

1 Senate Bill No.

2 (By Senators)

3
4 [Introduced; referred to the Committee on]

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10 A BILL to amend and reenact §22-25-1, §22-25-2, §22-25-3, §22-25-
11 4, §22-25-5, §22-25-6, §22-25-7, §22-25-8, §22-25-9, §22-25-
12 10, §22-25-11, §22-25-12, and §22-25-13 of the Code of West
13 Virginia, 1931, as amended, relating to establishing a
14 voluntary sustainability and environmental excellence
15 program; creating incentives for businesses, local
16 governments, schools, hospitals and other private, public,
17 and not-for-profit entities that exceed the requirements of
18 local, state and federal environmental laws and regulations
19 and increase the quantity and quality of life in West
20 Virginia by contributing to economic development in a region
21 and community beneficence; establishing legislative findings
22 and purposes; defining certain terms; directing the
23 secretary of the department of environmental protection to
24 develop and implement the sustainability and environmental

1 excellence program; authorizing the secretary of the
2 department of environmental protection to lead an executive
3 level committee that will propose legislative rules
4 regarding the sustainability and environmental excellence
5 program; establishing eligibility and application
6 requirements for participation; authorizing the department
7 of environmental protection to enter into sustainability and
8 environmental excellence performance agreements with
9 qualified entities; providing for sustainability and
10 environmental excellence program elements; providing for
11 appeal of adverse application decisions; providing for the
12 withdrawal, enforcement and termination of participation in
13 the program; providing for incentives to be established for
14 participating in the sustainability and environmental
15 excellence program; providing guidelines for the content of
16 sustainability and environmental excellence performance
17 agreements; establishing the sustainability and
18 environmental excellence trust fund; allowing for gifts and
19 donations to be received by the sustainability and
20 environmental excellence program trust fund; providing for
21 public participation in the sustainability and environmental
22 excellence program; providing for a performance review of
23 the sustainability and environmental excellence program; and
24 providing for the expiration of the sustainability and

1 environmental excellence program in 2015.

2 *Be it enacted by the Legislature of West Virginia:*

3 That §22-25-1, §22-25-2, §22-25-3, §22-25-4, §22-25-5, §22-
4 25-6, §22-25-7, §22-25-8, §22-25-9, §22-25-10, §22-25-11, §22-25-
5 12, and §22-25-13 of the Code of West Virginia, 1931, as amended,
6 be amended and reenacted to read as follows:

7 **ARTICLE 25. SUSTAINABILITY AND ENVIRONMENTAL EXCELLENCE**
8 **PROGRAM**

9 **§ 22-25-1. Legislative findings.**

10 The Legislature finds that:

11 (1) Private, public, and not-for-profit entities that
12 demonstrate a commitment to the environment by going beyond
13 compliance with environmental laws and rules positively impact
14 the quality of life for all citizens of the state by improving
15 the economy and the environment by increasing consumer and public
16 confidence, boosting management and employee morale, and
17 operating in a safe and sensible manner that lessens impacts on
18 the environment and communities.

19 (2) While West Virginia's existing environmental laws play
20 an important role in protecting the environment, environmental
21 protection could be further enhanced by authorizing innovative
22 advances in environmental regulatory methods and approaches.

23 (3) Enhanced public involvement allows the public and

1 community to meaningfully participate in finding solutions for
2 environmental issues in their communities while maintaining the
3 vitality of the local and state economy and strengthening ties
4 between businesses, nonbusiness entities, and communities.

5 (4) Increased use of pollution prevention strategies, more
6 cost-effective options for compliance with environmental
7 standards, improvement of environmental performance, and
8 reduction in occurrences of noncompliance with environmental
9 standards can be achieved through the establishment and
10 implementation of a voluntary sustainability and environmental
11 excellence program pursuant to this article.

