ENROLLED BILL
(REGULAR SESSION, 1933)

House Bill No. 336

(By Mr. Hill)

Passed March 14, 1933

In Effect ninety days from Passage
ENROLLED BILL
(H. B. No. 336)

[Passed March 11, 1933: in effect ninety days from passage.]

AN ACT to amend and reenact article eleven, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, creating the state water commission, defining its powers and duties, providing for necessary stenographic, clerical and other assistance, procedure by the commission and enforcement of its orders and the review thereof by the courts, and providing for research procedure by the said commission.

Be it enacted by the Legislature of West Virginia:

Section 1. Terms used in this act are defined as follows:

2 The term "commission" shall mean the state water commission, hereby created, and the term "commissioner" shall mean a member of said commission. The term "water" or "waters" shall mean all waters of any river, stream, watercourse, pond or lake. The term "pollution" shall mean the contaminating
or rendering unclean or impure of any water by any act prohibited by section six, article six, chapter twenty of the code of West Virginia, or sections two and three, article nine, chapter sixteen of the code of West Virginia, and "person" shall mean any and all persons natural or artificial, including any municipal or private corporation organized or existing under the laws of this or any other state or country, and as well any firm or association.

Sec. 2. On and after the date this act shall go into effect, the commissioner of health, the chairman of the public service commission of West Virginia and the chairman of the West Virginia game and fish commission, and their successors in office, shall constitute the state water commission and shall serve as commissioners thereof; they shall be reimbursed, out of moneys appropriated for such purposes, all sums which they necessarily shall expend in the discharge of their duties as members of such commission. The director of the division of sanitary engineering in the state health department shall perform such services in the state health department shall perform such services as said commission may request of him in connection with its duties hereunder; he shall be reimbursed, out of moneys appropriated for such purposes, all sums which he necessarily shall
expend in the performance of such services. Nothing contained
in this act, however, shall be construed to limit or interfere with
the power of the state health department to select, employ and
direct the direction of the division of sanitary engineering of
said department, or any employee thereof who in any way may
perform any services for the commission. The college of en-
gineering at West Virginia University, under the direction of
the dean thereof, shall, insofar as it can, without interference
with its usual and regular activities, aid and assist the com-
mission in the study and research of questions connected with
pollution of waters. The dean of the college of engineering
shall be reimbursed, out of moneys appropriated for such pur-
poses, any and all sums which he necessarily shall expend in
the performance of any services he may render to the commis-
sion under the provisions hereof.

Sec. 3. Said commission shall elect from its membership a
chairman and also elect a secretary, who need not be a member.
The commission may employ such stenographic, clerical and
other assistance as shall necessarily be required, and whose
duties shall be defined by the commission, and whose compen-
sation, to be fixed by the commission, shall be paid out of the state
7 treasury, out of moneys appropriated for such purpose, upon
8 the requisition of said commission. All orders of the said com-
9 mission shall be entered in a permanently bound record book,
10 properly indexed and the same carefully preserved. Copies of
11 orders entered by the commission, as well as copies of papers or
12 documents filed with it, or the records of proceedings before the
13 commission, shall be attested by the secretary of the commis-
14 sion. Said commission shall meet at such times or places as
15 agreed upon by the commissioners, or upon call of its chairman,
16 to take up any matters proper or necessary to be considered
17 by it.

Sec. 4. Any commissioner or any assistant or employee of
2 said commission may, at any reasonable time, enter any premises
3 while engaged in the performance of duty under the provisions
4 of this act.

Sec. 5. Any person, causing the pollution of any water, or
2 alleged to be causing the pollution of any water, may be cited
3 by the commission on its own motion, and shall, upon the peti-
4 tion of any person affected by such pollution, be cited to appear,
5 not less than fifteen nor more than thirty days from the service
6 of such citation, before said commission at a place designated
by it, then and there to show cause, if any shall exist, why said commission should not issue an order regulating such pollution, and any person affected by such pollution may by petition intervene as a party complainant or respondent in any proceeding instituted by or before such commission. Such citation may be issued by the commission or any member thereof and may be served and returned in the same manner as process in any civil action, or it may be served by sending a copy thereof by registered mail addressed to the person causing, or alleged to be causing, any pollution of any water, at his, their or its usual, or last known, post office address. Any commissioner may issue any subpoena, administer oaths and cause the attendance of witnesses, the production of evidence and testimony in any proceeding before the commission, subject to the same conditions as are provided by the general statutes for the attendance of witnesses and the production of evidence and testimony in civil actions: Provided, however, That such commission shall not institute proceedings against any person engaged in the mining of coal and draining mines in compliance with existing law.

