means the written application provided to the secretary requesting that a person be issued a certificate of approval.
- (c) "Appurtenant works" means any structure or facility that is an adjunct of, or connected, appended or annexed to a dam, including, but not limited to,

spillways, a reservoir and its rim, low-level outlet works or water conduits such as tunnels, pipelines and penstocks either through the dam or its abutments.

(d) "Certificate of approval" means the written approval issued by the secretary to a person who has applied to the secretary for a certificate of approval that authorizes the person to place, construct, enlarge, alter, repair or remove a dam and specifies the conditions or limitations under which the work is to be performed by that person.

(e)(1) "Dam" means an artificial barrier or obstruction, including any works appurtenant to it and any reservoir created by it, which is or will be placed, constructed, enlarged, altered or repaired so that it does or will impound or divert water and: (A) Is or will be twenty-five feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier and which does or can impound fifteen acre-feet or more of water; or

(B) Is or will be six feet or more in height from the natural bed of the stream or watercourse measured at the downstream toe of the barrier and which does or can impound fifty acre-feet or more of water;

(2) "Dam" does not mean:

(A) Any dam owned by the federal government;

(B) Any dam for which the operation and maintenance of the dam is the responsibility of the federal government;

(C) Farm ponds constructed and used primarily for agricultural purposes, including, but not limited to, livestock watering, irrigation, retention of animal wastes and fish culture, and that have no potential to cause loss of human life in the event of embankment failure; or

(D) Roadfill or other transportation structures that do not or will not impound water under normal conditions and that have a designed culvert or similar conveyance or capacity that would be used under a state designed highway at the same location: Provided, That the secretary may apply the provisions of section ten of this article for roadfill or other transportation structures that become a hazard to human life or property through the frequent or continuous impoundment of water.

(f) "Deficient dam" means a noncoal-related dam that exhibits one or more design, maintenance or operational problems that may adversely affect the performance of the dam over a period of time or during a major storm or other inclement weather

that may cause loss of life or property; or a noncoal-related dam that otherwise fails to meet the requirements of this article.

(g) "Department" means the Department of Environmental Protection.

(h) "Enlargement" means any change in or addition to an existing dam which: (1) Raises the height of the dam; (2) raises or may raise the water storage elevation of the water impounded by the dam; (3) increases or may increase the amount of water impounded by the dam; or (4) increases or may increase the watershed area from which water is impounded by the dam.

(i) "Person" means any public or private corporation, institution, association, society, firm, organization or company organized or existing under the laws of this or any other state or country; the State of West Virginia; any state governmental agency; any political subdivision of the state or of its counties or municipalities; a sanitary district; a public service district; a drainage district; a conservation district; a watershed improvement district; a partnership, trust, or estate; a person or individual; a group of persons or individuals acting individually or as a group; or any other legal entity. The term "person", when used in this article, includes and refers to any authorized agent, lessee or trustee of any of the foregoing, or receiver or trustee appointed by any court for any of the foregoing.

(j) "Reservoir" means any basin which contains or will contain impounded water.

(k) "Secretary" means the Secretary of the Department of Environmental Protection.

(l) "Natural Resources Conservation Service" means the Natural Resources Conservation Service of the United States Department of Agriculture or any successor or predecessor agency, including the Soil Conservation Service.

(m) "Water" means any liquid, including any solids or other matter that may be contained in the liquid, which is or may be impounded by a dam.

(n) "Water storage elevation" means the maximum elevation that water can reach behind a dam without encroaching on the freeboard approved for the dam under flood conditions.

§22-14-19. Dam Safety Rehabilitation Revolving Fund established; disbursement of fund moneys.

(a) There is created in the State Treasury a special revenue fund known as the Dam Safety Rehabilitation Revolving Fund. The fund shall be comprised of money allocated to the state by the federal government expressly for the purposes of

establishing and maintaining a state Dam Safety Rehabilitation Revolving Fund. The fund shall also include all receipts from loans made by the fund, any moneys appropriated by the Legislature, all income from the investment of moneys held in the fund and all other moneys designated for deposit to the fund from any source, public or private. The fund shall operate as a special revenue fund and all deposits and payments into the fund do not expire to the General Revenue Fund, but shall remain in the account and be available for expenditure in succeeding fiscal years.

(b) The fund, to the extent that money is available, shall be used solely to make loans to persons who own an interest in a deficient dam to finance the engineering, design, alteration, improvement, repair, breaching or removal of the deficient dam necessary to correct or remove the deficiencies and other activities as authorized by a federal grant or a legislative appropriation. Further, the fund may be used to defray costs incurred by the department in administering the provisions of this subsection.

(c) The secretary shall promulgate rules, in accordance with the provisions of article three, chapter twenty-nine-a of this code, to govern the disbursement of moneys from the fund, establish a state deficient dams rehabilitation assistance program to direct the distribution of loans from the fund, establish criteria for eligibility to receive loans from the fund and establish the terms and conditions of the loans, including interest rates and repayment terms.

(d) The secretary may employ qualified officers, agents, advisors and consultants and other persons necessary to carry out the administration and management of the fund.

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 247

(By Senators Tomblin, Mr. President, and Sprouse, By Request of the Executive)

[Passed January 23, 2006; in effect from passage.]

AN ACT to repeal §22A-2-69 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §15-5B-1, §15-5B-2, §15-5B-3, §15-5B-4 and §15-5B-5 ; to amend and reenact §22A-2-55 and §22A-2-66 of said code; and to amend said code by adding thereto a new section, designated §24-6-14, all relating to mine and industrial emergencies; creating the Mine and Industrial Accident Rapid Response System; providing requirements for protective equipment in underground mines; providing for criminal penalties for the unauthorized removal of or tampering with certain protective equipment; defining certain terms; providing for notification requirements in the event of an accident in or about any mine and imposing a civil administrative penalty for the failure to comply with such notification requirements; providing rule-making authority; and clarifying the responsibilities of county answering points.

Be it enacted by the Legislature of West Virginia:

That §22A-2-69 of the Code of West Virginia, 1931, as amended, be repealed; that said code be amended by adding thereto a new article, designated §15-5B-1, §15-5B-2, §15-5B-3, §15-5B-4 and §15-5B-5 ; that §22A-2-55 and §22A-2-66 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §24-6-14, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.**ARTICLE 5B. MINE AND INDUSTRIAL ACCIDENT RAPID RESPONSE SYSTEM.**

§15-5B-1. Legislative purpose; Mine and Industrial Accident Rapid Response System created.