12 (5) This voluntary program will provide private, public,
13 and non-for-profit entities with the opportunity to enter into
14 sustainability and environmental excellence performance
15 agreements with the department of environmental protection
16 through which the department shall and other agencies of state
17 government or private entities may grant incentives to
18 participating private, public, and not-for profit entities that
19 conform to a prescribed number of program elements established by
20 the secretary of the department of environmental protection
21 designed to enhance the environment, reduce pollution, improve
22 our communities, and provide greater prosperity to our state and
23 its citizens.

24 **§ 22-25-2. Purpose.**

1 The purpose of this article is to authorize the department
2 of environmental protection to establish and administer a
3 sustainability and environmental excellence program that will
4 promote, inspire, and reward leadership and excellence in
5 developing and implementing sustainable strategies that include
6 an emphasis on integrating societal, environmental, and economic
7 benefits. The program should, if practical, be compatible with
8 other federal programs that create incentives for achieving
9 sustainability and environmental performance beyond the
10 regulatory requirements. The program will be established and
11 implemented to recognize and reward environmental leadership and
12 excellence in West Virginia through the following goals:

13 (1) Recognizing and rewarding efforts that further
14 sustainability and environmental excellence within the state of
15 West Virginia;

16 (2) Building capacity for participants to act in a
17 sustainable manner and inspire participants to embrace the ethics
18 of corporate, community, and personal social responsibility;

19 (3) Encouraging participants to assess the environmental
20 impact of their actions and set measurable and identifiable goals
21 for reducing their environmental footprint through a process of
22 continual improvement;

23 (4) Promoting strategies, technologies, and programs that
24 incentivize sustainability and environmental stewardship;

1 (5) Increasing community level participation and encouraging
2 stakeholder involvement in the development of approaches to
3 education, development, monitoring, pollution prevention, and
4 conservation;

5 (6) Supporting open communication between participants and
6 interested stakeholders and encouraging sharing of information in
7 a manner that is accurate, timely, credible, relevant, and
8 usable;

9 (7) Fostering participation in the program and innovation
10 through collaboration, cooperation, coordination, education,
11 systems integration, outreach, and inclusion;

12 (8) Lowering the barriers to and the costs associated with
13 sustainable operational processes and procedures.

14 **§ 22-25-3. Definitions.**

15 As used in this article, unless the context otherwise
16 requires:

17 (a) "Applicant" means the interested party applying for
18 membership in the program pursuant to this article;

19 (b) "Application" means the form or forms prescribed by the
20 secretary for applying for membership in the program, including
21 any additions, revisions or modifications to the forms.

22 (c) "Community involvement committee" means the volunteer
23 group comprised of the participant and members of the
24 participant's community, the purpose of which is to initiate

1 communications and meetings with local organizations and
2 community and education leaders in order to further their
3 understanding of the program and its mission and learn of ways
4 the participant can be of service to the community.

5 (d) "Community involvement plan" means the public document
6 that informs the public of the nature of the program and involves
7 the public in the decision-making processes that will involve
8 them.

9 (e) "Conform" or any derivation thereof means meeting the
10 requirements of the program outlined in this article.

11 (f) "Cross-media transfer" means a pollutant transfer from
12 one environmental media to another, such as air to water.

13 (g) "Department" means the department of environmental
14 protection.

15 (h) "Environmental goals" means the environmental
16 performance objectives proposed by a qualified applicant, which
17 demonstrate superior environmental performance and may support
18 variances from environmental laws.

19 (i) "Environmental laws" means the following articles of
20 chapter twenty-two of the code of West Virginia, 1931, as
21 amended: four, five, eleven, twelve, fifteen, sixteen, seventeen
22 and eighteen and legislative rules adopted under one of those
23 articles, or a policy, rule, permit, license, other approval or
24 order issued by the department under one of those articles.

1 "Environmental laws" do not include any provision of the code of
2 West Virginia or of any municipal ordinance or enactment that
3 regulates the selection of a location for a new facility.

