

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1963

ENROLLED

Comm. SUB.
SENATE BILL NO. 117-118-119

(By Mr.....)

PASSED Feb. 20 1963

In Effect 90 days from Passage

Filed in Office of the Secretary of State
of West Virginia 3-1-63

JOE F. BURDETT
SECRETARY OF STATE

117-118-119

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bills Nos. 117, 118 and 119

[Passed February 20, 1963; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, five and six, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the policy of the state concerning air pollution control; the purpose of the air pollution control act; the powers, duties and authority of the air pollution control commission; the rendering of legal services to such commission; the method and manner of adopting and promulgating rules and regulations of such commission, and notice and hearing concerning same; notice of alleged violations of the air pollution control act and of complaints before the air pollution control commission; the method and manner of serving such notice; hearings thereon; the factors to be con-

sidered at any such hearing; the orders of such commission; service of such orders; petitions to modify or vacate any such order; proceedings on such petitions; service of any confirming, modifying or vacating order; when orders become final and conclusive; recording and transcribing all proceedings at any such hearing; and specifying that a hearing on a complaint can be held by no less than two members of the air pollution control commission, the transcript of such hearing to be reviewed by such commission as a whole.

Be it enacted by the Legislature of West Virginia:

That sections one, five and six, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

Section 1. Declaration of Policy and Purpose.—It is
2 hereby determined and declared to be the policy of the
3 state of West Virginia to maintain such a reasonable de-
4 gree of purity of the air resources of the state as shall be
5 technically feasible, economically reasonable, and neces-
6 sary for the protection of the health, the general welfare

7 and the property of the people of the state. The measures
8 for the accomplishment of this purpose shall not unrea-
9 sonably obstruct the attraction, development and expan-
10 sion of business, industry and commerce within the state.
11 The program for the control of air pollution under this
12 article shall be sought to be accomplished by a maximum
13 of cooperation and conciliation among all the parties con-
14 cerned. All powers herein conferred upon the air pollu-
15 tion control commission shall be exercised solely to ef-
16 fectuate the policy declared in this section. It is further
17 hereby determined and declared to be the policy of the
18 state of West Virginia that all departments, agencies and
19 other branches of the government of the state of West
20 Virginia shall immediately take such steps concerning
21 smoke and other impurities which are or may be emitted
22 from any building, plant or other structure under the
23 supervision and control of the departments, agencies and
24 other branches of such state government as are necessary
25 to accomplish the purposes of this article.

Sec. 5. Same; Powers and Duties of Commission Gen-

2 **erally; Rules and Regulations; Public Hearings.**—The

3 commission is hereby authorized and empowered:

4 (1) To develop ways and means for the regulation and
5 control of pollution of the air of the state;

6 (2) To advise, consult and cooperate with other agen-
7 cies of the state, political subdivisions of the state, other
8 states, agencies of the federal government, industries, and
9 with affected groups in furtherance of the declared pur-
10 poses of this article;

11 (3) To encourage and conduct such studies and re-
12 search relating to air pollution and its control and abate-
13 ment as the commission may deem advisable and neces-
14 sary;

15 (4) To adopt and to promulgate reasonable regulations,
16 not inconsistent with the provisions of this article, relating
17 to the control of air pollution: *Provided*, That no rule or
18 regulation of the commission shall specify the design of
19 equipment, type of construction, or particular method
20 which a person shall use to reduce the discharge of air
21 pollutants, nor shall any such rule or regulation apply to
22 any aspect of an employer-employee relationship;

23 (5) To enter orders requiring compliance with the pro-

24 visions of this article and the regulations lawfully pro-
25 mulgated hereunder;

26 (6) To consider complaints, subpoena witnesses, ad-
27 minister oaths, make investigations, and hold hearings
28 relevant to the promulgation of regulations and the entry
29 of compliance orders hereunder;

30 (7) To encourage voluntary cooperation by municipali-
31 ties, counties, industries and others in preserving the
32 purity of the air within the state;