(a) The Legislature finds that the health and safety of persons working in and around the mining industry and other industries is of paramount concern to the people of West Virginia and that deaths and serious injuries resulting from dangerous working conditions cause grief and suffering to workers and their families. The Legislature further finds that there is an urgent need to provide more effective means and measures for improving emergency response and communications for dealing with mine and industrial accidents. The Legislature declares that it is in the best interest of the citizens of West Virginia to designate an emergency telephone number for mining or industrial personnel to initiate a rapid emergency response to any mine or industrial accident. Provision of a single, primary emergency number through which emergency services can be quickly and efficiently obtained and through which the response of various state agencies charged by law with responding to mine and industrial emergencies can be coordinated will significantly contribute to the public good. The Mine and Industrial Accident Rapid Response System will provide a vital resource to the citizens of West Virginia by providing a critical connection between the Director of the Office of Miners' Health, Safety and Training, the Division of Homeland Security and Emergency Management, local and regional emergency services organizations and other responsible agencies.

(b) The Mine and Industrial Accident Rapid Response System is hereby created and shall consist of:

(1) The Mine and Industrial Accident Emergency Operations Center established in section two of this article; and

(2) The 24-hour-a-day statewide telephone number established by the Director of the Division of Homeland Security and Emergency Management.

§15-5B-2. Mine and industrial accident emergency operations center.

(a) The Director of the Division of Homeland Security and Emergency Management, working in conjunction with the Office of Miners' Health, Safety and Training, shall maintain the Mine and Industrial Accident Emergency Operations Center, which shall be the official and primary state government 24-hour-a-day communications center for dealing with mine and industrial accidents.

(b) The emergency operations center shall be operated twenty- four hours a day, seven days a week by emergency service personnel employed by the director to provide emergency assistance and coordination to mine and industrial accidents or emergencies.

(c) The emergency operations center shall be readily accessible twenty-four hours a day at a statewide telephone number established and designated by the director.

§15-5B-3. Emergency mine response.

(a) To assist the Division of Homeland Security and Emergency Management in implementing and operating the Mine and Industrial Accident Rapid Response System, the Office of Miners' Health, Safety and Training shall, on a quarterly basis, provide the emergency operations center with a mine emergency contact list. In the event of any change in the information contained in the mine emergency contact list, such changes shall be provided immediately to the emergency operations center. The mine emergency contact list shall include the following information:

- (1) The names and telephone numbers of the Director of the Office of Miners' Health, Safety and Training, or his or her designee, including at least one telephone number at which the Director or designee may be reached at any time;
- (2) The names and telephone numbers of all district mine inspectors, including at least one telephone number for each inspector at which each inspector may be reached at any time;
- (3) A current listing of all regional offices or districts of the Office of Miners' Health, Safety and Training, including a detailed description of the geographical areas served by each regional office or district; and
- (4) The names, locations and telephone numbers of all mine rescue stations, including at least one telephone number for each station that may be called twenty-four hours a day and a listing of all mines that each mine rescue station serves in accordance with the provisions of section thirty-five, article one, chapter twenty- two-a of this code.

(b) Upon the receipt of an emergency call regarding any accident, as defined in section sixty-six, article two, chapter twenty-two-a of this code, in or about any mine, the emergency operations center shall immediately notify:

- (1) The Director of the Office of Miners' Health, Safety and Training or his or her designee;
- (2) The district mine inspector assigned to the district or region in which the accident occurred; and
- (3) Local emergency service personnel in the area in which the accident occurred.

(c) The director or his or her designee shall determine the necessity for and contact all mine rescue stations that provide rescue coverage to the mine in question.

(d) In the event that an emergency call regarding any accident, as defined in section sixty-six, article two, chapter twenty-two-a of this code, in or about any mine, is initially received by a county answering point, as defined in article six, chapter twenty-four of this code, the call shall be immediately forwarded to the Mine and Industrial Accident Emergency Operations Center.

(e) Nothing in this section shall be construed to relieve an operator, as defined in section two, article one, chapter twenty- two-a of this code, from any reporting or notification obligation under federal law.

(f) The Mine and Industrial Accident Rapid Response System and the emergency operations center are designed and intended to provide communications assistance to emergency responders and other responsible persons. Nothing in this section shall be construed to conflict with the responsibility and authority of an operator to provide mine rescue coverage in accordance with the provisions of section thirty-five, article one, chapter twenty-two-a of this code or the authority of the Director of the Office of Miners' Health, Safety and Training to assign mine rescue teams under the provisions of subsection (d) of said section or to exercise any other authority provided in chapter twenty-two-a of this code.

§15-5B-4. Study of other industrial emergencies.

The Director of the Division of Homeland Security and Emergency Management shall immediately cause a study to be conducted to determine the feasibility of providing emergency coverage to other industrial, manufacturing, chemical or other emergencies through the Mine and Industrial Accident Rapid Response System. On or before the first day of November, two thousand six, the director shall submit a report to the Governor, the President of the Senate and the Speaker of the House of Delegates setting forth the findings of his or her study and recommendations for legislation consistent with the purposes of this article.

§15-5B-5. Rule-making authority.

The Director of the Division of Homeland Security and Emergency Management shall propose emergency and legislative rules for promulgation in accordance with article three, chapter twenty- nine-a of this code regarding the implementation and administration of the Mine and Industrial Accident Rapid Response System. The requirements of this article enacted during the regular session of the

Legislature in January, two thousand six, shall not be implemented until the emergency rule authorized herein has been approved.

CHAPTER 22A. MINERS' HEALTH, SAFETY AND TRAINING.

ARTICLE 2. UNDERGROUND MINES.

§22A-2-55. Protective equipment and clothing. (a) Welders and helpers shall use proper shields or goggles to protect their eyes. All employees shall have approved goggles or shields and use the same where there is a hazard from flying particles or other eye hazards.

(b) Employees engaged in haulage operations and all other persons employed around moving equipment on the surface and underground shall wear snug-fitting clothing. (c) Protective gloves shall be worn when material which may injure hands is handled, but gloves with gauntleted cuffs shall not be worn around moving equipment. (d) Safety hats and safety-toed shoes shall be worn by all persons while in or around a mine: Provided, That metatarsal guards are not required to be worn by persons when working in those areas of underground mine workings which average less than forty-eight inches in height as measured from the floor to the roof of the underground mine workings. (e) Approved eye protection shall be worn by all persons while being transported in open-type man trips. (f)(1) A self-contained self-rescue device approved by the Director shall be worn by each person underground or kept within his immediate reach and the device shall be provided by the operator. The self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. Each operator shall train each miner in the use of such device and refresher training courses for all underground employees shall be held during each calendar year.