4 (j) "Environmental management system" means a formal set of
5 voluntary procedures and policies used to evaluate environmental
6 performance and to achieve measurable or noticeable improvements
7 in that environmental performance through planning and changing
8 operations, based on a commitment to superior environmental
9 performance. An environmental management system is the part of
10 the overall management system that includes organizational
11 structure, planning activities, responsibilities, practices,
12 procedures, processes, and resources for developing,
13 implementing, achieving, reviewing, and maintaining an
14 environmental policy. An environmental management system may
15 include, but will not be limited to, the following:

16 (1) Adoption of an environmental policy that includes a
17 commitment to maintain or exceed compliance with environmental
18 and other requirements, pollution prevention, and continual
19 improvement;

20 (2) An analysis of the environmental aspects and impacts of
21 the organization's activities;

22 (3) Significance ranking of environmental aspects and
23 procedures;

24 (4) Plans and procedures to achieve, maintain, and exceed

1 requirements set forth by environmental laws;

2 (5) Identification of all legal requirements applicable to
3 the organization's environmental performance;

4 (6) Setting environmental objectives and developing
5 appropriate environmental management programs to meet the
6 objectives;

7 (7) Establishment of a structure for operational control and
8 responsibility for environmental performance;

9 (8) An employee training program to develop awareness of and
10 competence to manage environmental issues;

11 (9) A plan for taking preventive, corrective, and emergency
12 action to address environmental problems;

13 (10) A communication plan to collaborate with employees, the
14 public, and the department on the design of the projects and
15 activities to achieve superior environmental performance;

16 (11) Document control and record keeping of environmental
17 performance;

18 (12) Third party audits of the environmental management
19 system;

20 (13) Third party audits of environmental compliance;

21 (14) Senior management review;

22 (15) Monitoring and measurement of environmental
23 performance; and

24 (16) Other criteria as established by the secretary.

1 (k) "Environmental management system audit" means a
2 systematic and documented third party verification process of
3 evaluating whether an entity's environmental management system
4 conforms to the criteria set forth by the department.

5 (l) "Environmental performance baseline" means the actual
6 emissions, discharges, and impact to the environment by a
7 facility at the time the application to participate in the
8 program is filed with the department.

9 (m) "Hazardous substance" or "toxic substance" means those
10 chemicals defined as hazardous substances under section 313 of
11 the federal Superfund Amendments and Reauthorization Act of 1986
12 (SARA Title III), including any subsequent amendments, and
13 sections 101(14) and 102 of the federal Comprehensive
14 Environmental Response, Compensation and Liability Act (CERCLA),
15 as amended.

16 (n) "Nonregulated entity" means an organization that does
17 not require a permit issued pursuant to environmental laws to
18 legally operate in this state.

19 (o) "Organization" means facilities, places, buildings,
20 equipment, structures, and other stationary items that are
21 located on a single site or on contiguous or adjacent sites and
22 that are owned or operated by the same person, or by any person
23 who controls, is controlled by, or is under common control with,
24 such person that provides a particular service or is used for a

1 particular industry. "Organization" can also mean the piece of
2 land, with or without facilities, that is within the jurisdiction
3 of federal, state or local government.

4 (p) "Participant" means a qualified applicant that has been
5 admitted into the program through the execution of a
6 sustainability and environmental performance agreement with the
7 department. "Participant" is limited to the entity's site or
8 facility where the sustainability and environmental goals will be
9 achieved and does not include the entire entity where the entity
10 operates multiple sites or facilities.

11 (q) "Pollution prevention" means any practice that reduces
12 the use of any hazardous substance or amount of a pollutant or
13 contaminant prior to reuse, recycling, treatment or disposal, and
14 reduces the hazards to public health and the environment
15 associated with the use and release of hazardous substances,
16 pollutants or contaminants. Pollution prevention does not include
17 cross-media pollution transfers that do not result in a net
18 decrease of discharge, emission or impact to the environment.

19 (r) "Program" means the sustainability and environmental
20 excellence program created pursuant to this article.

