WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1965

ENROLLED
SENATE BILL NO. 50

(By Mr.)

PASSED March 3, 1965

In Effect Passage

FILED IN THE OFFICE OF
JOE F. BURDETT
SECRETARY OF STATE
THIS DATE 3-19-65
ENROLLED

Senate Bill No. 50
(By Mr. Tompos)

[Passed March 13, 1965; in effect from passage.]

AN ACT to amend and reenact section five, article five, and sections three, four and nineteen-a, article five-a, all of chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to general powers and duties of the chief of the division of water resources and the water resources board with respect to water resources and pollution, and to disposition of moneys collected by the director of natural resources resulting from loss of game-fish or aquatic life.

Be it enacted by the Legislature of West Virginia:

That section five, article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections three,
four and nineteen-a, article five-a of said chapter, be amended and reenacted, all to read as follows:

Article 5. Water Resources.

Section 5. General Powers and Duties of Chief of Division and Board with Respect to Water Resources.—

(a) In addition to all other powers and duties of the chief of the department's division of water resources, as prescribed in this article or elsewhere by law, the chief, under the supervision of the director, shall have and may exercise the following powers and authority and shall perform the following duties:

(1) To conduct, or contract for the conducting of, scientific investigations, experiments and research, and to collect data, concerning the water resources of the state;

(2) To advise all users of water resources as to the availability of water resources and the most practicable method of water diversion, use, development and conservation; and

(3) To cooperate with federal officers and agencies, other state agencies and officers, interstate agencies, and
other interested persons in the conservation, improvement and development of water resources, and to this end, the department may receive moneys from such agencies, officers and persons on behalf of the state: *Provided,*

That the department shall pay all moneys so received into a special fund hereby created in the state treasury, which fund shall be expended under the direction of the chief solely for the purpose or purposes for which the grant, gift or contribution shall have been made.

(b) In addition to all other powers and duties of the water resources board, as prescribed in this article or elsewhere by law, the board shall have and may exercise the following powers and authority and shall perform the following duties:

(1) To enter into compacts and agreements concerning this state's share of waters in watercourses where a portion of such waters is contained within the territorial limits of this state or of a neighboring state or states, subject to the approval of the Legislature; and

(2) To promulgate rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code,
to implement and make effective the powers, duties and responsibilities vested in the board and the chief by the provisions of this article and otherwise by law.

(c) The board, any member thereof and the chief, and their duly authorized representatives shall have the power and authority to enter at all reasonable times upon any private or public property for the purpose of making surveys, examinations, investigations and studies needed in the gathering of facts concerning the water resources of the state and their use, subject to responsibility for any damage to the property entered. Upon entering, and before making any survey, examination, investigation and study, such person shall immediately present himself to the occupant of the property. Upon entering property used in any manufacturing, mining or other commercial enterprise, or by any municipality or governmental agency or subdivision, and before making any survey, examination, investigation and study, such person shall immediately present himself to the person in charge of the operation, and if he is not available, to a managerial employee. All persons shall cooperate fully with the person
entering such property for such purposes. Upon refusal of the person owning or controlling such property to permit such entrance or the making of such surveys, examinations, investigations and studies, the board or the chief may apply to the circuit court of the county in which such property is located, or to the judge thereof in vacation, for an order permitting such entrance or the making of such surveys, examinations, investigations and studies; and jurisdiction is hereby conferred upon such court to enter such order upon a showing that the relief asked is necessary for the proper enforcement of this article:

Provided, however, That a dwelling occupied for residential purposes shall not be entered without a search warrant.

(d) The board is hereby authorized to hire one or more individuals to serve as hearing examiners on a full or part-time basis. Such individuals may be attorneys at law admitted to practice before any circuit court of this state. All such hearing examiners shall be individuals authorized to take depositions under the laws of this state.
Article 5-A. Water Pollution Control Act.