(2) In addition to the requirements of subdivision (1) of this subsection, the operator shall also provide caches of additional self-contained self-rescue devices throughout the mine in accordance with a plan approved by the director. Each additional self-contained self-rescue device shall be adequate to protect a miner for one hour or longer. The total number of additional self-contained self-rescue devices, the total number of storage caches and the placement of each cache throughout the mine shall be established by rule pursuant to subsection (i) of this section. Intrinsically safe battery-powered strobe lights shall be affixed to each cache and shall be capable of automatic activation in the event of an emergency. A luminescent sign with the words "SELF-CONTAINED SELF-RESCUER" or "SELF-CONTAINED SELF-RESCUERS" shall be conspicuously posted at each cache and

luminescent direction signs shall be posted leading to each cache. Lifeline cords or other similar device, with reflective material at 25-foot intervals, shall be attached to each cache from the last open crosscut to the surface. The operator shall conduct weekly inspections of each cache, the affixed strobe lights and each lifeline cord or other similar device to ensure operability.

(3) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any self-contained self-rescue device or battery-powered strobe light from the mine or mine site with the intent to permanently deprive the operator of the device or light or knowingly tampers with or attempts to tamper with such device or light shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than ten thousand dollars nor more than one hundred thousand dollars, or both.

(g)(1) A wireless emergency communication device approved by the director and provided by the operator shall be worn by each person underground. The wireless emergency communication device shall, at a minimum, be capable of receiving emergency communications from the surface at any location throughout the mine. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine any and all equipment necessary to transmit emergency communications from the surface to each wireless emergency communication device at any location throughout the mine.

(2) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless emergency communication device or related equipment, from the mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than ten thousand dollars nor more than one hundred thousand dollars, or both.

(h)(1) A wireless tracking device approved by the director and provided by the operator shall be worn by each person underground. In the event of an accident or other emergency, the tracking device shall, at a minimum, be capable of providing real-time monitoring of the physical location of each person underground: Provided, That no person shall discharge or discriminate against any miner based on information gathered by a wireless tracking device during nonemergency

monitoring. Each operator shall train each miner in the use of the device and provide refresher training courses for all underground employees during each calendar year. The operator shall install in or around the mine all equipment necessary to provide real-time emergency monitoring of the physical location of each person underground.

(2) Any person that, without the authorization of the operator or the director, knowingly removes or attempts to remove any wireless tracking device or related equipment, approved by the director, from a mine or mine site with the intent to permanently deprive the operator of the device or equipment or knowingly tampers with or attempts to tamper with the device or equipment shall be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than one year nor more than ten years or fined not less than ten thousand dollars nor more than one hundred thousand dollars, or both.

(i) The director may promulgate emergency and legislative rules to implement and enforce this section pursuant to the provisions of article three, chapter twenty-nine-a of this code. (j) The penalties set forth in this article enacted during the regular session of the Legislature in January, two thousand six, shall become effective the first day of July, two thousand six.

§22A-2-66. Accident; notice; investigation by Office of Miners' Health, Safety and Training.

(a) For the purposes of this section, the term "accident" means:

(1) The death of an individual at a mine; (2) An injury to an individual at a mine which has a reasonable potential to cause death; (3) The entrapment of an individual; (4) The unplanned inundation of a mine by a liquid or gas; (5) The unplanned ignition or explosion of gas or dust; (6) The unplanned ignition or explosion of a blasting agent or an explosive; (7) An unplanned fire in or about a mine not extinguished within five minutes of ignition; (8) An unplanned roof fall at or above the anchorage zone in active workings where roof bolts are in use or an unplanned roof or rib fall in active workings that impairs ventilation or impedes passage; (9) A coal or rock outburst that causes withdrawal of miners or which disrupts regular mining activity for more than one hour; (10) An unstable condition at an impoundment, refuse pile or culm bank which requires emergency action in order to prevent failure, or which causes individuals to evacuate an area, or the failure of an impoundment, refuse pile or culm bank; (11) Damage to hoisting equipment in a shaft or slope which endangers an individual or which interferes with use of the equipment for more than thirty minutes; and (12) An

event at a mine which causes death or bodily injury to an individual not at the mine at the time the event occurs.

(b) Whenever any accident occurs in or about any coal mine or the machinery connected therewith, it is the duty of the operator or the mine foreman in charge of the mine to give notice, within fifteen minutes of ascertaining the occurrence of an accident, to the Mine and Industrial Accident Emergency Operations Center at the statewide telephone number established by the Director of the Division of Homeland Security and Emergency Management pursuant to the provisions of article five-b, chapter fifteen of this code stating the particulars of the accident: Provided, That the operator or the mine foreman in charge of the mine may comply with this notice requirement by immediately providing notice to the appropriate local organization for emergency services as defined in section eight, article five of said chapter, or the appropriate local emergency telephone system operator as defined in article six, chapter twenty-four of this code: Provided, however, That nothing in this subsection shall be construed to relieve the operator from any reporting or notification requirement under federal law.

(c) The Director of the Office of Miners' Health, Safety and Training shall impose, pursuant to rules authorized in this section, a civil administrative penalty of one hundred thousand dollars on the operator if it is determined that the operator or the mine foremen in charge of the mine failed to give immediate notice as required in this section: Provided, That the director may waive imposition of the civil administrative penalty at any time if he or she finds that the failure to give immediate notice was caused by circumstances wholly outside the control of the operator.

(d) If anyone is killed, the inspector shall immediately go to the scene of the accident and make recommendations and render assistance as he or she may deem necessary for the future safety of the men and investigate the cause of the explosion or accident and make a record. He or she shall preserve the record with the other records in his or her office. The cost of the investigation records shall be paid by the Office of Miners' Health, Safety and Training. A copy shall be furnished to the operator and other interested parties. To enable him or her to make an investigation, he or she has the power to compel the attendance of witnesses and to administer oaths or affirmations. The director has the right to appear and testify and to offer any testimony that may be relevant to the questions and to cross-examine witnesses.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-14. Notification of mining accidents.

Each county answering point that receives a call reporting an accident in or about any mine shall immediately route the call to the Mine and Industrial Accident Emergency Operations Center created pursuant to section two, article five-a, chapter fifteen of this code.

