

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1965

ENROLLED

SENATE BILL NO. 50

(By Mr. Tampa)

PASSED March 13, 1965

In Effect June Passage



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

50
#

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

2 Division and Board with Respect to Water Resources.—

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

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

13 (2) To advise all users of water resources as to the
14 availability of water resources and the most practicable
15 method of water diversion, use, development and con-
16 servation; and

17 (3) To cooperate with federal officers and agencies,
18 other state agencies and officers, interstate agencies, and

19 other interested persons in the conservation, improvement
20 and development of water resources, and to this end, the
21 department may receive moneys from such agencies,
22 officers and persons on behalf of the state: *Provided*,
23 That the department shall pay all moneys so received
24 into a special fund hereby created in the state treasury,
25 which fund shall be expended under the direction of the
26 chief solely for the purpose or purposes for which the
27 grant, gift or contribution shall have been made.

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

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

38 (2) To promulgate rules and regulations, in accordance
39 with the provisions of chapter twenty-nine-a of this code,

40 to implement and make effective the powers, duties and
41 responsibilities vested in the board and the chief by the
42 provisions of this article and otherwise by law.

43 (c) The board, any member thereof and the chief,
44 and their duly authorized representatives shall have the
45 power and authority to enter at all reasonable times upon
46 any private or public property for the purpose of making
47 surveys, examinations, investigations and studies needed
48 in the gathering of facts concerning the water resources
49 of the state and their use, subject to responsibility for any
50 damage to the property entered. Upon entering, and
51 before making any survey, examination, investigation
52 and study, such person shall immediately present himself
53 to the occupant of the property. Upon entering property
54 used in any manufacturing, mining or other commercial
55 enterprise, or by any municipality or governmental agency
56 or subdivision, and before making any survey, examina-
57 tion, investigation and study, such person shall imme-
58 diately present himself to the person in charge of the
59 operation, and if he is not available, to a managerial em-
60 ployee. All persons shall cooperate fully with the person

61 entering such property for such purposes. Upon refusal
62 of the person owning or controlling such property to per-
63 mit such entrance or the making of such surveys, exami-
64 nations, investigations and studies, the board or the chief
65 may apply to the circuit court of the county in which
66 such property is located, or to the judge thereof in vaca-
67 tion, for an order permitting such entrance or the making
68 of such surveys, examinations, investigations and studies;
69 and jurisdiction is hereby conferred upon such court
70 to enter such order upon a showing that the relief asked
71 is necessary for the proper enforcement of this article:
72 *Provided, however,* That a dwelling occupied for resi-
73 dential purposes shall not be entered without a search
74 warrant.

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

Article 5-A. Water Pollution Control Act.**Section 3. General Powers and Duties of Chief of****2 Division and Board with Respect to Water Pollution.---**

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

9 (1) To encourage voluntary cooperation by all per-
10 sons in controlling and reducing the pollution of the
11 waters of this state, and to advise, consult and cooperate
12 with all persons, all agencies of this state, the federal
13 government or other states, and with interstate agencies
14 in the furtherance of the purposes of this article, and
15 to this end and for the purpose of studies, scientific or
16 other investigations, research, experiments and demon-
17 strations pertaining thereto, the department may receive
18 moneys from such agencies, officers and persons on behalf
19 of the state: *Provided*, That the department shall pay
20 all moneys so received into a special fund hereby created

21 in the state treasury, which fund shall be expended under
22 the direction of the chief solely for the purpose or pur-
23 poses for which the grant, gift or contribution shall have
24 been made;

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

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

38 (4) To study and investigate all problems concerning
39 water flow, water pollution and the control and reduc-
40 tion of such pollution, and to make reports and recom-
41 mendations with respect thereto;

42 (5) To collect and disseminate information relating to
43 water pollution and the control and reduction thereof;

44 (6) To develop a public education and promotion pro-
45 gram to aid and assist in publicizing the need and secur-
46 ing support for pollution control and abatement;

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

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

52 (9) To exercise general supervision over the adminis-
53 tration and enforcement of the provisions of this article,
54 and all orders issued pursuant to the provisions of this
55 article; and

56 (10) In cooperation with the college of engineering
57 at West Virginia university, to conduct studies, scientific
58 or other investigations, research, experiments and
59 demonstrations in an effort to discover economical and
60 practical methods for the elimination, disposal, control
61 and treatment of sewage, industrial wastes, and other
62 wastes, and the control and reduction of water pollution,

63 and to this end, the chief may cooperate with any public
64 or private agency and receive therefrom, on behalf of
65 the state, and for deposit in the state treasury, any moneys
66 which such agency may contribute as its part of the
67 expenses thereof, and all gifts, donations or contributions
68 received as aforesaid shall be expended by the chief ac-
69 cording to the requirements or directions of the donor
70 or contributor without the necessity of an appropriation
71 therefor, except that an accounting thereof shall be made
72 in the fiscal reports of the department.

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

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

82 (2) To promulgate rules and regulations, in accordance
83 with the provisions of chapter twenty-nine-a of this code,

84 to implement and make effective the powers, duties and
85 responsibilities vested in the board and the chief by the
86 provisions of this article and otherwise by law: *Provided*,
87 That all such rules and regulations shall be consistent
88 with the declaration of public policy set forth in section
89 one of this article.