33 (8) To employ personnel, including specialists and con-
34 sultants, purchase materials and supplies, and enter into
35 contracts necessary, incident or convenient to the accom-
36 plishment of the purposes of this article;

37 (9) To enter at reasonable times upon any private or
38 public property for the purpose of investigating an alleged
39 statutory air pollution: *Provided, however,* That no such
40 investigation shall extend to information relating to sec-
41 ret processes or methods of manufacturing or production;

42 (10) Upon reasonable evidence of a violation of this ar-
43 ticle, which presents an imminent and serious hazard to
44 public health, to give notice to the public or to that por-

45 tion of the public which is in danger by any and all
46 appropriate means;

47 (11) To cooperate with, receive and expend money from
48 the federal government and other sources;

49 (12) To represent the state in any and all matters per-
50 taining to plans, procedures and negotiations for interstate
51 compacts in relation to the control of air pollution; and

52 (13) To appoint technical advisory councils from such
53 areas of the state as it may determine. Each such council
54 so appointed shall consist of not more than five members
55 for each area so designated, at least two of whom shall
56 be truly representative of industries operating within
57 such area, and may advise and consult with the commis-
58 sion about all matters pertaining to the regulation, control
59 and abatement of air pollution within such area.

60 The attorney general and his assistants and the prose-
61 cuting attorneys of the several counties shall render to
62 the commission without additional compensation such
63 legal services as the commission may require of them
64 to enforce the provisions of this article.

65 No rule or regulation of the commission pertaining to

66 the control, reduction or abatement of air pollution shall
 67 become effective until after at least one public hearing
 68 thereon shall have been held by the commission within
 69 the state. Notice to the public of the time and place of
 70 any such hearing shall be given by the commission at
 71 least thirty days prior to the scheduled date of such hear-
 72 ing by advertisement published once a week for two suc-
 73 cessive weeks in at least one daily newspaper of general
 74 circulation in the county wherein such hearing is to be
 75 held. Full opportunity to be heard shall be accorded to
 76 all persons in attendance and any person, whether or not
 77 in attendance at such hearing, may submit in writing his
 78 views with respect to any such rule or regulation to the
 79 commission within thirty days after such hearing. The
 80 proceedings at the hearing before the commission shall
 81 be recorded by mechanical means or otherwise as may be
 82 prescribed by the commission. Such record of proceedings
 83 need not be transcribed unless requested by an interested
 84 party, in which event the prevailing rates for such tran-
 85 scripts will be required from such interested party. The
 86 commission may, in its discretion, solicit the comments

87 in writing of any person who may be affected by or in-
88 terested in such proposed rules and regulations.

Sec. 6. Notice of Alleged Violations; Hearings; Factors
2 Considered; Complaints Before the Commission and Pro-
3 cedure Thereon; Orders of Commission; Petitions to
4 Modify or Vacate Order; Confirming or Modifying Order;
5 When Order Final; Record of Proceedings.—If, from any
6 investigation made by it or from any complaint filed be-
7 fore it, the commission shall be of the opinion that there
8 is sufficient cause to believe that a person may be violat-
9 ing the provisions of this article, the commission may give
10 written notice to such person to appear before the com-
11 mission at a time and place, within the county wherein
12 the pollution is alleged to have originated, to be specified
13 in such notice, then and there to show cause, if any shall
14 exist, why said commission should not enter an order
15 finding that such person has violated the provisions of
16 this article and regulating or controlling the alleged pol-
17 lution. The said notice shall with reasonable particularity
18 specify the nature of the alleged air pollution which is
19 to be the subject of inquiry at such hearing. No such

20 hearing shall be held less than thirty days from the date
21 of said notice. Any such notice may be served and re-
22 turned in the same manner as a summons in a civil action
23 or may be served by sending a copy thereof by registered
24 mail addressed to the person or persons alleged to be
25 causing such pollution at his and/or its usual, or last
26 known, post office address. Any person to whom such
27 notice has been given may appear in person or by counsel
28 at the hearing and adduce evidence in answer to the
29 alleged violation.