Senate Bill No. 7

(By Senators Bailey, Sharpe, Minard and Hunter)

[Introduced January 11, 2006; referred to the Committee
on Government Organization; and then to the Committee on Finance.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §29-29-1, §29-29-2, §29-29-3, §29-29-4, §29-29-5 and §29-29-6, all relating to state flood protection planning; providing legislative findings; defining terms; establishing the State Flood Protection Planning Council and authorizing certain duties; establishing State Flood Protection Planning Advisory Committee and setting forth its duties; and establishing a Joint Legislative Oversight Commission on Flooding.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §29-29-1, §29-29-2, §29-29-3, §29-29-4, §29-29-5 and §29-29-6, all to read as follows:

ARTICLE 29. FLOOD PROTECTION PLANNING ACT.

§29-29-1. Short title; legislative findings; purpose.

- (a) This article may be known and cited as the Flood Protection Planning Act.
- (b) The West Virginia Legislature finds that:
 - (1) Flooding has affected each of the fifty-five counties and thirty-two major watersheds within the state;
 - (2) Over the past forty years, more than two hundred and fifty West Virginians have died in floods;
 - (3) Between January, one thousand nine hundred ninety-six, and September, two thousand four, there have been sixteen federal disaster declarations in West Virginia involving flooding for a total cost to the Federal Emergency Management Agency of five hundred million dollars; and

(4) Despite the many state and federal flood protection programs and projects, flooding continues to be West Virginia's most common and widespread natural disaster.

(c) It is the purpose of this article to provide a comprehensive and coordinated statewide flood protection planning program to save lives and reduce or mitigate flood damage while supporting economic growth and protecting the environment.

§29-29-2. Definitions.

For purposes of this article:

- (1) "Council" means the State Flood Protection Planning Council; and
- (2) "Committee" or "Advisory Committee" means the State Flood Protection Planning Advisory Committee.

§29-29-3. State Flood Protection Planning Council.

(a) The State Flood Protection Planning Council is created. The council shall consist of six members: The Director of the Division of Natural Resources or his or her designee; the Secretary of the Department of Environmental Protection or his or her designee; the Executive Director of the West Virginia Conservation Agency or his or her designee; the Director of the West Virginia Housing Development Fund; the Secretary of the Department of Military Affairs and Public Safety or his or her designee; and the Secretary of Transportation or his or her designees.

(b) (1) The council shall designate one of its members in rotation to be chair for a term of two years. In the absence of the chair, any member designated by the members present may act as chair.

(2) The Executive Director of the West Virginia Conservation Agency or his or her designee is designated as the temporary chair and he or she shall call the members together for an organizational meeting on or after the effective date of this article.

(c) The council shall meet no less than once each calendar quarter at the time and place designated by the chair. All decisions of the council shall be decided by a majority vote of the members.

§29-29-4. Powers and duties.

The council may:

- (1) Serve as coordinator of all flood protection programs and activities in the state;

- (2) Annually review the state flood protection plan and update the plan no less than biannually;
- (3) Recommend legislation to reduce or mitigate flood damage;
- (4) Review and implement recommendations of the Advisory Committee;
- (5) Report to the Legislative Oversight Commission on flooding at least quarterly;
- (6) Catalog, maintain and monitor a listing of current and proposed capital expenditures to reduce or mitigate flood damage;
- (7) Coordinate planning of flood projects with federal agencies;
- (8) Improve professional management of flood plains;
- (9) Provide education and outreach on flooding issues to the citizens of this state;
- (10) Establish a single website integrating all agency flood information; and
- (11) Take all other actions necessary and proper to effectuate the purposes of this article.

§29-29-5. State Flood Protection Planning Advisory Committee; members; meetings; duties.

(a) The State Flood Protection Planning Advisory Committee is created. The Advisory Committee shall be appointed by the council and shall consist of no more than twenty members. The council shall appoint members for their technical and policy expertise and experience in flooding issues so that the Advisory Committee can provide the council with sufficient information for it to make informed decisions regarding flood protection. Each of the following agencies shall be represented by at least one member on the Advisory Committee: U. S. Army Corps of Engineers, Natural Resources Conservation Service, National Weather Service, U. S. Geological Survey, Federal Emergency Management Agency, West Virginia Division of Forestry, West Virginia Department of Environmental Protection, West Virginia Division of Highways, West Virginia Development Office, West Virginia Division of Natural Resources, West Virginia Insurance Commission, West Virginia Office of Emergency Services, West Virginia Board of Risk Management and West Virginia Bureau for Public Health. Two members of the Advisory Committee shall be flood plain managers. One member shall be from the West Virginia Association of Counties. One member shall be from the West Virginia Municipal League. Two members shall represent public or nonprofit organizations.

(b) The Advisory Committee shall elect a chair from its membership for a term of two years. The Advisory Committee shall meet as often as necessary at the time and place designated by the chair or by call of a majority of the Advisory Committee members. All decisions of the Advisory Committee shall be made by a majority vote of the members.

(c) The chair of the Advisory Committee may appoint subcommittees, prescribe their jurisdiction and designate a subcommittee chair.

(d) The Advisory Committee shall make recommendations to and advise the council on matters within the council's jurisdiction.

§29-29-6. Joint Legislative Oversight Commission on Flooding.

(a) The President of the Senate and the Speaker of the House of Delegates shall each designate five members of their respective houses, including two members of the minority party, to serve on a Joint Legislative Oversight Commission charged with immediate and ongoing oversight of flood damage reduction and flood plain management. Each congressional district shall be represented in the commission membership. The commission shall be known as the "Joint Legislative Oversight Commission on Flooding" and shall regularly monitor all activities relating to flood protection and shall make recommendations to the Legislature that offer solutions to reduce the reality and threat of future loss of life and property damages associated with flooding.

(b) The expenses of the commission are to be approved by the Joint Committee on Government and Finance and paid from legislative appropriations.

(c) The chair of the State Flood Protection Planning Council shall report quarterly , at a minimum, in sufficient detail for the commission to monitor the activities of the council to assure progress toward reducing and mitigating flood damage within this state and to develop legislative recommendations. The chair of the council shall submit an annual report to the commission by the thirty-first day of December each year.

NOTE: The purpose of this bill is to establish the State Flood Protection Planning Council to coordinate flood protection programs and review and update state flood protection plan. The bill also establishes the Legislative Oversight Commission on Flooding.

This article is new; therefore, strike-throughs and underscoring have been omitted.