21 (s) "Qualified applicant" means any regulated or
22 nonregulated site or facility of a government entity,
23 corporation, partnership, sole proprietorship, municipality,
24 county, city and county, or special district located and doing

1 business in this state that meets the requirements for
2 participation in the program set forth by this article.

3 (t) "Register" means to enroll in the most basic level of
4 participation in the program.

5 (u) "Registrant" means an organization that has met the
6 minimum qualifications for participation in the program as
7 established by this article.

8 (v) "Regulated entity" means an organization that requires
9 a permit issued under one of the environmental laws to legally
10 operate in this state or is otherwise subject to enforcement of
11 environmental laws.

12 (w) "Secretary" means the secretary of the department of
13 environmental protection.

14 (x) "Significant impact to the environment" means a release
15 of a substance into the environment that has caused or may cause
16 an adverse affect to the air, water, land or natural resources,
17 organisms, flora, fauna or the ecosystem.

18 (y) "Significant impact to human health" means a release of
19 a substance into the environment that has caused or may cause an
20 acute or chronic affect to human health.

21 (z) "Source reduction" means any practice that reduces the
22 amount of any pollutant, contaminant, or hazardous substance
23 entering any waste stream or otherwise being released into the
24 environment, including fugitive emissions, prior to recycling,

1 treatment, or disposal and reduces the hazards to public health
2 and the environment associated with the release of these
3 pollutants, contaminants, or hazardous substances. "Source
4 reduction" includes equipment or technology modifications,
5 process or procedure modifications, reformulation or redesign of
6 products, substitution of raw materials, and improvements in
7 housekeeping, maintenance, training or inventory control.
8 "Source reduction" does not include any practice that alters the
9 physical, chemical, or biological characteristics or the volume
10 of a hazardous substance, pollutant or contaminant through a
11 process or activity that itself is not integral to and necessary
12 for the production of a product or the provision of a service.

13 (aa) "Superior environmental performance" means
14 environmental performance that results in measurable or
15 discernable improvement in the quality of the air, water, land or
16 natural resources or in the protection of the natural resources,
17 organisms, flora, fauna or the ecosystem beyond that which is
18 actually being achieved by the qualified applicant in compliance
19 with current environmental laws. "Superior environmental
20 performance" does not include pollutant reductions resulting from
21 cross-media pollutant transfers unless it can be demonstrated
22 that such transfer results in an overall improvement to the
23 quality of the air, water, land or natural resources. "Superior
24 environmental performance" may include, but is not limited to,

1 any of the following:

2 (1) An entity that limits the discharges or emissions of
3 pollutants from, or in some other way minimizes the negative
4 effects on air, water, land, natural resources or human health of
5 a site or facility that is owned or operated by the entity or an
6 activity that is performed by the entity to an extent that is
7 greater than is required by applicable environmental laws.

8 (2) An entity that minimizes the negative impact on air,
9 water, land, natural resources or human health of the raw
10 materials used by the entity or the products or services produced
11 or provided by the entity to an extent that is greater than is
12 required by applicable environmental laws.

13 (3) An entity that voluntarily engages in restoring,
14 reclaiming, enhancing or preserving natural resources.

15 (4) An entity that organizes segmented or uncoordinated
16 entities that are producing environmental harm into a program
17 that achieves positive environmental results.

18 (5) An entity that reduces waste, hazardous substances or
19 toxic substances in the design, production, delivery, use or
20 reuse of goods and services.

21 (6) An entity that reduces or conserves energy, nonrenewable
22 or renewable natural resources through more efficient and
23 sustainable methods.

24 (bb) "Sustainability and environmental excellence

1 performance agreement" or "performance agreement" means an
2 agreement entered into between the secretary and a program
3 participant that specifies the participant's commitment to
4 superior environmental performance and enhanced public
5 involvement in exchange for incentives to be provided to the
6 participant by the department.

