

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1953



ENROLLED

Committee substitute for

HOUSE BILL No. 65

Originating in the House Committee

(By Mr. *on the Judiciary*)



PASSED *March 13* 1953

In Effect *ninety days from* Passage



65

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COMMITTEE SUBSTITUTE FOR

House Bill No. 65

(Originating in the House Committee on the Judiciary.)

[Passed March 13, 1953; in effect ninety days from passage.]

AN ACT to amend article eleven, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by amending and reenacting sections one, five, six, seven, nine and fifteen thereof and by adding thereto a new section, to be designated section six-a, relating to the powers, duties and responsibilities of the state water commission with respect to the prevention, control and elimination of water pollution in this state and judicial review thereof.

Be it enacted by the Legislature of West Virginia:

That article eleven, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by amending and reenacting sections one, five, six, seven, nine and fifteen thereof, and by adding thereto a new

section, to be designated section six-a, all to read as follows:

Section 1. *Definitions.*—Terms used in this article are

2 defined as follows:

3 (a) “Commission” shall mean the state water commiss-
4 ion, hereby created.

5 (b) “Commissioner” shall mean a member of the com-
6 mission.

7 (c) “Water” or “waters” shall mean all waters of any
8 river, stream, watercourse, pond or lake.

9 (d) “Pollution” shall mean the discharge or deposit,
10 directly or indirectly, of sewage, industrial wastes or other
11 substances, in such condition, manner or quantity as may
12 contaminate or alter the physical, chemical or biological
13 properties of any of the waters of the state to such extent
14 as to render such waters directly or indirectly detrimental
15 to the public health or unreasonably and adversely affect
16 such waters for present or future domestic, commercial, in-
17 dustrial, agricultural, recreational or other legitimate uses.

18 (e) “Person” shall mean any and all persons natural or
19 artificial, including any municipal or private corporation
20 organized or existing under the laws of this or any other

21 state or country, any county court, government institu-
22 tion, agency or political subdivision as well as any firm
23 or association.

Sec. 5. *Control and Abatement of Pollution; Permits;*

2 *Citations.*—Within six months after July one, one thousand
3 nine hundred fifty-three, all persons who on July one, one
4 thousand nine hundred fifty-three, are causing a material
5 contribution of sewage, industrial wastes or other pol-
6 luting substances to the waters of the state shall file with
7 the commission such information as the commission may
8 require with regard thereto, including, but not limited to,
9 the kind, characteristics and rate of flow.

10 After July one, one thousand nine hundred fifty-three,
11 no person shall, without first securing a permit from the
12 commission, construct, install or operate a new sewer,
13 disposal system or treatment works; extensions, modifi-
14 cations or additions to new or existing disposal systems
15 or treatment works; extensions, modifications or additions
16 to industrial or commercial establishments or the oper-
17 ation thereof, or make or cause to be made any new outlet,
18 or to add to the load from any existing outlet; which

19 would cause a material pollution of the waters of the
20 state. For the purposes herein, the commission may issue
21 temporary or conditional permits and renew, change, mod-
22 ify, amend or revoke the same: *Provided, however, That*
23 any person who is denied a permit by the commission or
24 who has such permit revoked or modified shall be afforded
25 an opportunity for hearing in connection therewith, as
26 hereinafter provided, upon written application filed with
27 the commission within twenty days of receipt of such de-
28 nial, revocation or modification, which notice shall be com-
29 municated to the commission by registered mail, addressed
30 to its chairman or executive secretary, and upon any other
31 persons affected, personally or by registered mail. All such
32 applications for permits primarily relating to sewage
33 shall be submitted to the state department of health
34 in such form as shall have been approved by both the
35 commission and the department. After the decision by
36 the state department of health in regard thereto and the
37 reasons have been noted therein, the application, the
38 notation of the department's decision and other papers
39 making up the file shall be forwarded by the department

40 to the commission, The commission's permit or other
41 decision shall be returned with the entire file to the
42 state department of health, which shall notify the appli-
43 cant in writing of the decisions of both the department
44 and the commission, enclosing certificates where granted,
45 and shall deliver to the commission a copy of such notifi-
46 cation.