Senate Bill No. 206

(By Senators Oliverio, Dempsey, Fanning, Foster, Hunter, Jenkins, Kessler, Barnes, Weeks, Unger, McKenzie, McCabe and Sharpe)

[Introduced January 18, 2006; referred to the Committee on the Judiciary; and then to the Committee on Finance.]

A BILL to amend and reenact §7-1-3u of the Code of West Virginia, 1931, as amended; and to amend and reenact §19-21A-4 of said code, all relating to floodplain management and flood debris generally; requiring floodplain management plans to prohibit or regulate placement of manufactured housing and storage of materials which may become flood debris or present additional flood hazards; requiring local governments establish penalties for violations of floodplain management plans; and authorizing the conservation agency to remove debris and other impediments during flood emergencies.

Be it enacted by the Legislature of West Virginia:

That §7-1-3u of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §19-21A-4 of said code be amended and reenacted, all to read as follows:

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3u. Authority of counties and municipalities to treat streams to prevent floods.

(a) To protect people and property from floods, counties and municipalities are hereby empowered to rechannel and dredge streams; remove accumulated debris, snags, sandbars, rocks and any other kinds of obstructions from streams; straighten stream channels; and carry out erosion and sedimentation control measures and programs.

(b) For stream treatment to prevent floods as provided in this section, counties and municipalities are hereby further empowered to levy, within all constitutional and statutory limitations; acquire property by purchase, exercise of the right of eminent domain, lease, gift or grant; accept any and all benefits, moneys, services

and assistance which may be available from the federal and state government or any private source; issue and sell bonds within the constitutional and statutory limitations prescribed by law for the issuance and sale of bonds by counties and municipalities for public purposes generally. Any such levy shall be equal and uniform throughout the county or municipality.

(c) The power and authority granted in this section, may be exercised by any county or municipality in cooperation with each other or separately as provided in section three-i of this article. Any county or municipality which exercises any power or authority set forth in this section shall comply with all applicable provisions of federal and state laws and rules and regulations lawfully promulgated thereunder.

(d) Each county commission and municipal governing body shall, as part of its flood plain management plan, on before June 30, 2008, prohibit location of manufactured housing whether permanent or temporary, utilized for a residence, vacation home or camp and storage of hazardous or floatable materials, outbuildings, culverts, pipes and fuel oil and propane tanks within the regulated flood plain.

(1) The county commission or municipal governing body may, in lieu of a total prohibition, require such items to be elevated above the level of the one hundred year flood plain on reinforced piers, securely anchored to a fixed structure on a permanent foundation, relocated out of the regulated flood plain or utilize other appropriate measures designed to keep such items out of streams, resist expected flood waters and impact from debris.

(2) For purposes of this section "manufactured housing" means a structure, transportable in one or more sections, which is built and remains on a permanent chase and designed to be used as a dwelling with or without a permanent foundation; the term includes any structure commonly referred to as factory built home, mobile home, house trailer, modular home and any camper, trailer or recreational vehicle located permanently or temporarily in a flood plain.

(3) Each county commission and municipal governing body shall establish penalties for violations of its flood plain management plan.

(e) The term "stream" as used in this section means any watercourse, whether natural or man-made, distinguishable by banks and a bed, regardless of their size, through which water flows continually or intermittently, regardless of its volume.

ARTICLE 21A. CONSERVATION DISTRICTS.

§19-21A-4. State conservation committee; continuation.

(a) The State Conservation Committee is continued. It serves as an agency of the state and is to perform the functions conferred upon it in this article. The committee consists of the following ten members:

(1) Four citizen members;

(2) The following ex officio members:

(A) The Director of the State Cooperative Extension Service;

(B) The Director of the State Agricultural and Forestry Experiment Station;

(C) The Secretary of the Department of Environmental Protection;

(D) The State Commissioner of Agriculture, who is the chairperson of the committee;

(E) The Director of the Division of Forestry; and

(F) The President of the West Virginia Association of Conservation Districts.

(b) The Governor shall appoint, by and with the consent of the Senate, the four citizen members. Members shall be appointed for four-year terms, which are staggered in accordance with the initial appointments under prior enactment of this section. In the event of a vacancy, the appointment is for the unexpired term.

© The Committee may invite the Secretary of Agriculture of the United States of America to appoint one person to serve with the Committee as an advisory member.

(d) The Committee shall keep a record of its official actions, shall adopt a seal, which shall be judicially noticed, and may perform those acts, hold public hearings and adopt or propose for legislative approval rules necessary for the execution of its functions under this article.

(e) The State Conservation Committee may employ an administrative officer, technical experts and other agents and employees, permanent and temporary, as it requires. The administrative officer and support staff shall be known as the West Virginia Conservation Agency. The Committee shall determine their qualifications, duties and compensation. The Committee may call upon the Attorney General of the state for legal services it requires. It may delegate to its chairperson, to one or more of its members, or to one or more agents or employees powers and duties it considers proper. The Committee may secure necessary and suitable office accommodations and the necessary supplies and equipment. Upon request of the Committee, for the purpose of carrying out any of its functions, the

supervising officer of any state agency or of any state institution of learning shall, insofar as may be possible, under available appropriations and having due regard to the needs of the agency to which the request is directed, assign or detail to the Committee, members of the staff or personnel of the agency or institution of learning and make special reports, surveys or studies required by the Committee.

(f) A member of the Committee holds office so long as he or she retains the office by virtue of which he or she is serving on the Committee. A majority of the Committee is a quorum and the concurrence of a majority in any matter within their duties is required for its determination. The chairperson and members of the Committee may receive no compensation for their services on the Committee, but are entitled to reimbursement of expenses, including traveling expenses necessarily incurred in the discharge of their duties on the Committee. The Committee shall:

(1) Require the execution of surety bonds for all employees and officers who are entrusted with funds or property;

(2) Provide for the keeping of a full and accurate public record of all proceedings and of all resolutions, rules and orders issued or adopted; and

(3) Provide for an annual audit of the accounts of receipts and disbursements.

