CHAPTER 3

Water Resources Planning and Coordination Act

**SECTION 49‑3‑10.** Transfer of former Water Resources Division; transfer of regulatory functions of former Water Resources Commission.

 The former Water Resources Division of the Department of Natural Resources is transferred to the Division of Water in the Department of Environmental Services. The regulatory functions of the former Water Resources Commission that were transferred to the Department of Health and Environmental Control are further transferred to the Department of Environmental Services.

HISTORY: 1962 Code Section 70‑21; 1967 (55) 60; 1993 Act No. 181, Section 1244; 2023 Act No. 60 (S.399), Section 5, eff July 1, 2024.

Effect of Amendment

2023 Act No. 60, Section 5, rewrote the section.

**SECTION 49‑3‑20.** "Department" defined.

 As used in this chapter:

 "Department" means the Department of Environmental Services.

HISTORY: 1962 Code Section 70‑22; 1967 (55) 60; 1969 (56) 72; 1962 Code Section 70‑22; 1967 (55) 60; 1969 (56) 72; 1993 Act No. 181, Section 1243; 1993 Act No. 181, Section 1244; 2023 Act No. 60 (S.399), Section 5, eff July 1, 2024.

Effect of Amendment

2023 Act No. 60, Section 5, rewrote the section.

**SECTION 49‑3‑30.** Omitted.

HISTORY: Former Section, titled Transfer of former Water Resources Commission to Water Resources Division of Department of Natural Resources; transfer of regulatory powers to Department of Health and Environmental Control, had the following history: 1962 Code Section 70‑23; 1967 (55) 60; 1969 (56) 72; 1993 Act No. 181, Section 1244. Omitted by 2023 Act No. 60, Section 5, eff July 1, 2024.

**SECTION 49‑3‑40.** Powers and duties of department.

 (A) The department shall advise and assist the Governor and the General Assembly in:

 (1) formulating and establishing a comprehensive water resources policy for the State, such as a State Water Plan, including coordination of policies and activities among the state departments and agencies;

 (2) developing and establishing policies and proposals designed to meet and resolve special problems of water resource use and control within or affecting the State, including consideration of the requirements and problems of urban and rural areas;

 (3) reviewing the actions and policies of state agencies with water resource responsibilities to determine the consistency of such actions and policies with the comprehensive water policy of the State and to recommend appropriate action where deemed necessary;

 (4) reviewing any project, plan, or program of federal aid affecting the use or control of any waters within the State and to recommend appropriate action where deemed necessary;

 (5) developing policies and recommendations to assure that the long‑range interests of all groups, urban, suburban, and rural, are provided for in the state's representation on interstate water issues;

 (6) recommending to the General Assembly any changes of law or regulation required to implement the policy declared in this chapter; and

 (7) such other water resources planning, policy formulation, and coordinating functions as the Governor and the General Assembly may designate.

 (B) The department is authorized to conduct or arrange for such studies, inquiries, surveys, or analyses as may be relevant to its duties in assisting the Governor and the General Assembly in the implementation of the policy declared in this chapter, and in developing recommendations for the General Assembly. For these purposes, the department shall have full access to the relevant records of other state departments and agencies and political subdivisions of the State, and may hold public hearings, and may cooperate with or contract with any public or private agency, including educational, civic, and research organizations. The studies, inquiries, surveys, or analyses shall incorporate and integrate, to the maximum extent feasible, plans, programs, reports, research, and studies of federal, state, interstate, regional, metropolitan, and local units, agencies and departments of government.

 (C) In developing recommendations for the Governor and the General Assembly relating to the use and control of the water resources of the State, the department shall:

 (1) coordinate its activities by distribution of copies of its notices of meetings with agenda, minutes and reports of all state agencies concerned with water resources;

 (2) consult with representatives of any federal, state, interstate, or local units of government which would be affected by such recommendations; and

 (3) be authorized to appoint such interdepartmental and public advisory boards as necessary to advise them in developing policies for recommendations to the Governor and the General Assembly.

 (D) The department shall encourage, assist, and advise regional, metropolitan, and local governmental agencies, officials, or bodies responsible for planning in relation to water aspects of their programs, and shall assist in coordinating local and regional water resources activities, programs, and plans.

 (E) The department may publish reports, including the results of such studies, inquiries, surveys, and analyses as may be of general interest, and shall make an annual report of its activities to the Governor and the General Assembly within ten days after the convening of each session of the General Assembly.

 (F) The department may receive and expend grants, gifts, and monies donated or given by any state, federal, or private agency, person, corporation, water or sewer authority, or political subdivision in connection with water resource investigations in which the results of such investigations will be made publicly available.

 (G) The department is authorized and required to review and approve the expenditure of funds derived from the United States Army Corps of Engineers when any funds are authorized and appropriated for any water resources related projects or purposes including, but not limited to, the following:

 (1) navigation,

 (2) irrigation,

 (3) water storage,

 (4) aquatic weed management,

 (5) flood control,

 (6) salinity control,

 (7) interstate water concerns, and

 (8) any studies, surveys, or analyses performed by the Corps of Engineers.

 The review and approval required by this subsection is not applicable to any Corps of Engineers funds which must be expended in a different manner pursuant to express statutory direction.

HISTORY: 1962 Code Section 70‑24; 1967 (55) 60; 1969 (56) 72; 1976 Act No. 466, Section 1; 1984 Act No. 512, Part II, Section 36; 1993 Act No. 181, Section 1244; 2019 Act No. 73 (H.4011), Section 1, eff May 16, 2019; 2023 Act No. 60 (S.399), Section 5, eff July 1, 2024.