7 (cc) "Sustainability policy" means the document drafted by
8 the participant that sets forth its plan to operate itself in a
9 manner that promotes the prosperity of the community in which it
10 operates and protects that community's quality of life by
11 adhering to the sustainability elements of economic viability,
12 operational excellence, natural resource conservation, and social
13 responsibility.

14 (dd) "Toxic use reduction" means changes in production
15 processes, products or raw materials that reduce, avoid or
16 eliminate the use of toxic or hazardous substances and the
17 generation of hazardous byproducts per unit of production, so as
18 to reduce the overall risks to the health of workers, consumers
19 or the environment without creating new risks of concern.

20 **§ 22-25-4. General powers and duties of the secretary with**
21 **respect to the program.** (a) The secretary, after receiving
22 public comment and after consultation with the executive
23 committee established in section five [§ 22-25-5] of this
24 article, shall promulgate legislative rules in accordance with

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1 the provisions of article three [§§ 29A-3-1, et seq.], chapter
2 twenty-nine-a of this Code to implement the provisions of this
3 article, including without limitation:

4 (1) The requirements for program applications;

5 (2) The requirements for program participation;

6 (3) The establishment of program elements, which may
7 include, by way of illustration only and not by way of
8 limitation, the following:

9 (i) Commitment by the participant to superior environmental
10 performance;

11 (ii) Commitment by the participant to sustainable practices
12 and environmental excellence, including the expanded use of
13 environmental management systems;

14 (iii) Commitment by the participant to community
15 involvement;

16 (iv) Development by the executive committee of incentives to
17 encourage participation in the program;

18 (v) Development by the executive committee of classes,
19 categories or tiers within which various levels of
20 environmentally sustainable practices may be recognized; and

21 (vi) Development by the executive committee of funding
22 mechanisms for financing program operations, including the
23 creation of a sustainability and environmental excellence trust
24 fund in the State Treasury, which funds therein deposited shall

1 be dedicated and appropriated to the department to administer the
2 program.

3 (b) The secretary may negotiate with federal regulatory
4 agencies and state and local agencies within West Virginia to
5 obtain authority to grant incentives under federal and other
6 state or local programs.

7 **§ 22-25-5. Sustainability and environmental excellence executive**
8 **committee.**

9 (a) The secretary shall establish the sustainability and
10 environmental excellence executive committee to assist in the
11 administration of the program.

12 (b) The secretary shall serve as chair of the executive
13 committee and shall appoint at least eleven persons to serve
14 thereon.

15 (c) In selecting persons to serve on the executive
16 committee, the secretary shall appoint the secretary of the
17 department of commerce or his or her designee; the secretary of
18 the department of revenue or his or her designee; the secretary
19 of the department of administration or his or her designee; the
20 secretary of the department of education or his or her designee;
21 the chair of the public service commission or his or her
22 designee; at least one person who represents local governments;
23 at least one person who represents industries regulated by the
24 department or their trade associations; at least one person who

1 represents organized labor; at least one person who represents
2 organizations advocating environmental protection; and at least
3 two persons who represent the public at large.

4 (d) The executive committee shall study issues pertaining
5 to sustainability and environmental excellence including, but not
6 limited to, scientific, technical, legal, and regulatory issues,
7 and issues regarding the creation of incentives to motivate both
8 regulated and nonregulated entities to participate in the
9 program.

10 (e) The executive committee shall also develop a long-term
11 strategy for sustainability and environmental excellence in West
12 Virginia.

