

Rec., Mar. 11, 1933

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# ENROLLED BILL

(REGULAR SESSION, 1933)

House Bill No. 336

(By Mr. Hill \_\_\_\_\_)

Passed March 11, 1933

In Effect ninety days from Passage

Originated in the.....*C. H. Hensel*.....Takes effect.....*ninety days from passage*  
*Geo. S. Ball*.....Clerk.....*Geo. S. Ball*.....Clerk of the House of Delegates.

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*James L. Smith*.....Chairman Senate Committee.

## 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,
- 3 hereby created, and the term "commissioner" shall mean a
- 4 member of said commission. The term "water" or "waters"
- 5 shall mean all waters of any river, stream, watercourse, pond
- 6 or lake. The term "pollution" shall mean the contaminating

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7 or rendering unclean or impure of any water by any act pro-  
8 hibited by section six, article six, chapter twenty of the code of  
9 West Virginia, or sections two and three, article nine, chapter  
10 sixteen of the code of West Virginia, and "person" shall mean  
11 any and all persons natural or artificial, including any mu-  
12 nicipal or private corporation organized or existing under the  
13 laws of this or any other state or country, and as well any firm  
14 or association.

Sec. 2. On and after the date this act shall go into effect,  
2 the commissioner of health, the chairman of the public service  
3 commission of West Virginia and the chairman of the West  
4 Virginia game and fish commission, and their successors in office,  
5 shall constitute the state water commission and shall serve as  
6 commissioners thereof; they shall be reimbursed, out of moneys  
7 appropriated for such purposes, all sums which they necessarily  
8 shall expend in the discharge of their duties as members of such  
9 commission. The director of the division of sanitary engineer-  
10 ing in the state health department shall perform such services  
11 as said commission may request of him in connection with its  
12 duties hereunder; he shall be reimbursed, out of moneys appro-  
13 priated for such purposes, all sums which he necessarily shall

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14 expend in the performance of such services. Nothing contained  
15 in this act, however, shall be construed to limit or interfere with  
16 the power of the state health department to select, employ and  
17 direct the direction of the division of sanitary engineering of  
18 said department, or any employee thereof who in any way may  
19 perform any services for the commission. The college of en-  
20 gineering at West Virginia University, under the direction of  
21 the dean thereof, shall, insofar as it can, without interference  
22 with its usual and regular activities, aid and assist the com-  
23 mission in the study and research of questions connected with  
24 pollution of waters. The dean of the college of engineering  
25 shall be reimbursed, out of moneys appropriated for such pur-  
26 poses, any and all sums which he necessarily shall expend in  
27 the performance of any services he may render to the commis-  
28 sion under the provisions hereof.

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Sec. 3. Said commission shall elect from its membership a  
2 chairman and also elect a secretary, who need not be a member.  
3 The commission may employ such stenographic, clerical and  
4 other assistance as shall necessarily be required, and whose  
5 duties shall be defined by the commission, and whose compensa-  
6 tion, to be fixed by the commission, shall be paid out of the state

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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

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7 by it, then and there to show cause, if any shall exist, why said  
8 commission should not issue an order regulating such pollution,  
9 and any person affected by such pollution may by petition  
10 intervene as a party complainant or respondent in any proceed-  
11 ing instituted by or before such commission. Such citation may  
12 be issued by the commission or any member thereof and may  
13 be served and returned in the same manner as process in any  
14 civil action, or it may be served by sending a copy thereof by  
15 registered mail addressed to the person causing, or alleged to be  
16 causing, any pollution of any water, at his, their or its usual,  
17 or last known, post office address. Any commissioner may issue  
18 any subpoena, administer oaths and cause the attendance of  
19 witnesses, the production of evidence and testimony in any pro-  
20 ceeding before the commission, subject to the same conditions  
21 as are provided by the general statutes for the attendance of  
22 witnesses and the production of evidence and testimony in civil  
23 actions: *Provided, however,* That such commission shall not in-  
24 stitute proceedings against any person engaged in the mining  
25 of coal and draining mines in compliance with existing law.