Effect of Amendment

2019 Act No. 73, Section 1, in (a), in (1), inserted "such as a State Water Plan,", in (5), substituted "water issues" for "water agencies", and in (6), inserted "or regulation"; in (d), inserted "and regional"; and in (f), inserted ", federal,".

2023 Act No. 60, Section 5, made nonsubstantive changes throughout the section.

**SECTION 49‑3‑50.** Matters to be considered by department in exercising responsibilities.

 In exercising its responsibilities under this chapter, the department shall take into consideration the need for:

 (1) adequate supplies of surface and groundwaters of suitable quality for all uses, including domestic, municipal, agricultural, and industrial;

 (2) water of suitable quality for all purposes;

 (3) water availability for recreational and commercial needs;

 (4) hydroelectric power;

 (5) flood damage control or prevention measures including zoning to protect people, property, and productive lands from flood losses;

 (6) land stabilization measures;

 (7) drainage measures, including salinity control;

 (8) watershed protection and management measures;

 (9) outdoor recreational and fish and wildlife opportunities;

 (10) studies on saltwater intrusion into groundwater and surface water;

 (11) measures to protect the state's fisheries and other aquatic resources;

 (12) any other means by which development of water and related land resources can contribute to economic growth and development, the long‑term preservation of water resources, and the general well‑being of all the people of the State.

HISTORY: 1962 Code Section 70‑25; 1967 (55) 60; 1969 (56) 72; 1993 Act No. 181, Section 1244; 2008 Act No. 344, Section 1, eff six months after approval (approved June 11, 2008); 2019 Act No. 73 (H.4011), Section 2, eff May 16, 2019; 2023 Act No. 60 (S.399), Section 5, eff July 1, 2024.

Effect of Amendment

The 2008 amendment, in item (c), substituted "for recreational and commercial needs" for "facilities".

2019 Act No. 73, Section 2, in (a), substituted "all uses, including domestic, municipal, agricultural, and industrial" for "domestic, municipal, agricultural, and industrial uses"; in (b), deleted "quality facilities and controls to assure water" following "Water"; in (c), substituted "Water availability" for "Water navigation"; and inserted (j) and (k) and redesignated (j) as (l).

2023 Act No. 60, Section 5, made nonsubstantive changes throughout the section.

**SECTION 49‑3‑60.** Procedures governing department action which may give rise to a contested case.

 (A) All decisions of the Department of Environmental Services involving the issuance, denial, renewal, suspension, or revocation of permits, licenses, certificates, or other actions of the department which may give rise to a contested case, except a decision to establish a baseline or setback line, must be made using the procedures set forth in this section. A department decision referenced in this subsection relating to a poultry facility or another animal facility, except a swine facility, also must comply with the provisions of Section 49‑3‑65.

 (B) The department shall comply with all requirements for public notice, receipt of public comments, and public hearings before making a decision. To the maximum extent possible, the department shall use a uniform system of public notice of permit applications, opportunity for public comment, and public hearings.

 (C) In making a decision about a permit, license, certification, or other approval giving rise to a contested case, the department shall take into consideration all material comments received in response to the public notice in determining whether to issue, deny, or condition a permit, license, certification, or other approval. At the time that a final departmental decision is made, the department shall issue a final written decision and shall base its decision on the administrative record, which must consist of the application and supporting exhibits, all public comments and submissions, and other documents contained in the supporting file for the permit, license, certification, or other approval. The administrative record also may include material readily available at the department, or published materials which are generally available and need not be physically included in the same file as the rest of the record as long as such materials are specifically referred to in the department decision. The department is not required to issue a final written departmental decision for issuance of routine permits for which the department has not received adverse public comments. The department is required to make a final decision granting the permit where the applicant has met all conditions in statutes and regulations governing that permit.

 (D)(1) The department shall send a notice of a final departmental decision by certified mail, returned receipt requested to the applicant, permittee, licensee, certificate holder, and affected persons who have requested in writing to be notified. Affected persons may request in writing to be notified by regular mail or electronic mail in lieu of certified mail. Notice of decisions for which a written decision is not required pursuant to subsection (C) must be provided by mail, delivery, or other appropriate means to the applicant, permittee, licensee, certificate holder, and affected persons who have requested in writing to be notified.

 (2) Decisions by the department become final thirty days after the mailing of a notice pursuant to item (1) unless the applicant, permittee, licensee, certificate holder, or affected person files a request for a contested case hearing with the Administrative Law Court.

 (3) Within thirty calendar days after the mailing of the decision pursuant to item (1), an applicant, permittee, licensee, certificate holder, or affected person desiring to contest the agency decision may request a contested case hearing before the Administrative Law Court, in accordance with the Administrative Procedures Act. Notwithstanding Section 1‑23‑600(H)(1), the entirety of Section 1‑23‑600(H) shall apply to timely requests for a contested case hearing of decisions from the Department of Environmental Services. The court shall give consideration to the provisions of Section 1‑23‑330 regarding the department's specialized knowledge.

 (E) If a deadline provided for in this section falls on a Saturday, Sunday, or state holiday, the deadline must be extended until the next calendar day that is not a Saturday, Sunday, or state holiday.

HISTORY: 2022 Act No. 139 (S.1010), Section 1, eff April 25, 2022; 2023 Act No. 60 (S.399), Section 5, eff July 1, 2024.

Effect of Amendment

2023 Act No. 60, Section 5, rewrote the section.