Section 3. General Powers and Duties of Chief of Division and Board with Respect to Water Pollution.---

(a) In addition to all other powers and duties of the chief of the department’s division of water resources, as prescribed in this article or elsewhere by law, the chief, under the supervision of the director, shall have and may exercise the following powers and authority and shall perform the following duties:

(1) To encourage voluntary cooperation by all persons in controlling and reducing the pollution of the waters of this state, and to advise, consult and cooperate with all persons, all agencies of this state, the federal government or other states, and with interstate agencies in the furtherance of the purposes of this article, and to this end and for the purpose of studies, scientific or other investigations, research, experiments and demonstrations pertaining thereto, the department may receive moneys from such agencies, officers and persons on behalf of the state: Provided, That the department shall pay all moneys so received into a special fund hereby created
in the state treasury, which fund shall be expended under
the direction of the chief solely for the purpose or pur-
poses for which the grant, gift or contribution shall have
been made;

(2) To encourage the formulation and execution of
plans by cooperative groups or associations of municipal
corporations, industries, and other users of waters of the
state, who, jointly or severally, are or may be the source
of pollution of the same waters, for the control and re-
duction of pollution;

(3) To encourage, participate in, or conduct or cause
to be conducted studies, scientific or other investigations,
research, experiments and demonstrations relating to
water pollution, and the causes, control and reduction
thereof, and to collect data with respect thereto, all as
may be deemed advisable and necessary to carry out
the purposes of this article;

(4) To study and investigate all problems concerning
water flow, water pollution and the control and reduc-
tion of such pollution, and to make reports and recom-
mandations with respect thereto;
(5) To collect and disseminate information relating to water pollution and the control and reduction thereof;

(6) To develop a public education and promotion program to aid and assist in publicizing the need and securing support for pollution control and abatement;

(7) To sample ground and surface water with sufficient frequency to ascertain the standards of purity or quality from time to time of the waters of the state;

(8) To develop programs for the control and reduction of the pollution of the waters of the state;

(9) To exercise general supervision over the administration and enforcement of the provisions of this article, and all orders issued pursuant to the provisions of this article; and

(10) In cooperation with the college of engineering at West Virginia university, to conduct studies, scientific or other investigations, research, experiments and demonstrations in an effort to discover economical and practical methods for the elimination, disposal, control and treatment of sewage, industrial wastes, and other wastes, and the control and reduction of water pollution,
and to this end, the chief may cooperate with any public
or private agency and receive therefrom, on behalf of
the state, and for deposit in the state treasury, any moneys
which such agency may contribute as its part of the
expenses thereof, and all gifts, donations or contributions
received as aforesaid shall be expended by the chief ac-
cording to the requirements or directions of the donor
or contributor without the necessity of an appropriation
therefor, except that an accounting thereof shall be made
in the fiscal reports of the department.

(b) In addition to all other powers and duties of the
water resources board, as prescribed in this article or
elsewhere by law, the board shall have and may exercise
the following powers and authority and shall perform
the following duties:

(1) To cooperate with any interstate agencies for the
purpose of formulating, for submission to the Legisla-
ture, interstate compacts and agreements relating to the
control and reduction of water pollution; and

(2) To promulgate rules and regulations, in accordance
with the provisions of chapter twenty-nine-a of this code,
to implement and make effective the powers, duties and responsibilities vested in the board and the chief by the provisions of this article and otherwise by law: Provided,

That all such rules and regulations shall be consistent with the declaration of public policy set forth in section one of this article.

(c) The board is hereby authorized to hire one or more individuals to serve as hearing examiners on a full or part-time basis. Such individuals may be attorneys at law admitted to practice before any circuit court of this state. All such hearing examiners shall be individuals authorized to take depositions under the laws of this state.

(d) The board, any member thereof and the chief, and their duly authorized representatives, shall have the power and authority to make investigations, inspections and inquiries concerning compliance with the provisions of this article, any order made and entered in accordance with the provisions of this article, any rule or regulation promulgated by the board, and with the terms and conditions of any permit issued in accordance
with the provisions of section seven of this article. In
order to make such investigations, inspections and in-
quiries, the board, any member thereof and the chief,
and their duly authorized representatives, shall have the
power and authority to enter at all reasonable times upon
any private or public property, subject to responsibility
for any damage to the property entered. Upon entering,
and before making any investigation, inspection and in-
quiry, such person shall immediately present himself to
the occupant of the property. Upon entering property
used in any manufacturing, mining or other commercial
enterprise, or by any municipality or governmental
agency or subdivision, and before making any investiga-
tion, inspection and inquiry, such person shall imme-
diately present himself to the person in charge of the
operation, and if he is not available, to a managerial
employee. All persons shall cooperate fully with the
person entering such property for such purposes. Upon
refusal of the person owning or controlling such property
to permit such entrance or the making of such inspections,
investigations and inquiries, the board or the chief may
apply to the circuit court of the county in which such property is located, or to the judge thereof in vacation, for an order permitting such entrance and the making of such inspections, investigations and inquiries; and jurisdiction is hereby conferred upon such court to enter such order upon a showing that the relief asked is necessary for the proper enforcement of this article: Provided, however, That a dwelling occupied for residential purposes shall not be entered without a search warrant.