47 Any person causing the pollution of any water, or al-
48 leged to be causing the pollution of any water, may be
49 cited by the commission on its own motion to appear
50 not less than fifteen nor more than thirty days from
51 the service of such citation at a place designated by
52 it, within the county wherein the pollution is alleged
53 to have occurred or is being caused, then and there to
54 show cause, if any shall exist, why said commission should
55 not issue an order regulating such pollution, and any per-
56 sons affected by such pollution may by petition intervene
57 as a party complainant or respondent in any proceeding in-
58 stituted by or before such commission. Such citation may
59 be issued by the commission or any member thereof and
60 may be served and returned in the same manner as pro-

61 cess in any civil action, or it may be served by sending
62 a copy thereof by registered mail addressed to the person
63 causing, or alleged to be causing, any pollution of any
64 water, at his, their or its usual, or last known, post office
65 address. The hearings herein provided may be conducted
66 by the commission, any member thereof, or any person
67 authorized to take depositions by the laws of this state:
68 *Provided*, That where any such hearing is not conducted
69 by the commission all the testimony shall be reduced to
70 writing as provided by law applicable to the taking of
71 depositions, the cost thereof to be borne by the party
72 presenting the same, and all findings in connection there-
73 with shall be made by the commission. Any commissioner
74 may issue any subpoena, administer oaths and cause the
75 attendance of witnesses, the production of evidence and
76 testimony in any proceeding, subject to the same condi-
77 tions as are provided by the general statutes for the attend-
78 ance of witnesses and the production of evidence and testi-
79 mony in civil actions.

Sec. 6. Orders Controlling and Eliminating Pollution;

2 *Procedure and Enforcement.*—After a full hearing the

3 commission shall make its finding of facts, and if it finds
4 that any person is polluting any of the waters of the state,
5 or that the construction, installation or operation of any
6 new sewer, disposal system or treatment works, exten-
7 sions, modifications or additions to new or existing dis-
8 posal systems or treatment works, extensions, modifi-
9 cations or additions to industrial or commercial establish-
10 ments or the operation thereof, or any new outlet or addi-
11 tional load from any existing outlet would cause a mater-
12 ial pollution of the waters of the state, and that the same
13 should be prevented, eliminated, controlled or reduced,
14 considering the purposes of this article, the amount and
15 effect of such pollution, the practicality and physical and
16 economic feasibility of eliminating, controlling or reducing
17 such pollution, the health and welfare of the public and
18 other present and future uses of the waters of the state, it
19 shall make and enter an order directing such person to
20 cease such pollution, or shall make and enter an order
21 denying any permit being sought under the provisions of
22 section five of this article, and such person shall have
23 thirty days after notice of the entry of such final order to

24 notify the commission that he will comply therewith or
25 will install, use and operate some practical and reasonably
26 available system or means which will so eliminate, control
27 or reduce such pollution, having regard for the rights and
28 interests of all persons concerned, and if such person does
29 not so comply with such order, thereafter the commission
30 may cause the enforcement of any order issued by it to
31 cease such pollution and, as well all other orders entered
32 by it in matters subject to its jurisdiction, by application
33 to the circuit court of any county wherein the alleged pol-
34 lution originated or naturally flows or to any judge of
35 such court if the same shall be in vacation, to enjoin any
36 persons from causing or continuing such pollution, which
37 application shall be brought and the proceedings thereon
38 conducted by the prosecuting attorney of the county
39 wherein such proceedings may be pending, or by special
40 counsel employed by any intervening petitioner. If any
41 person notifies the commission that he will comply with
42 such final order by installing, using and operating some
43 practical and available system to so eliminate, control or
44 reduce such pollution, and makes application for an ex-

45 tension of time, the commission within reasonable limits
46 may grant such extension of time. The person against
47 whom such order shall be issued shall, before proceeding
48 to install any system or means, submit to the commission
49 for its consideration and approval, a plan or statement
50 describing the system or means which is proposed to be
51 used or operated; if any person shall desire to make any
52 substantial change in any system or means used or oper-
53 ated, such person shall, before making such change, file
54 with the commission for its consideration and approval
55 a plan or statement describing such proposed change,
56 together with application for the action of the commission
57 thereon and in respect thereto. The commission shall, in
58 any case, enter an order approving or disapproving any
59 such system or means proposed to be used or operated,
60 or permit or refuse to permit the proposed change in any
61 system or means adopted, used or operated, and shall
62 make and enter all such orders as the commission deems
63 proper and necessary. Any order of the commission may,
64 at any time after at least twenty days' notice in writing
65 to any person affected thereby and any intervening pe-

66 titioner, and after a hearing thereon, be modified or re-
67 voked by an order entered by the commission, and the
68 commission shall forthwith cause an attested copy of any
69 order entered by it to be served upon all persons affected
70 thereby in the same manner as writs or summons in civil
71 actions may be served, or by sending the same by re-
72 gistered mail to such person, or intervener, at his, their
73 or its usual or last known post office address.

Sec. 6-a. *Authority of Commission to Authorize the*
2 *Exercise of Eminent Domain.*—All persons not otherwise
3 having the right to condemn lands to effectuate the pur-
4 poses of this article shall be vested with the right of emi-
5 nent domain under the provisions of chapter fifty-four of
6 the code of West Virginia, as amended, upon application
7 to the state water commission for and the entry by the
8 commission of an order finding that the use by the appli-
9 cant of a specified interest in a specifically described piece
10 of land is necessary in connection with the elimination or
11 control of a substantial pollution or the substantial re-
12 duction of the pollution of any of the waters of the state
13 and directing the applicant to put the said land to use for

14 such purpose within a reasonable time after the acqui-
15 sition of title or the right of possession thereof.