13 (f) The executive committee may conduct or initiate
14 studies, investigations, research, and demonstrations pertaining
15 to sustainability and environmental excellence and methods of
16 incentivizing program participation, and to this end, the
17 executive committee may cooperate with state institutions of
18 higher education or any public agency, either state or federal or
19 any private entity. By way of illustration only, and not by way
20 of limitation, the following are examples of incentive categories
21 to be considered by the executive committee:

22 (1) Marketing support and recognition, which includes case
23 studies on participant progress, recognition by the department
24 and others of outstanding environmental performance (e.g. unique

1 certificate, brand usage, website listings, plaques, flags,
2 recognition ceremonies, annual celebrations), promotion through
3 the department's environmental awards program, print and
4 broadcast media advertising, and marketing;

5 (2) Capacity building, which includes leadership
6 development, access to professional groups, and mentoring;

7 (3) Single points of contact, streamlined communication,
8 and technical assistance at the department and any other
9 interested agency, either federal, state or local;

10 (4) Tax benefits;

11 (5) Reduced energy or water rates based upon implemented
12 facility-wide conservation measures;

13 (6) Access to low cost capital in the form of state and
14 private loans or state and federal grants or priority assistance
15 for local economic development funds;

16 (7) Consideration regarding monitoring, inspections,
17 reporting, and permitting;

18 (8) Membership discounts to trade associations and green
19 business networks; and

20 (9) Expedited consideration for zoning variations by local
21 government entities.

22 (g) The executive committee shall issue a report to the
23 Legislature by July 1, 2011 that, at a minimum:

24 (1) Recommends appropriate methods to encourage the

1 development of the sustainability and environmental excellence
2 program;

3 (2) Recommends any legislation the executive committee may
4 determine to be necessary or desirable to incentivize
5 participation in the program;

6 (3) Recommends methods of facilitating the widespread
7 implementation of companion sustainability and environmental
8 excellence programs throughout West Virginia;

9 (4) Recommends methods of financing program operations; and

10 (5) Outlines the executive committee's long-term strategy
11 for the promotion of sustainability and environmental excellence
12 in West Virginia.

13 (h) The executive committee shall assist the secretary in
14 developing and promulgating legislative rules in accordance with
15 this article.

16 (i) The secretary may receive on behalf of the state for
17 deposit into the State Treasury any moneys that state
18 institutions of higher learning or state or federal agencies may
19 be authorized to transfer to the secretary, and all gifts,
20 donations or contributions that private entities or others may
21 provide, to defray the expenses of administering the program.
22 Any amounts so received shall be expended by the secretary solely
23 for the purposes set forth in this article.

24 **§ 22-25-6. Eligibility and application requirements.**

1 (a) The minimum criteria for registration in the program may
2 include evidence of, but will not be limited to, the following:

3 (1) Compliance with environmental laws, which means no
4 unresolved or unaddressed compliance issues at the facility or
5 self-certification that the facility is in compliance at the time
6 of application;

7 (2) A commitment to develop a sustainability policy;

8 (3) A commitment to develop an environmental management
9 system;

10 (4) A commitment to develop a pollution prevention and
11 conservation plan, which means an agreement to establish and
12 follow a basic plan for pollution prevention and conservation
13 that addresses waste, water, emissions, energy, local
14 involvement, transportation, purchasing, natural environment,
15 built environment, and communication;

16 (5) A commitment to transparency, which means a pledge to
17 operate the facility openly and maintain communication with and
18 accountability to the community in which the facility resides;

19 (6) A commitment to community involvement, which means
20 evidence of providing or participating in volunteer service or
21 registration with Volunteer West Virginia (www.volunteerwv.org)
22 or another similar program;

23 (7) A commitment to economic development, which means a
24 commitment to land use planning and development that is

1 integrated, balanced, and diversified, and also a commitment to
2 economic development with a diversified economic base; and

3 (8) A commitment to leadership development, which means
4 enrollment in a leadership development, capacity building, or
5 mentoring programs;

6 (b) The minimum criteria for participation in the program
7 may include evidence of, but will not be limited to, the
8 following:

9 (1) Sustained compliance with environmental laws, which
10 means no unresolved or unaddressed compliance issues at the
11 facility or self-certification, verified by the department, that
12 the facility has maintained compliance with environmental laws by
13 having documentation of a proven environmental performance record
14 in the state of West Virginia. It also requires an agreement
15 by the facility to submit to compliance screening. An applicant
16 has a proven record of compliance with environmental laws if no
17 criminal, civil or administrative actions apply to its West
18 Virginia operations or employees;

