WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1963

ENROLLED
Comm. Sub. SENATE BILL NO. 117-118-119

(By Mr. ................................................................. )

PASSED ................................................................. 1963

In Effect. .................................................................

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

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

Sec. 5. Same; Powers and Duties of Commission Gen-
2 erally; Rules and Regulations; Public Hearings.—The
(1) To develop ways and means for the regulation and control of pollution of the air of the state;

(2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries, and with affected groups in furtherance of the declared purposes of this article;

(3) To encourage and conduct such studies and research relating to air pollution and its control and abatement as the commission may deem advisable and necessary;

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

(5) To enter orders requiring compliance with the pro-
visions of this article and the regulations lawfully promulgated hereunder;

(6) To consider complaints, subpoena witnesses, administer oaths, make investigations, and hold hearings relevant to the promulgation of regulations and the entry of compliance orders hereunder;

(7) To encourage voluntary cooperation by municipalities, counties, industries and others in preserving the purity of the air within the state;

(8) To employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts necessary, incident or convenient to the accomplishment of the purposes of this article;

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

(10) Upon reasonable evidence of a violation of this article, which presents an imminent and serious hazard to public health, to give notice to the public or to that por-
tion of the public which is in danger by any and all appropriate means;

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

(12) To represent the state in any and all matters pertaining to plans, procedures and negotiations for interstate compacts in relation to the control of air pollution; and

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

The attorney general and his assistants and the prosecuting attorneys of the several counties shall render to the commission without additional compensation such legal services as the commission may require of them to enforce the provisions of this article.

No rule or regulation of the commission pertaining to
the control, reduction or abatement of air pollution shall
become effective until after at least one public hearing
thereon shall have been held by the commission within
the state. Notice to the public of the time and place of
any such hearing shall be given by the commission at
least thirty days prior to the scheduled date of such hear-
ing by advertisement published once a week for two suc-
cessive weeks in at least one daily newspaper of general
circulation in the county wherein such hearing is to be
held. Full opportunity to be heard shall be accorded to
all persons in attendance and any person, whether or not
in attendance at such hearing, may submit in writing his
views with respect to any such rule or regulation to the
commission within thirty days after such hearing. The
proceedings at the hearing before the commission shall
be recorded by mechanical means or otherwise as may be
prescribed by the commission. Such record of proceedings
need not be transcribed unless requested by an interested
party, in which event the prevailing rates for such tran-
scripts will be required from such interested party. The
commission may, in its discretion, solicit the comments
in writing of any person who may be affected by or in-
terested in such proposed rules and regulations.

Sec. 6. Notice of Alleged Violations; Hearings; Factors

Considered; Complaints Before the Commission and Pro-
cedure Thereon; Orders of Commission; Petitions to
Modify or Vacate Order; Confirming or Modifying Order;

When Order Final; Record of Proceedings.—If, from any
investigation made by it or from any complaint filed be-
fore it, the commission shall be of the opinion that there
is sufficient cause to believe that a person may be violat-
ing the provisions of this article, the commission may give
written notice to such person to appear before the com-
mission at a time and place, within the county wherein
the pollution is alleged to have originated, to be specified
in such notice, then and there to show cause, if any shall
exist, why said commission should not enter an order
finding that such person has violated the provisions of
this article and regulating or controlling the alleged pol-
lution. The said notice shall with reasonable particularity
specify the nature of the alleged air pollution which is
to be the subject of inquiry at such hearing. No such
hearing shall be held less than thirty days from the date of said notice. Any such notice may be served and returned in the same manner as a summons in a civil action or may be served by sending a copy thereof by registered mail addressed to the person or persons alleged to be causing such pollution at his and/or its usual, or last known, post office address. Any person to whom such notice has been given may appear in person or by counsel at the hearing and adduce evidence in answer to the alleged violation.

In any proceeding under this article the commission shall consider all pertinent factors, including a balancing of the conflicting interests and equities involved, the availability and practicality of control devices, the physical and economic feasibility of eliminating, controlling or reducing the alleged pollution, the nature of the locality affected by the alleged pollution, the reasonableness of existing conditions and such other factors as may appear to the commission to be consonant with the policy declared in section one of this article.

For the purpose of holding a hearing on a complaint
said hearing can be held by no less than two members of the commission who have been designated by the chairman, and the transcript from such hearing shall be reviewed by the commission for the purpose of issuing such orders as may be necessary.

Consistent with the evidence adduced at the hearing and a consideration of the aforesaid factors, the commission shall enter such order as in its opinion will best promote the declared policy of this article. Such order shall contain specific findings of fact with respect to all factors considered by the commission and shall require that the statutory air pollution, if any be found, be corrected within a reasonable period of time to be fixed therein. A true copy of such order shall be promptly served, either by service as a summons in a civil action or by registered mail as aforesaid, upon all persons substantially affected by such order. Within twenty days after service of such order, any person substantially affected thereby may file with the secretary of the commission a petition in writing requesting the commission to modify or vacate such order. The petition shall assign the grounds relied upon
by the petitioner in support of a modification or vacation of such order. The commission shall thereupon reconsider its original order and shall, within twenty days after the filing of the petition, enter of record an order confirming, modifying or vacating the original order. A true copy of such order shall be promptly served upon all persons substantially affected thereby in the same manner as the original order was served. Any order of the commission entered hereunder shall become final and conclusive upon all persons affected thereby unless an appeal therefrom is taken in the manner provided in section seven of this article.

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