WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1953

ENROLLED

Committee substitutes for

HOUSE BILL No. 65

Originating in the House Committee
(By Mr. on the Judiciary)

PASSED March 15, 1953

In Effect thirty days from Passage
ENROLLED

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 defined as follows:

(a) "Commission" shall mean the state water commission, hereby created.

(b) "Commissioner" shall mean a member of the commission.

(c) "Water" or "waters" shall mean all waters of any river, stream, watercourse, pond or lake.

(d) "Pollution" shall mean the discharge or deposit, directly or indirectly, of sewage, industrial wastes or other substances, in such condition, manner or quantity as may contaminate or alter the physical, chemical or biological properties of any of the waters of the state to such extent as to render such waters directly or indirectly detrimental to the public health or unreasonably and adversely affect such waters for present or future domestic, commercial, industrial, agricultural, recreational or other legitimate uses.

(e) "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, any county court, government institution, agency or political subdivision as well as any firm or association.

Sec. 5. Control and Abatement of Pollution; Permits; Citations.—Within six months after July one, one thousand nine hundred fifty-three, all persons who on July one, one thousand nine hundred fifty-three, are causing a material contribution of sewage, industrial wastes or other polluting substances to the waters of the state shall file with the commission such information as the commission may require with regard thereto, including, but not limited to, the kind, characteristics and rate of flow.

After July one, one thousand nine hundred fifty-three, no person shall, without first securing a permit from the commission, construct, install or operate a new sewer, disposal system or treatment works; extensions, modifications or additions to new or existing disposal systems or treatment works; extensions, modifications or additions to industrial or commercial establishments or the operation thereof, or make or cause to be made any new outlet, or to add to the load from any existing outlet; which
would cause a material pollution of the waters of the state. For the purposes herein, the commission may issue temporary or conditional permits and renew, change, modify, amend or revoke the same: Provided, however, That any person who is denied a permit by the commission or who has such permit revoked or modified shall be afforded an opportunity for hearing in connection therewith, as hereinafter provided, upon written application filed with the commission within twenty days of receipt of such denial, revocation or modification, which notice shall be communicated to the commission by registered mail, addressed to its chairman or executive secretary, and upon any other persons affected, personally or by registered mail. All such applications for permits primarily relating to sewage shall be submitted to the state department of health in such form as shall have been approved by both the commission and the department. After the decision by the state department of health in regard thereto and the reasons have been noted therein, the application, the notation of the department's decision and other papers making up the file shall be forwarded by the department
to the commission, The commission's permit or other
decision shall be returned with the entire file to the
state department of health, which shall notify the appli-
cant in writing of the decisions of both the department
and the commission, enclosing certificates where granted,
and shall deliver to the commission a copy of such notifi-
cation.

Any person causing the pollution of any water, or al-
leged to be causing the pollution of any water, may be
cited by the commission on its own motion to appear
not less than fifteen nor more than thirty days from
the service of such citation at a place designated by
it, within the county wherein the pollution is alleged
to have occurred or is being caused, then and there to
show cause, if any shall exist, why said commission should
not issue an order regulating such pollution, and any per-
sons affected by such pollution may by petition intervene
as a party complainant or respondent in any proceeding in-
stituted 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 pro-
cess 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. The hearings herein provided may be conducted by the commission, any member thereof, or any person authorized to take depositions by the laws of this state: Provided, That where any such hearing is not conducted by the commission all the testimony shall be reduced to writing as provided by law applicable to the taking of depositions, the cost thereof to be borne by the party presenting the same, and all findings in connection therewith shall be made by the commission. Any commissioner may issue any subpoena, administer oaths and cause the attendance of witnesses, the production of evidence and testimony in any proceeding, 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.

Sec. 6. Orders Controlling and Eliminating Pollution; 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
notify the commission that he will comply therewith or
will install, use and operate some practical and reasonably
available system or means which will so eliminate, control
or reduce 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 commission
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 pol-
lution originated or naturally flows or to any judge of
such court if the same shall be in vacation, to enjoin any
persons from causing or continuing such pollution, 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 notifies the commission that he will comply with
such final order by installing, using and operating some
practical and available system to so eliminate, control or
reduce such pollution, and makes application for an ex-
tension 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 pe-
petitioner, and after a hearing thereon, be modified or re-
voked by an order entered by the commission, 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 re-
gistered mail to such person, or intervener, at his, their
or its usual or last known post office address.