Sec. 7. *Judicial Review; Duties of Commission, Prosecuting Attorney and Attorney General.*—Any party feeling aggrieved by the entry of a final order by the commission, affecting him or it, may present a petition 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 modified. 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 agreement 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 commission, so that the commission may be represented at such hearing by one or more of its members or by counsel. For such hearing the commission shall file with the clerk

20 of said court all papers, documents, evidence and records
21 or certified copies thereof as were before the commission
22 at the hearing or investigation resulting in the entry of
23 the order from which the petitioner appeals. The com-
24 mission shall file with the court before the day fixed for
25 the final hearing a written statement of its reasons for
26 the entry of such order, and after arguments by counsel
27 the court shall by order entered of record, affirm, modify
28 or set aside in whole or in part the order of the commis-
29 sion. Upon such judicial review, the findings of fact made
30 by the commission shall have like weight to that accorded
31 to the findings of fact of a trial chancellor or at any equity
32 procedure. The supreme court of appeals of the state
33 shall have jurisdiction to review the order of the circuit
34 court upon application of either party or any intervener.
35 The prosecuting attorney of the county wherein the pro-
36 ceedings in the circuit court are had shall represent the
37 commission and the attorney general of the state shall
38 represent it in any proceedings in the supreme court of
39 appeals and any intervener may be represented by counsel
40 specially employed.

Sec. 9. *Cooperation with the United States Government,*

2 *State and Interstate Agencies.*—The state water commis-
3 sion is hereby designated as the water pollution agency
4 for this state for all purposes of the Water Pollution Con-
5 trol Act, Public Law 845, 80th Congress (62 Stat. 1155)
6 approved June thirtieth, one thousand nine hundred
7 forty-eight, hereinafter called the “federal act”, and is
8 hereby authorized to take all action necessary or appro-
9 priate to secure to this state the benefits of said act. In
10 carrying out the purposes of this section the commission,
11 in addition to any other action which may be necessary
12 or appropriate, is authorized to cooperate with the surgeon
13 general of the United States public health service and
14 other agencies of the federal government, other states,
15 interstate agencies and other interested parties in all mat-
16 ters relating to water pollution. including the develop-
17 ment of programs for eliminating or reducing pollution
18 and improving the sanitary conditions of waters; on be-
19 half of this state to apply for and receive funds made
20 available to the commission under the aforesaid federal
21 act by any agency of the federal government: *Provided,*

22 That all moneys received from any federal agency as
23 herein provided shall be paid into the state treasury and
24 shall be expended, under the direction of the commission,
25 solely for the purpose or purposes for which the grant or
26 grants shall have been made; to approve projects for
27 which application for loans or grants under the federal
28 act is made by any municipality (including any city, town,
29 district or other public body created by or pursuant to
30 the laws of this state and having jurisdiction over disposal
31 of sewage, industrial wastes or other substances) or
32 agency of this state or by any interstate agency; to par-
33 ticipate through its authorized representatives in proceed-
34 ings under the federal act to recommend measures for
35 abatement of water pollution originating in this state; to
36 give consent on behalf of this state to requests by the
37 federal security administrator to the attorney general of
38 the United States for the bringing of suits for abatement
39 of such pollution; and to consent to the joinder as a de-
40 fendant in such suit of any person who is alleged to be
41 discharging matter contributing to the pollution, abate-
42 ment of which is sought in such suit.

Sec. 15. *Construction of Act; Inconsistent Acts Re-*
2 *pealed.*—Being for the public health, safety and welfare,
3 this article shall be liberally construed to effectuate the
4 purposes thereof, and all other existing laws or parts of
5 laws of this state inconsistent with this article are hereby
6 repealed: *Provided, however,* That the provisions of this
7 article shall not be construed to abridge or change any of
8 the powers and duties of the state department of health.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. M. Kinley
Chairman Senate Committee

C. H. Hubler
Chairman House Committee

Originated in the House of Delegates

Takes effect *ninety days from* passage.

J. Howard Kyles
Clerk of the Senate

J. Schiff
Clerk of the House of Delegates

Ralph Bean
President of the Senate

W. E. Hamner
Speaker House of Delegates

The within *approved* this the *20th*
day of *March*, 1953.

William C. Maunard
Governor



FILED IN THE OFFICE OF THE SECRETARY OF STATE
OF THE STATE OF VIRGINIA

MAR 20 1953

D. FITT O'BRIEN,
SECRETARY OF STATE