19 (2) A well developed sustainability policy that has been
20 communicated to the members of the participant's community;

21 (3) A well developed environmental management system, which
22 means a establishment of an environmental management system and
23 participate in environmental management training, including
24 identification of environmental aspects and impacts and

1 establishment of objectives and targets, participation in
2 Occupational Health and Safety training and identification of
3 Occupational Health and Safety aspects and risks and the
4 establishment of objectives and targets;

5 (4) A well developed pollution prevention and conservation
6 plan, which means a strategy for pollution prevention and
7 conservation that addresses waste, water, emissions, energy,
8 local involvement, transportation, purchasing, natural
9 environment, built environment, and communication;

10 (5) Transparency, openness, communication, and
11 accountability in operations, which means public reporting of
12 sustainability efforts within the community and beyond and
13 submission to randomly scheduled annual visitation by the
14 department or other appropriate state or federal agency to assess
15 conformance with program requirements and compliance with
16 environmental and occupational health and safety laws.

17 (6) Active community involvement, which means establishment
18 and implementation of a community involvement plan, which
19 includes outreach and education activities to address community
20 concerns and expectations, and includes a community involvement
21 committee.

22 (7) Active participation in economic development, which
23 means land use planning and development that is integrated,
24 balanced, and diversified, and also a commitment to economic

1 development with a diversified economic base; and

2 (8) Active participation in leadership development, which
3 means after completion of a leadership development, capacity
4 building or mentoring program, establishment of a leadership
5 development, capacity building or mentoring plan.

6 (c) The secretary may establish additional program elements
7 in addition to the program elements set forth in subsections (a)
8 and (b) of this section. Qualified applicants may select from
9 among the additional program elements and complete those selected
10 within a specified time period. The number of additional program
11 elements shall be determined by the secretary and based on the
12 activity of the applicant and the nature of the application. All
13 additional program elements shall be designed to result in
14 measurable improvement and enhancement of the environmental
15 quality of the state or shall be activities that are beneficial
16 to the environment. Additional program elements may include, but
17 are not limited to, evidence of the following:

18 (1) Development and maintenance of programs that provide
19 technical assistance or mentoring to one or more specified
20 organizations to encourage technology transfers;

21 (2) Active participation in sustainability and environmental
22 improvement programs;

23 (3) Publication and public distribution of annual
24 sustainability and environmental excellence performance reports;

1 (4) Promotion, sponsorship and participation in programs
2 that complement and augment this program;

3 (5) Development and management of programs that encourage
4 and reward employees for developing ideas that assist the entity
5 in exceeding requirements of environmental laws or permits and
6 for participation in voluntary sustainability and environmental
7 activities; and

8 (6) Development and implementation of management programs
9 that reduce adverse environmental impacts of development,
10 manufacturing, and distribution of the participant's activities,
11 products or services.

12 (d) The secretary shall promulgate rules, in accordance with
13 article three [§§ 29A-3-1, et seq.] chapter twenty-nine-a of this
14 code containing application procedures, guidelines for
15 eligibility, reporting requirements, and other matters considered
16 appropriate. (e) Applicants accepted into an equivalent
17 sustainability and environmental program at the time of
18 submitting an application to the department may satisfy some or
19 all of the eligibility and application requirements pursuant to
20 this article at the secretary's discretion.

21 **§22-25-7. Authority to enter into sustainability and**
22 **environmental excellence performance agreements.**

23 (a) The secretary may enter into or amend sustainability and
24 environmental excellence performance agreements with participants

1 in order to implement the provisions of this article. The
2 performance agreements shall set out the requirements for
3 participation in the program and describe incentives to be
4 provided to the participant.