Sec. 6. After a full hearing the commission shall make its  
2 findings of facts, and if it find that any person is polluting any

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3 of the waters of the state, it shall make and enter an order di-  
4 recting such person to cease such pollution and such person shall  
5 have thirty days after notice of the entry of such final order  
6 to notify the commission that he will comply therewith or will  
7 install, use and operate some practical and reasonably available  
8 system or means which will reduce, control or eliminate or re-  
9 duce to a harmless minimum such pollution, having regard for  
10 the rights and interests of all persons concerned, and if such  
11 person does not so comply with such order, thereafter the com-  
12 mission may cause the enforcement of any order issued by it to  
13 cease such pollution and, as well, all other orders entered by it in  
14 matters subject to its jurisdiction, by application to the circuit  
15 court of any county wherein the alleged pollution originated or  
16 naturally flows, or to any judge of such court if the same shall  
17 be in vacation, to enjoin any person from continuing such pollu-  
18 tion, which application shall be brought and the proceedings  
19 thereon conducted by the prosecuting attorney of the county  
20 wherein such proceedings may be pending, or by special counsel  
21 employed by any intervening petitioner. If any person notify  
22 the commission that he will comply with such final order by in-  
23 stalling, using and operating some practical and available system

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24 to reduce, control or eliminate or reduce to a harmless minimum  
25 such pollution, and make application for an extension of time,  
26 the commission within reasonable limits may grant such exten-  
27 sion of time. The person against whom such order shall be  
28 issued shall, before proceeding to install any system or means,  
29 submit to the commission for its consideration and approval, a  
30 plan or statement describing the system or means which is pro-  
31 posed to be used or operated; if any person shall desire to make  
32 any substantial change in any system or means used or operated,  
33 such person shall, before making such change, file with the com-  
34 mission for its consideration and approval a plan or statement  
35 describing such proposed change, together with application for  
36 the action of the commission thereon and in respect thereto. The  
37 commission shall, in any case, enter an order approving, or dis-  
38 approving any such system or means proposed to be used or  
39 operated, or permit or refuse to permit the proposed change in  
40 any system or means adopted, used or operated, and shall make  
41 and enter all such orders as the commission deems proper and  
42 necessary. Any order of the commission may, at any time after  
43 at least twenty days' notice in writing to any person affected  
44 thereby and any intervening petitioner, and after a hearing



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45 thereon, be modified or revoked by an order entered by the com-  
46 mission and the commission shall forthwith cause an attested  
47 copy of any order entered by it to be served upon all persons  
48 affected thereby in the same manner as writs or summons in  
49 civil actions may be served, or by sending the same by registered  
50 mail to such person, or intervener, at his, their or its usual or  
51 last known post office address.

Sec. 7. Any party feeling aggrieved by the entry of a final  
2 order by the commission, affecting him or it, may present a peti-  
3 tion in writing to the circuit court of the county wherein the  
4 pollution originated or naturally flows, or to the judge of such  
5 court in vacation, within thirty days after the entry of such  
6 order, praying that such final order may be set aside or modi-  
7 fied. The applicant shall deliver a copy of such petition to the  
8 secretary of the commission before presenting the same to the  
9 court or judge. The court or judge shall fix a time for the  
10 hearing on the application, but such hearing, unless by agree-  
11 ment by the parties, shall not be held sooner than five days  
12 after its presentation; and notice of the time and place of such  
13 hearing shall be forthwith delivered to the secretary of the com-  
14 mission, so that the commission may be represented at such hear-

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15 ing by one or more of its members or by counsel. For such  
16 hearing the commission shall file with the clerk of said court  
17 all papers, documents, evidence and records or certified copies  
18 thereof as were before the commission at the hearing or in-  
19 vestigation resulting in the entry of the order from which the  
20 petitioner appeals. The commission shall file with the court be-  
21 fore the day fixed for the final hearing a written statement of  
22 its reasons for the entry of such order, and after arguments by  
23 counsel the court shall by order entered of record, make a find-  
24 ing as to whether the act complained of is a statutory pollution,  
25 and certify the same back to the commission which shall make  
26 such changes in its orders as will be necessary to make it comply  
27 with the law, as found by the court, governing the matter. The  
28 supreme court of appeals of the state shall have jurisdiction to  
29 review the order of the circuit court upon application of either  
30 party or any intervener. The prosecuting attorney of the  
31 county wherein the proceedings in the circuit court are had  
32 shall represent the commission, and the attorney general of the  
33 state shall represent it in any proceedings in the supreme court  
34 of appeals, and any intervener may be represented by counsel  
35 specially employed.

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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, and 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

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4 any other reason invalid, the remaining provisions of this act

5 shall not be thereby affected.

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*[Signature]*  
 Chairman Senate Committee.

*[Signature]*

Speaker of the House of Delegates.

*[Signature]*

Clerk of the House of Delegates.

*[Signature]*

President of the Senate.

*[Signature]*

Clerk of the Senate.

The within is.....

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

.....  
 Governor.

*[Signature]*  
 Chairman House Committee.

Filed in the office of the Secretary of State  
 of West Virginia.

MAR 18 1933

Wm. S. O'BRIEN,  
 Secretary of State