Sec. 6. After a full hearing the commission shall make its findings of facts, and if it find that any person is polluting any
of the waters of the state, it shall make and enter an order di-
recting such person to cease such pollution and such person shall
have thirty days after notice of the entry of such final order
to notify the commission that he will comply therewith or will
install, use and operate some practical and reasonably available
system or means which will reduce, control or eliminate or re-
duce to a harmless minimum such pollution, having regard for
the rights and interests of all persons concerned, and if such
person does not so comply with such order, thereafter the com-
mission may cause the enforcement of any order issued by it to
cease such pollution and, as well, all other orders entered by it in
matters subject to its jurisdiction, by application to the circuit
court of any county wherein the alleged pollution originated or
naturally flows, or to any judge of such court if the same shall
be in vacation, to enjoin any person from continuing such pollu-
tion, which application shall be brought and the proceedings
thereon conducted by the prosecuting attorney of the county
wherein such proceedings may be pending, or by special counsel
employed by any intervening petitioner. If any person notify
the commission that he will comply with such final order by in-
stalling, using and operating some practical and available system
to reduce, control or eliminate or reduce to a harmless minimum such pollution, and make application for an extension of time, the commission within reasonable limits may grant such extension of time. The person against whom such order shall be issued shall, before proceeding to install any system or means, submit to the commission for its consideration and approval, a plan or statement describing the system or means which is proposed to be used or operated; if any person shall desire to make any substantial change in any system or means used or operated, such person shall, before making such change, file with the commission for its consideration and approval a plan or statement describing such proposed change, together with application for the action of the commission thereon and in respect thereto. The commission shall, in any case, enter an order approving, or disapproving any such system or means proposed to be used or operated, or permit or refuse to permit the proposed change in any system or means adopted, used or operated, and shall make and enter all such orders as the commission deems proper and necessary. Any order of the commission may, at any time after at least twenty days' notice in writing to any person affected thereby and any intervening petitioner, and after a hearing
thereon, be modified or revoked by an order entered by the com-
mission and the commission shall forthwith cause an attested
copy of any order entered by it to be served upon all persons
affected thereby in the same manner as writs or summons in
civil actions may be served, or by sending the same by registered
mail to such person, or intervenor, at his, their or its usual or
last known post office address.

Sec. 7. Any party feeling aggrieved by the entry of a final
order by the commission, affecting him or it, may present a peti-
tion in writing to the circuit court of the county wherein the
pollution originated or naturally flows, or to the judge of such
court in vacation, within thirty days after the entry of such
order, praying that such final order may be set aside or modi-
fied. The applicant shall deliver a copy of such petition to the
secretary of the commission before presenting the same to the
court or judge. The court or judge shall fix a time for the
hearing on the application, but such hearing, unless by agree-
ment by the parties, shall not be held sooner than five days
after its presentation; and notice of the time and place of such
hearing shall be forthwith delivered to the secretary of the com-
mision, so that the commission may be represented at such hear-
ing by one or more of its members or by counsel. For such
hearing the commission shall file with the clerk of said court
all papers, documents, evidence and records or certified copies
thereof as were before the commission at the hearing or in-
vestigation resulting in the entry of the order from which the
petitioner appeals. The commission shall file with the court be-
fore the day fixed for the final hearing a written statement of
its reasons for the entry of such order, and after arguments by
counsel the court shall by order entered of record, make a find-
ing as to whether the act complained of is a statutory pollution,
and certify the same back to the commission which shall make
such changes in its orders as will be necessary to make it comply
with the law, as found by the court, governing the matter. The
supreme court of appeals of the state shall have jurisdiction to
review the order of the circuit court upon application of either
party or any intervenor. The prosecuting attorney of the
county wherein the proceedings in the circuit court are had
shall represent the commission, and the attorney general of the
state shall represent it in any proceedings in the supreme court
of appeals, and any intervener may be represented by counsel
specially employed.
Sec. 8. The commission shall study questions arising in connection with pollution of waters in the state and make reports and recommendations in respect thereto; and in cooperation with the college of engineering at West Virginia University, make research, investigation and scientific experiments in efforts to discover economical and practical methods for elimination, disposal and treatment of industrial wastes and the control and correction of stream pollution; and to this end the commission may cooperate with any public or private experimental agency receive therefrom, on behalf of the state, and for deposit in its treasury, any money which such agency may contribute as its part of the expense thereof.

Sec. 9. Nothing in this act contained shall be so interrupted or construed as to in any way repeal, supersede or modify section six, article six, chapter twenty of the code of West Virginia, section seven, article one, and sections two and three, article nine, chapter sixteen of the code of West Virginia; all other acts and parts of acts inconsistent herewith are hereby repealed.

Sec. 10. The various provisions of this act shall be construed as separable and several, and should any of the provisions or parts thereof be construed or held to be unconstitutional, or for
any other reason invalid, the remaining provisions of this act
shall not be thereby affected.
The within is.

this........ day of......................... 1933.

Governor.

Filed in the office of the Secretary of State
of West Virginia. MAR 18 1933

Wm. S. O'Brien,
Secretary of State