(e) The board is hereby authorized and empowered to investigate and ascertain the need and factual bases for the establishment of public service districts as a means of controlling and reducing pollution from unincorporated communities and areas of the state, and to present reports and recommendations thereon to the county court or courts of the areas concerned, together with a request that such county court or courts create a public service district, or districts, as therein shown to be needed and required and as provided in article thirteen-a, chapter sixteen of this code.

Sec. 4. Cooperation with Other Governments and
A agencies.—The division of water resources is hereby de-
signated as the water pollution control agency for this
state for all purposes of the federal water pollution con-
trol act, public law six hundred sixty, eighty-fourth Con-
gress, approved July ninth, one thousand nine hundred
fifty-six, as amended by public law eighty-seven—eighty-
eight, eighty-seventh Congress, approved July twentieth,
one thousand nine hundred sixty-one, and subsequent
amendatory provisions thereof, all hereinafter called the
"Federal act", and is hereby authorized to take all action
necessary or appropriate to secure to this state the bene-
fits of said act. In carrying out the purposes of this
section, the chief, in addition to any other action which
may be necessary or appropriate, is hereby authorized
to cooperate with the surgeon general of the United
States public health service, other agencies of the federal
government, other states, interstate agencies and other
interested parties in all matters relating to water pollu-
tion, including the development of programs for con-
trolling and reducing water pollution and improving the
sanitary conditions of waters; to apply for and receive,
on behalf of this state, funds made available to the division under the aforesaid federal act by any agency of the federal government, on condition 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 chief, 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 the disposal of sewage, industrial wastes, or other wastes) or agency of this state or by any interstate agency; and to participate through his authorized representatives in proceedings under the federal act to recommend measures for the abatement of water pollution originating in this state.

The governor is hereby authorized, in his discretion, to give consent on behalf of this state to requests by the secretary of the United States department of health, education and welfare to the attorney general of the United
States for the bringing of actions for the abatement of such pollution. Whenever a federal law requires the approval or recommendation of a state agency or any political subdivision of the state in any matter relating to the water resources of the state, the director, subject to approval of the Legislature, is hereby designated as the sole person to give the approval or recommendation required by the federal law, unless the federal law specifically requires the approval or recommendation of some other state agency or political subdivision of the state.

Sec. 19-a. Civil Liability.—If any loss of game fish or aquatic life results from a person's or persons' failure or refusal to discharge any duty imposed upon him by this article, the West Virginia department of natural resources shall have a cause of action on behalf of the state of West Virginia to recover from such person or persons causing such loss a sum equal to the cost of replacing such game fish or aquatic life. Any moneys so collected by the director shall be deposited in a special revenue fund entitled "Natural Resources Game Fish and Aquatic Life Fund" and shall be
expended as hereinafter provided. The fund shall be expended to stock waters of this state with game fish and aquatic life. Where feasible, the director shall use any sum collected in accordance with the provisions of this section to stock waters in the area in which the loss resulting in the collection of such sum occurred. Any balance of such sum shall remain in said fund and be expended to stock state owned and operated fishing lakes and ponds, wherever located in this state, with game fish and aquatic life.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

O. Ray Parker  
Chairman Senate Committee

James E. Loop  
Chairman House Committee

Originated in the Senate.

Takes effect from Passage.

M. D. Fawcett  
Clerk of the Senate

C. A. Blankenship  
Clerk of the House of Delegates

H. T. Caldwell  
President of the Senate

A. L. Atchur  
Speaker House of Delegates

The within approved this the 19

day of March, 1965.

H. W. Fairbanks  
Governor
Presented to the Governor's Office
March 18, 1965
4:30 P.M.