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

97 (d) The board, any member thereof and the chief,
98 and their duly authorized representatives, shall have
99 the power and authority to make investigations, inspec-
100 tions and inquiries concerning compliance with the pro-
101 visions of this article, any order made and entered in
102 accordance with the provisions of this article, any rule
103 or regulation promulgated by the board, and with the
104 terms and conditions of any permit issued in accordance

105 with the provisions of section seven of this article. In
106 order to make such investigations, inspections and in-
107 quires, the board, any member thereof and the chief,
108 and their duly authorized representatives, shall have the
109 power and authority to enter at all reasonable times upon
110 any private or public property, subject to responsibility
111 for any damage to the property entered. Upon entering,
112 and before making any investigation, inspection and in-
113 quiry, such person shall immediately present himself to
114 the occupant of the property. Upon entering property
115 used in any manufacturing, mining or other commercial
116 enterprise, or by any municipality or governmental
117 agency or subdivision, and before making any investiga-
118 tion, inspection and inquiry, such person shall imme-
119 diately present himself to the person in charge of the
120 operation, and if he is not available, to a managerial
121 employee. All persons shall cooperate fully with the
122 person entering such property for such purposes. Upon
123 refusal of the person owning or controlling such property
124 to permit such entrance or the making of such inspections,
125 investigations and inquiries, the board or the chief may

126 apply to the circuit court of the county in which such
127 property is located, or to the judge thereof in vacation,
128 for an order permitting such entrance and the making
129 of such inspections, investigations and inquiries; and
130 jurisdiction is hereby conferred upon such court to enter
131 such order upon a showing that the relief asked is neces-
132 sary for the proper enforcement of this article: *Pro-*
133 *vided, however,* That a dwelling occupied for residential
134 purposes shall not be entered without a search warrant.

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

Sec. 4. Cooperation with Other Governments and

2 **Agencies.**—The division of water resources is hereby de-
3 signated as the water pollution control agency for this
4 state for all purposes of the federal water pollution con-
5 trol act, public law six hundred sixty, eighty-fourth Con-
6 gress, approved July ninth, one thousand nine hundred
7 fifty-six, as amended by public law eighty-seven—eighty-
8 eight, eighty-seventh Congress, approved July twentieth,
9 one thousand nine hundred sixty-one, and subsequent
10 amendatory provisions thereof, all hereinafter called the
11 “Federal act”, and is hereby authorized to take all action
12 necessary or appropriate to secure to this state the bene-
13 fits of said act. In carrying out the purposes of this
14 section, the chief, in addition to any other action which
15 may be necessary or appropriate, is hereby authorized
16 to cooperate with the surgeon general of the United
17 States public health service, other agencies of the federal
18 government, other states, interstate agencies and other
19 interested parties in all matters relating to water pollu-
20 tion, including the development of programs for con-
21 trolling and reducing water pollution and improving the
22 sanitary conditions of waters; to apply for and receive,

23 on behalf of this state, funds made available to the divi-
24 sion under the aforesaid federal act by any agency of
25 the federal government, on condition that all moneys
26 received from any federal agency as herein provided
27 shall be paid into the state treasury and shall be expended,
28 under the direction of the chief, solely for the purpose
29 or purposes for which the grant or grants shall have
30 been made; to approve projects for which application
31 for loans or grants under the federal act is made by any
32 municipality (including any city, town, district or other
33 public body created by or pursuant to the laws of this
34 state and having jurisdiction over the disposal of sewage,
35 industrial wastes, or other wastes) or agency of this
36 state or by any interstate agency; and to participate
37 through his authorized representatives in proceedings
38 under the federal act to recommend measures for the
39 abatement of water pollution originating in this state.
40 The governor is hereby authorized, in his discretion, to
41 give consent on behalf of this state to requests by the
42 secretary of the United States department of health, edu-
43 cation and welfare to the attorney general of the United

44 States for the bringing of actions for the abatement of
45 such pollution. Whenever a federal law requires the
46 approval or recommendation of a state agency or any
47 political subdivision of the state in any matter relating
48 to the water resources of the state, the director, subject
49 to approval of the Legislature, is hereby designated as
50 the sole person to give the approval or recommendation
51 required by the federal law, unless the federal law spe-
52 cifically requires the approval or recommendation of
53 some other state agency or political subdivision of the
54 state.

Sec. 19-a. Civil Liability.—If any loss of game fish or
2 aquatic life results from a person's or persons' failure or re-
3 fusal to discharge any duty imposed upon him by this arti-
4 cle, the West Virginia department of natural resources shall
5 have a cause of action on behalf of the state of West Virginia
6 to recover from such person or persons causing such loss a
7 sum equal to the cost of replacing such game fish or ac-
8 quatic life. Any moneys so collected by the director shall
9 be deposited in a special revenue fund entitled "Natural
10 Resources Game Fish and Aquatic Life Fund" and shall be

11 expended as hereinafter provided. The fund shall be
12 expended to stock waters of this state with game fish
13 and aquatic life. Where feasible, the director shall use
14 any sum collected in accordance with the provisions of
15 this section to stock waters in the area in which the loss
16 resulting in the collection of such sum occurred. Any
17 balance of such sum shall remain in said fund and be
18 expended to stock state owned and operated fishing lakes
19 and ponds, wherever located in this state, with game fish
20 and **aquatic life.**

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

A. Rayfarber
Chairman Senate Committee

James W. Loop
Chairman House Committee

Originated in the Senate.

Takes effect *from* _____ Passage.
Howard K. Lee
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

H. Leban White
Speaker House of Delegates

The within *approved* this the *19*
day of *March*, 1965.

Hubert C. Smith
Governor



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