5 (b) The secretary shall not enter into any performance
6 agreements that would:

7 (1) Violate or waive any specific statutory provision;

8 (2) Waive any federal regulation, unless specifically
9 authorized by the federal government; or

10 (3) Result in an increase in emissions, discharges or other
11 releases above those allowable under the otherwise applicable
12 regulatory requirements.

13 **§ 22-25-8. Sustainability and environmental excellence**
14 **performance agreements; contents and**
15 **specifications.**

16 (a) The sustainability and environmental excellence
17 performance agreement shall clearly establish the sustainability
18 and environmental goals of the participant, public involvement
19 requirements, incentives, reporting requirements, and any other
20 term that will ensure that the program is properly implemented
21 and enforceable.

22 (b) In entering into performance agreements, the secretary
23 shall take appropriate steps to ensure accountability by

1 participants.

2 (c) A final performance agreement may include, but shall
3 not be limited to, the following:

4 (1) The specific sustainability and environmental goals of
5 the participant and the criteria for determining whether the
6 agreement meets those goals;

7 (2) Any applicable laws, regulations, requirements,
8 policies or practices;

9 (3) A description of how compliance with the performance
10 agreement will be monitored and enforced, including any penalties
11 that may be imposed for failure to carry out the terms of the
12 performance agreement;

13 (4) The duration of the performance agreement and the terms
14 for its renewal;

15 (5) A transition plan for returning any unused incentives
16 in the event the performance agreement is terminated by either
17 the participant or the department; and

18 (6) Criteria for determining whether the performance
19 agreement may be transferred in the event of a change in
20 ownership of the facility subject to the terms and conditions of
21 the performance agreement and, when applicable, the procedures
22 for transferring the performance agreement.

23 **§22-25-9. Withdrawal or termination from the program.**

24 (a) Any participant may elect to withdraw from membership in

1 the program at any time upon written notice to the executive
2 committee.

3 (b) The executive committee shall terminate the membership
4 of any participant in the program if a serious violation is
5 discovered or occurs and the violation is not properly disclosed
6 in accordance with the law or is not corrected or remedied in a
7 timely manner to the satisfaction of the department.

8 (c) The executive committee may allow the membership of a
9 participant in the program to continue if a serious violation is
10 discovered or occurs and the violation is properly disclosed in
11 accordance with law and is corrected or remedied in a timely
12 manner to the satisfaction of the department.

13 (d) The executive committee shall suspend a participant's
14 membership in the program from the time the serious violation is
15 discovered or occurs until the time it is corrected or remedied
16 to the satisfaction of the department.

17 (e) If the executive committee determines at any time a
18 participant is failing to perform in accordance with the
19 performance agreement, and if, after written notice to the
20 participant, the participant does not come into conformance
21 within a reasonable period of time, as established by the
22 executive committee, the executive committee may terminate the
23 participant's membership in the program.

24 (f) All incentives provided by the program shall be

1 withdrawn, effective upon termination or withdrawal of the
2 participant's membership in the program. If a participant
3 withdraws or is terminated from the program, any unused
4 incentives will be forfeited.

5 (g) The secretary, after consultation with the executive
6 committee, shall establish, by rule, procedures and criteria that
7 set forth circumstances under which a participant's membership in
8 the program shall be suspended or terminated and criteria for a
9 transition plan phasing out the incentives conferred by
10 membership in the program if the performance agreement is
11 terminated by the participant for any reason or by the executive
12 committee for failure to meet the performance agreement's stated
13 environmental goals.

14 **§22-25-10. Review and expiration of the program.**

15 (a) The joint committee on government operations shall,
16 pursuant to authority granted in article ten, chapter four of
17 this code, conduct reviews of the program.

18 (b) This article and any rules promulgated thereunder shall
19 remain in effect until June 30, 2015, at which time this article
20 and any rules promulgated thereunder shall be repealed.

21

22

23 NOTE: The purpose of this bill is to establish a voluntary
24 sustainability and environmental excellence program.

25

1 This article has been completely rewritten; therefore,
2 strike-throughs and underscoring have been omitted.

DRAFT