(g) In addition to other duties and powers conferred upon the State Conservation Committee, it may:

(1) Offer appropriate assistance to the supervisors of conservation districts, organized as provided in this article, in the carrying out of any of their powers and programs;

(2) Keep the supervisors of each of the several districts, organized under the provisions of this article, informed of the activities and experience of all other districts organized under this article and facilitate an interchange of advice and experience between the districts and cooperation between them;

(3) Coordinate the programs of the several conservation districts so far as this may be done by advice and consultation;

(4) Secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of the districts;

(5) Disseminate information throughout the state concerning the activities and programs of the conservation districts and encourage the formation of the districts in areas where their organization is desirable;

(6) Accept and receive donations, gifts, contributions, grants and appropriations in money, services, materials or otherwise from the United States or any of its agencies, from the State of West Virginia or from other sources and use or expend

the money, services, materials or other contributions in carrying out the policy and provisions of this article, including the right to allocate the money, services or materials in part to the various conservation districts created by this article in order to assist them in carrying on their operations; and

(7) Obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise any property, real or personal, or rights or interests in the property; maintain, administer, operate and improve any properties acquired; receive and retain income from the property and to expend the income as required for operation, maintenance, administration or improvement of the properties or in otherwise carrying out the purposes and provisions of this article; and sell, lease or otherwise dispose of any of its property or interests in the property in furtherance of the purposes and the provisions of this article. Money received from the sale of land acquired in the small watershed program shall be deposited in the special account of the State Conservation Committee and expended as provided in this article.

(8) To promulgate emergency and legislative rules to effectuate the provisions of this article as amended and reenacted by the Legislature during the regular session of the Legislature in the year two thousand five.

(9) During and after a flood event agency employees, its agents or contractors may enter any water of the state for the purpose of removing debris and other obstructions which impede water flow and present additional flood hazards. The agency shall conduct this effort as part of its current stream recovery programs in cooperation with other federal, state and local entities. In exercising this emergency power agency employees, its agents and contractors are authorized to enter any property regardless of ownership when and where necessary to most efficiently carry out the tasks necessary to reduce additional flood hazards during a flood event. The exercise of this limited authority does not constitute taking of private property or trespass.

NOTE: The purpose of this bill is enact measures to assist local and state authorities in flood plain management and flood clean up.

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

Senate Bill No. 207

(By Senator Oliverio, Dempsey, Fanning, Foster, Hunter, Jenkins, Kessler, Barnes, Weeks, McKenzie, McCabe and Sharpe)

[Introduced January 18, 2006; referred to the Committee on the Judiciary; and then to the Committee on Finance.]

A BILL to amend and reenact §21-9-4 and §21-9-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §24- 2-2 of said code, all relating to requiring manufactured housing, fuel oil and propane tanks and other items to be properly secured when in floodplain; requiring certificate or installation approval from floodplain manager prior to installation; providing for penalties; providing that utility service may not be provided to a building or manufactured home under certain conditions; and requiring building or property owner provide utility companies with certificate or installation approval before service to home may be provided.

Be it enacted by the Legislature of West Virginia:

That §21-9-4 and §21-9-12 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §24-2-2 of said code be amended and reenacted, all to read as follows:

ARTICLE 9. MANUFACTURED HOUSING CONSTRUCTION AND SAFETY STANDARDS.

§21-9-4. General powers and duties; persons adversely affected entitled to hearing.

(a) The board shall have the power to:

- (1) Regulate its own procedure and practice;
- (2) Propose rules for legislative approval in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement the provisions of this article and the federal standards;
- (3) Advise the commissioner in all matters within his jurisdiction under this article;

(4) Prepare and submit to HUD a state plan application seeking the designation of the board as a state administrative agency for the purpose of administering and enforcing the federal standards and take all other action necessary to enable the board to serve as a state administrative agency;

(5) Study and report to the governor and the Legislature on matters pertinent to the manufacture, distribution and sale of manufactured housing in this state and recommend changes in the law determined by the board to be necessary to promote consumer safety and protect purchasers of manufactured housing;

(6) Conduct hearings and presentations of views consistent with its rules and the federal standards;

(7) Approve or disapprove applications for licenses to manufacturers, dealers, distributors and contractors in accordance with section nine of this article, and revoke or suspend licenses in accordance with that section, and set the amounts of license fees and bonds or other forms of assurance in accordance with sections nine and ten of this article;

(8) Delegate to and authorize the commissioner to exercise the powers and duties of the board that the board may determine, including without limitation, the authority to approve, disapprove, revoke or suspend licenses in accordance with section nine of this article;

(9) Require all new or previously owned manufactured homes, outbuildings and propane or fuel-oil tanks utilized for such homes, installed in a flood plain area in this state after June 30, 2008, to be sufficiently secured to prevent the home, outbuilding and any propane or fuel-oil tank from being separated from its foundation or location during a flood. The board shall promulgate a rule in accordance with the provisions of §29A-3-1 et seq to implement this requirement and may adopt the standards set forth in the manual, Manufactured Home Installation In Flood Hazard Areas, published by the Federal Emergency Management Agency (FEMA) or more stringent standards when necessary to protect the health, safety and welfare of the citizens of this State. The rule shall require licensed dealers and installers or the homeowner if the homeowner is installing the home, outbuilding or tank, to obtain a certificate from the county or municipal flood plain manager that the proposed home site is not in a flood hazard area location. If the proposed home site is in a flood hazard area the installation design shall be engineered for use in a flood plain location and approved by the board and the county or municipal flood plain manager for site specific flooding conditions. No utility may provide service to a manufactured

home sold or installed after the effective date of the amendment and enactment of this section during the two thousand five legislative session until the appropriate site certification or installation approval have been obtained. It shall be the responsibility of the licensed dealer for new homes and the licensed dealer or installer of used homes to obtain the site certification or installation approval and to provide a copy to the customer's insurance company and the board. In those instances where the homeowner installs the home, he or she is responsible for obtaining the site certification or installation approval and providing a copy to his or her insurance company and the board. In all instances, it is the responsibility of the homeowner to provide a copy of the certificate or installation approval to the utility company or companies.

In addition to any other penalties provided by law, any person failing to comply with the provisions of this section is in violation of the applicable county and municipal flood plain management plans.

(b) Any person adversely affected by a decision of the board or the commissioner shall be afforded an opportunity for hearing before the board in accordance with section one, article five, chapter twenty-nine-a of this code.

§21-9-12. Violation of article; penalties; injunction.

(a) Any person who violates any of the following provisions relating to manufactured homes or any legislative rule proposed by the board pursuant to the provisions of this article, is liable to the state for a penalty, as determined by the board, not to exceed one thousand dollars for each violation. Each violation constitutes a separate violation with respect to each manufactured home, except that the maximum penalty may not exceed one million dollars for any related series of violations occurring within one year from the date of the first violation. No person may:

(1) Manufacture for sale, lease, sell, offer for sale or lease, or introduce or deliver, or import into this state any manufactured home which is manufactured on or after the effective date of any applicable standard established by a rule promulgated by the board pursuant to the provisions of this article, or any applicable federal standard, which does not comply with that standard.