Sec. 6-a. Authority of Commission to Authorize the
Exercise of Eminent Domain.—All persons not otherwise
having the right to condemn lands to effectuate the pur-
poses of this article shall be vested with the right of emi-
nent domain under the provisions of chapter fifty-four of
the code of West Virginia, as amended, upon application
to the state water commission for and the entry by the
commission of an order finding that the use by the appli-
cant of a specified interest in a specifically described piece
of land is necessary in connection with the elimination or
control of a substantial pollution or the substantial re-
duction of the pollution of any of the waters of the state
and directing the applicant to put the said land to use for
such purpose within a reasonable time after the acquisi-
tion of title or the right of possession thereof.

Sec. 7. Judicial Review; Duties of Commission, Prose-
cuting Attorney and Attorney General.—Any party feel-
ing aggrieved by the entry of a final order by the commis-
sion, 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 pre-
senting 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 presenta-
tion; and notice of the time and place of such hearing
shall be forthwith delivered to the secretary of the com-
mッション, 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
of said court all papers, documents, evidence and records
or certified copies thereof as were before the commission
at the hearing or investigation resulting in the entry of
the order from which the petitioner appeals. The com-
mission shall file with the court before 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, affirm, modify
or set aside in whole or in part the order of the commis-
sion. Upon such judicial review, the findings of fact made
by the commission shall have like weight to that accorded
to the findings of fact of a trial chancellor or at any equity
procedure. 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 intervener.
The prosecuting attorney of the county wherein the pro-
cedings 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. 9. Cooperation with the United States Government.

State and Interstate Agencies.—The state water commission is hereby designated as the water pollution agency for this state for all purposes of the Water Pollution Control Act, Public Law 845, 80th Congress (62 Stat. 1155) approved June thirtieth, one thousand nine hundred forty-eight, hereinafter called the "federal act", and is hereby authorized to take all action necessary or appropriate to secure to this state the benefits of said act. In carrying out the purposes of this section the commission, in addition to any other action which may be necessary or appropriate, is authorized to cooperate with the surgeon general of the United States public health service and other agencies of the federal government, other states, interstate agencies and other interested parties in all matters relating to water pollution, including the development of programs for eliminating or reducing pollution and improving the sanitary conditions of waters; on behalf of this state to apply for and receive funds made available to the commission under the aforesaid federal act by any agency of the federal government: Provided,
That all moneys received from any federal agency as 
herein provided shall be paid into the state treasury and 
shall be expended, under the direction of the commission, 
solely for the purpose or purposes for which the grant or 
grants shall have been made; to approve projects for 
which application for loans or grants under the federal 
act is made by any municipality (including any city, town, 
district or other public body created by or pursuant to 
the laws of this state and having jurisdiction over disposal 
of sewage, industrial wastes or other substances) or 
agency of this state or by any interstate agency; to par-
ticipate through its authorized representatives in proceed-
ings under the federal act to recommend measures for 
abatement of water pollution originating in this state; to 
give consent on behalf of this state to requests by the 
federal security administrator to the attorney general of 
the United States for the bringing of suits for abatement 
of such pollution; and to consent to the joinder as a de-
fendant in such suit of any person who is alleged to be 
discharging matter contributing to the pollution, abate-
ment of which is sought in such suit.
Sec. 15. Construction of Act; Inconsistent Acts Repealed.—Being for the public health, safety and welfare, this article shall be liberally construed to effectuate the purposes thereof, and all other existing laws or parts of laws of this state inconsistent with this article are hereby repealed: Provided, however, That the provisions of this article shall not be construed to abridge or change any of 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.

Chairman Senate Committee

Chairman House Committee

Originated in the House of Delegates

Takes effect ninety day from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

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

Governor

Secretary of State