30 In any proceeding under this article the commission
31 shall consider all pertinent factors, including a balancing
32 of the conflicting interests and equities involved, the avail-
33 ability and practicality of control devices, the physical and
34 economic feasibility of eliminating, controlling or reduc-
35 ing the alleged pollution, the nature of the locality af-
36 fected by the alleged pollution, the reasonableness of
37 existing conditions and such other factors as may appear
38 to the commission to be consonant with the policy de-
39 clared in section one of this article.

40 For the purpose of holding a hearing on a complaint

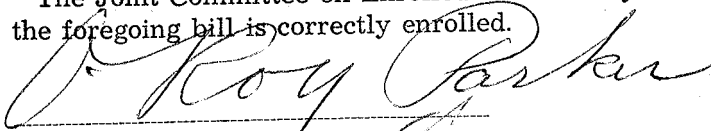
41 said hearing can be held by no less than two members
42 of the commission who have been designated by the
43 chairman, and the transcript from such hearing shall
44 be reviewed by the commission for the purpose of issuing
45 such orders as may be necessary.

46 Consistent with the evidence adduced at the hearing
47 and a consideration of the aforesaid factors, the commis-
48 sion shall enter such order as in its opinion will best pro-
49 mote the declared policy of this article. Such order shall
50 contain specific findings of fact with respect to all factors
51 considered by the commission and shall require that the
52 statutory air pollution, if any be found, be corrected with-
53 in a reasonable period of time to be fixed therein. A true
54 copy of such order shall be promptly served, either by
55 service as a summons in a civil action or by registered
56 mail as aforesaid, upon all persons substantially affected
57 by such order. Within twenty days after service of such
58 order, any person substantially affected thereby may file
59 with the secretary of the commission a petition in writ-
60 ing requesting the commission to modify or vacate such
61 order. The petition shall assign the grounds relied upon

62 by the petitioner in support of a modification or vacation
 63 of such order. The commission shall thereupon reconsider
 64 its original order and shall, within twenty days after the
 65 filing of the petition, enter of record an order confirming,
 66 modifying or vacating the original order. A true copy
 67 of such order shall be promptly served upon all persons
 68 substantially affected thereby in the same manner as
 69 the original order was served. Any order of the com-
 70 mission entered hereunder shall become final and con-
 71 clusive upon all persons affected thereby unless an appeal
 72 therefrom is taken in the manner provided in section
 73 seven of this article.

74 The proceedings at any such hearing shall be recorded
 75 by mechanical means or otherwise as may be prescribed
 76 by the commission: *Provided*, That the proceedings shall
 77 be taken by a stenographer appointed by the commission
 78 upon demand of any interested person. A copy of such
 79 transcript shall be furnished on demand to any person
 80 substantially affected upon payment of the fee prescribed
 81 therefor in the rules and regulations of the commission,
 82 such fee not to exceed that prescribed for transcripts in
 83 the circuit court.

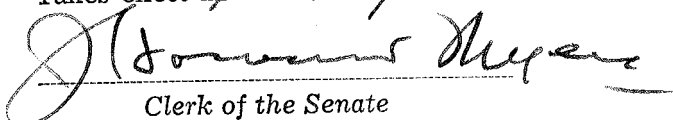
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

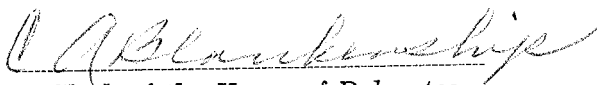

Chairman Senate Committee



Chairman House Committee

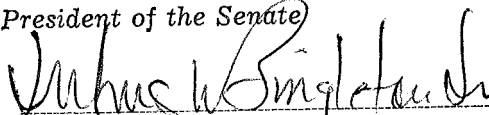
Originated in the Senate.

Takes effect 90 days 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 28th
day of February, 1963.


Governor