(2) Fail or refuse to permit access to or copying of records, or fail to make reports or provide information or fail or refuse to permit entry or inspection as required by the provisions of this article.

(3) Fail to furnish notification of any defect as required by the provisions of 42 U.S.C. §5414.

(4) Fail to issue a certification required by the provisions of 42 U.S.C. §5415 or issue a certification to the effect that a manufactured home conforms to all applicable federal standards, when the person knows or in the exercise of due care would have reason to know that the certification is false or misleading in a material respect.

(5) Fail to establish and maintain records, make reports, and provide information as the board may reasonably require to enable the board to determine whether there is compliance with the federal standards; or fail to permit, upon request of a person duly authorized by the board, the inspection of appropriate books, papers, records and documents relative to determining whether a manufacturer, dealer, distributor or contractor has acted or is acting in compliance with the provisions of this article or applicable federal standards.

(6) Issue a certification pursuant to the provisions of 42 U.S.C. §5403(a), when the person knows or in the exercise of due care would have reason to know that the certification is false or misleading in a material respect.

(7) Violate the provisions of subdivision ten, subsection four, of this article, any person found guilty of such violation will be subjected to double the maximum penalty provided by this section and revocation of his or her license.

(b) Subdivision (1), subsection (a) of this section does not apply to:

(1) The sale or the offer for sale of any manufactured home after the first purchase of it in good faith for purposes other than resale;

(2) Any person who establishes that he did not have reason to know in the exercise of due care that the manufactured home is not in conformity with applicable federal standards; or

(3) Any person who, prior to the first purchase, holds a certificate by the manufacturer or importer of the manufactured home to the effect that the manufactured home conforms to all applicable federal standards, unless that person knows that the manufactured home does not conform to those standards.

(c) Any manufacturer, dealer, distributor or contractor who engages in business in this state without furnishing a bond or other form of assurance as required by the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than fifty dollars for each day the violation continues.

(d) The board may institute proceedings in the circuit court of the county in which the alleged violation occurred or are occurring to enjoin any violation of the provisions of this article.

(e) Any person or officer, director, partner or agent of a corporation, partnership or other entity who willfully or knowingly violates any of the provisions listed in subsection (a) of this section, in any manner which threatens the health or safety of any purchaser, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than one thousand dollars or confined in the county or regional jail for a period of not more than one year, or both fined and imprisoned.

(f) Nothing in this article applies to any bank or financial institution engaged in the disposal of foreclosed or repossessed manufactured homes.

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-2. General power of commission to regulate public utilities.

(a) The commission is hereby given power to investigate all rates, methods and practices of public utilities subject to the provisions of this chapter; to require them to conform to the laws of this state and to all rules, regulations and orders of the commission not contrary to law; and to require copies of all reports, rates, classifications, schedules and timetables in effect and used by the public utility or other person, to be filed with the commission, and all other information desired by the commission relating to the investigation and requirements, including inventories of all property in such form and detail as the commission may prescribe. The commission may compel obedience to its lawful orders by mandamus or injunction or other proper proceedings in the name of the state in any circuit court having jurisdiction of the parties or of the subject matter, or the supreme court of appeals direct, and the proceedings shall have priority over all pending cases. The commission may change any intrastate rate, charge or toll which is unjust or unreasonable or any interstate charge with respect to matters of a purely local nature which have not been regulated by or pursuant to an act of Congress and may prescribe a rate, charge or toll that is just and reasonable, and change or prohibit any practice, device or method of service in order to prevent undue discrimination or favoritism between persons and between localities and between commodities for a like and contemporaneous service. But in no case shall the rate, toll or charge be more than the service is reasonably worth, considering the cost of the service. Every order entered by the commission shall continue in force until the expiration of the time, if any, named by the commission in the

order, or until revoked or modified by the commission, unless the order is suspended, modified or revoked by order or decree of a court of competent jurisdiction: Provided, That in the case of utilities used by emergency shelter providers, the commission shall prescribe such rates, charges or tolls that are the lowest available. "Emergency shelter provider" means any nonprofit entity which provides temporary emergency housing and services to the homeless or to victims of domestic violence or other abuse.

(b) Notwithstanding any other provision of this code to the contrary, rates are not discriminatory if, when considering the debt costs associated with a future water or sewer project which would not benefit existing customers, the commission establishes rates which ensure that the future customers to be served by the new project are solely responsible for the debt costs associated with the project.

(c) The commission shall, after June 30, 2008, prohibit any regulated utility from providing service to any public or private building or manufactured housing, to be used for commercial or dwelling purposes, until the building or property owner or his or her designee provides the utility with a certificate that the building or manufactured housing is not in flood hazard area or if the building or manufactured housing is in a flood hazard area that the construction, engineering and installation design have been approved by the county or municipal flood plain manager for site specific flooding conditions. All propane or fuel-oil tanks utilized for any building or manufactured housing must also receive a certificate or installation approval from the county or municipal flood plain manager prior to being filled.

NOTE: The purpose of this bill is to protect the health, safety and welfare of the citizens of this State by reducing the opportunity for unsecured or improperly secured buildings, manufactured housing, propane and fuel-oil tanks to impede water flow after a flood.

Senate Bill No. 208

(By Senators Oliverio, Dempsey, Fanning, Foster, Hunter, Jenkins, Kessler, Barnes, Weeks, Plymale, McKenzie, McCabe and Sharpe)

[Introduced January 18, 2006; referred to the Committee on the Judiciary; and then to Committee on Finance.]

A BILL to amend and reenact §20-1A-3 of the Code of West Virginia, 1931, as amended, relating to granting the Public Land Corporation the authority to condemn certain abandoned structures in the waters of the state causing or contributing to flooding or erosion; requiring owner to remove certain abandoned structures; authorizing repayment to Public Land Corporation for certain costs incurred; authorizing citations for violations of right of entry; and establishing civil penalties.

Be it enacted by the Legislature of West Virginia:

That §20-1A-3 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

§20-1A-3. Public land corporation, powers and duties.

(a) The corporation is hereby authorized and empowered to:

(1) Acquire from any persons or the state auditor or any local, state or federal agency, by purchase, lease or other agreement, any lands necessary and required for public use;

(2) Acquire by purchase, condemnation, lease or agreement, receive by gifts and devises, or exchange, rights-of-way, easements, waters and minerals suitable for public use;

(3) Condemn by right of eminent domain, in accordance with the procedures set forth in chapter fifty-four, article two of this code, any structure, including, but not limited to culverts, pipes, bridges, railroad trestles and low water crossings located in a streambed of the state, which was granted a right of entry by the public land corporation, upon a finding that the structure is abandoned, that the structure obstructs, inhibits or otherwise alters the flow of the watercourse and

causes or increases the likelihood of flooding or streambed erosion, or causes accumulation of materials behind the structure that alters or otherwise inhibits the flow and direction of the watercourse. Any such structure that has been placed in a streambed without the required right of entry into the streambed from the public land corporation or any structure that varies from the structure which was granted a right of entry, shall be removed at the owner's expense upon request of the corporation. Any such structure which is not removed within a reasonable amount of time by the owner shall be removed by the public land corporation at the owner's expense. The public land corporation may use any lawful means necessary to collect reimbursement from the owner. All reimbursement moneys shall be deposited into the Planning and Development-Public Land Corporation Fund.

(3) Sell or exchange public lands where it is determined that the sale or exchange of such tract meets any or all of the following disposal criteria:

(A) The tract was acquired for a specific purpose and the tract is no longer required for that or any other state purpose;

(B) Disposal of the tract serves important public objectives including, but not limited to, expansion of communities and economic development which cannot be achieved on lands other than public lands and which clearly outweigh other public objectives and values including, but not limited to, recreation and scenic values which would be served by maintaining the tract in state ownership; or

(C) The tract, because of its location or other characteristics, is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another state department or agency.

(4) Sell, purchase or exchange lands or stumpage for the purpose of consolidating lands under state or federal government administration subject to the disposal criteria specified in subdivision (3) of this section;

(5) Negotiate and effect loans or grants from the government of the United States or any agency thereof for acquisition and development of lands as may be authorized by law to be acquired for public use;

(6) Expend the income from the use and development of public lands for the following purposes:

(A) Liquidate obligations incurred in the acquisition, development and administration of lands, until all obligations have been fully discharged;

(B) Purchase, develop, restore and preserve for public use, sites, structures, objects and documents of prehistoric, historical, archaeological, recreational, architectural and cultural significance to the state of West Virginia; and

(C) Obtain grants or matching moneys available from the government of the United States or any of its instrumentalities for prehistoric, historic, archaeological, recreational, architectural and cultural purposes.

(7) Designate lands, to which it has title, for development and administration for the public use including recreation, wildlife stock grazing, agricultural rehabilitation and homesteading or other conservation activities;

(8) Enter into leases as a lessor for the development and extraction of minerals, including coal, oil, gas, sand or gravel, except as otherwise circumscribed herein: *Provided*, That leases for the development and extraction of minerals shall be made in accordance with the provisions of sections five and six of this article. The corporation shall reserve title and ownership to the mineral rights in all cases;

(9) Convey, assign, or allot lands to the title or custody of proper departments or other agencies of state government for administration and control within the functions of departments or other agencies as provided by law;

(10) Make proper lands available for the purpose of cooperating with the government of the United States in the relief of unemployment and hardship or for any other public purpose.

(b) There is hereby created in the state treasury a special public land corporation fund into which shall be paid all proceeds from public land sales and exchanges and rents, royalties and other payments from mineral leases. The corporation may acquire public lands from use of the payments made to the fund, along with any interest accruing to the fund. The corporation shall report annually, just prior to the beginning of the regular session of the Legislature, to the finance committees of the Legislature on the financial condition of the special fund. The corporation shall report annually to the Legislature on its public land holdings and all its leases, its financial condition and its operations and shall make such recommendations to the Legislature concerning the acquisition, leasing, development, disposition and use of public lands.

(c) All state agencies, institutions, divisions and departments shall make an inventory of the public lands of the state as may be by law specifically allocated to and used by each and provide to the corporation a list of such public lands and minerals, including their current use, intended use or best use to which lands and minerals may be put: *Provided*, That the division of highways need not provide the

inventory of public lands allocated to and used by it. The inventory shall identify those parcels of land which have no present or foreseeable useful purpose to the state of West Virginia. The inventory shall be submitted annually to the corporation by the first day of August. The corporation shall compile the inventory of all public lands and minerals and report annually to the Legislature by no later than the first day of January, on its public lands and minerals and the lands and minerals of the other agencies, institutions, divisions or departments of this state which are required to report their holdings to the corporation as set forth in this subsection, and its financial condition and its operations.

(c) A right of entry granted by the public land corporation is a privilege in the nature of a permit. Failure to obtain a right of entry into a streambed or changing the structure permitted in a streambed without obtaining an amended right of entry is a violation punishable by a civil penalty not to exceed five hundred dollars per day the violation exists. Any employee of the public land corporation and any conservation officer may enter private property to investigate a potential violation and may issue a citation to a landowner if a violation exists. A landowner may appeal a citation as a final agency decision under the provisions of §29A-5-1 et seq. All fines collected pursuant to this section shall be deposited in the Planning and Development-Public Land Corporation Fund.

NOTE: The purpose of this bill is to authorize the Public Land Corporation to condemn abandoned structures located in waterways that it finds inhibits water flow and exacerbates flooding or steam-bank erosion and to grant the Corporation enforcement authority.

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

ENROLLED

Senate Bill No. 635

(By Senators Edgell, Plymale, Bailey, Dempsey, Hunter, Unger, White, Boley, Guills, Harrison and Sprouse)

[Passed March 8, 2006; in effect ninety days from passage.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-5-47, relating to requiring flood insurance on certain buildings, and the contents of those buildings, owned by a county board of education.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §18-5-47, to read as follows:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-47. County board flood insurance requirements.

- (a) Each county board shall maintain flood insurance on each insurable building that it owns and that meets one or both of the following requirements:
- (1) The building is within the identified special flood hazard area which is the area on a flood hazard boundary map or a flood insurance rate map that is identified as an "A zone", a numbered "A zone" or an "AE zone" or regulatory one hundred year floodplain and the building has a replacement value that is greater than three hundred thousand dollars; or
 - (2) The building has been damaged in a previous flood and flood insurance is required by the Federal Emergency Management Agency.
- (b) Each county board also shall maintain flood insurance on the contents of each insurable building that it owns and that meets one or both of the requirements set forth in subsection (a) of this section.
- (c) The buildings and the contents of those buildings required to be insured by this section shall be insured at the maximum amounts available through the National Flood Insurance Program or the estimated replacement value of the structure and contents, whichever is less.

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