

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967



ENROLLED

HOUSE BILL No. 575

(By Mr. Speaker, Mr. White, and  
Mr. Edgar)



PASSED March 11, 1967

In Effect Ninety days for Passage

#575



FILED IN THE OFFICE  
ROBERT D. BAILEY  
SECRETARY OF STATE  
THIS DATE 3-20-67

**ENROLLED**

**Com. Sub. for House Bill No. 575**

(By MR. SPEAKER, MR. WHITE, and MR. EDGAR)

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[Passed March 11, 1967; in effect ninety days from passage.]

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AN ACT to amend article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one-a, and to amend and reenact sections one, two, three, five, seven, ten, twelve, fifteen, sixteen, seventeen and nineteen, article five-a of said chapter, relating to water resources, the water pollution control act, and to a statement of the purpose of the act, definitions of terms used in the act, the general powers and duties of the chief of the division of water resources and the water resources board with respect to water pollution, requirements for permits for specified activities, applications for and forms of permits, permit fees, procedures con-

cerning permits, the transfer of permits, orders of the chief to stop or prevent discharges or deposits, orders of the chief to take remedial action, service of orders, duty to proceed with remedial action upon receipt of permit, progress reports, finances and funds, appeals to and review procedures before the water resources board, circuit courts and the supreme court of appeals, actions to abate nuisances, injunctive relief, violations, and criminal penalties.

*Be it enacted by the Legislature of West Virginia:*

That article five, chapter twenty of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one-a, and that sections one, two, three, five, seven, ten, twelve, fifteen, sixteen, seventeen and nineteen, article five-a of said chapter be amended and reenacted, to read as follows:

**ARTICLE 5. WATER RESOURCES.**

**§20-5-1a. Declaration of policy.**

1 It is declared to be the public policy of this state that  
2 the water resources of this state with respect to the  
3 quantity thereof shall be available for reasonable use  
4 by all of the citizens of this state; and that such use

5 shall be subject to the provisions of article five-a of this  
6 chapter.

**ARTICLE 5A. WATER POLLUTION CONTROL ACT.**

**§20-5A-1. Declaration of policy.**

1 It is declared to be the public policy of the state of  
2 West Virginia to maintain reasonable standards of purity  
3 and quality of the water of the state consistent with (1)  
4 public health and public enjoyment thereof; (2) the  
5 propagation and protection of animal, bird, fish, aquatic  
6 and plant life; and (3) the attraction, development,  
7 maintenance and expansion of agriculture, mining, manu-  
8 facturing and other business and industry.

**§20-5A-2. Definitions**

1 Unless the context in which used clearly requires a  
2 different meaning, as used in this article:

3 (a) "Director" shall mean the director of the depart-  
4 ment of natural resources:

5 (b) "Board" shall mean the state water resources  
6 board;

7 (c) "Chief" shall mean the chief of the division of  
8 water resources of the department of natural resour-  
9 ces;

10 (d) "Person," "persons" or "applicant" shall mean  
11 any public or private corporation, institution, association,  
12 firm or company organized or existing under the laws of  
13 this or any other state or country; state of West Vir-  
14 ginia; governmental agency; political subdivision; county  
15 court; municipal corporation; industry; sanitary district;  
16 public service district; drainage district; soil conserva-  
17 tion district; watershed improvement district; partner-  
18 ship; trust; estate; person or individual; group of per-  
19 sons or individuals acting individually or as a group;  
20 or any other legal entity whatever;

21 (e) "Water resources," "water" or "waters" shall  
22 mean any and all water on or beneath the surface of  
23 the ground, whether percolating, standing, diffused or  
24 flowing, wholly or partially within this state, or border-  
25 ing this state and within its jurisdiction, and shall in-  
26 clude, without limiting the generality of the foregoing,  
27 natural or artificial lakes, rivers, streams, creeks,  
28 branches, brooks, ponds (except farm ponds, industrial  
29 settling basins and ponds and water treatment facil-  
30 ities), impounding reservoirs, springs, wells and water-  
31 courses;

32 (f) "Pollution" shall mean the discharge or deposit,  
33 directly or indirectly, of sewage, industrial wastes, or  
34 other wastes, of whatever kind or character, in or near  
35 any waters of the state, in such condition, manner or  
36 quantity, as does, will, or is likely to (1) contaminate or  
37 substantially contribute to the contamination of any  
38 of such waters, or (2) alter or substantially contribute  
39 to the alteration of the physical, chemical or biological  
40 properties of any of such waters, if such contamination  
41 or alteration, or the resulting contamination or alter-  
42 ation where a person only contributes thereto, is to such  
43 an extent as to make any of such waters (i) directly  
44 or indirectly harmful, detrimental or injurious to the  
45 public health, safety and welfare, or (ii) directly or  
46 indirectly detrimental to existing animal, bird, fish,  
47 aquatic or plant life, or (iii) unsuitable for present or  
48 future domestic, commercial, industrial, agricultural,  
49 recreational or other legitimate uses;

50 (g) "Sewage" shall mean water-carried human or  
51 animal wastes from residences, buildings, industrial es-  
52 tablishments or other places, together with such ground

53 water infiltration and surface water as may be pres-  
54 ent;

55 (h) "Industrial wastes" shall mean any liquid, gas-  
56 eous, solid or other waste substance, or a combination  
57 thereof, resulting from any process of industry, manu-  
58 facturing, trade or business, or from the development,  
59 processing or recovery of any natural resources; and  
60 the admixture with such industrial wastes of sewage,  
61 or other wastes, as hereinafter defined, shall also be  
62 considered "industrial wastes" within the meaning of  
63 this article;

64 (i) "Other wastes" shall mean garbage, refuse, de-  
65 cayed wood, sawdust, shavings, bark, and other wood  
66 debris and residues, sand, lime, cinders, ashes, offal,  
67 night soil, silt, oil, tar, dyestuffs, acids, chemicals, and  
68 all other materials and substances not sewage or in-  
69 dustrial wastes which may cause or might reasonably  
70 be expected to cause or to contribute to the pollution  
71 of any of the waters of the state;

72 (j) "Establishment" shall mean an industrial estab-  
73 lishment, mill, factory, tannery, paper or pulp mill,

74 mine, colliery, breaker or mineral processing operation,  
75 quarry, refinery, and each and every industry or plant  
76 or works in the operation of which industrial wastes, or  
77 other wastes are produced;

78 (k) "Sewer system" shall mean pipelines or con-  
79 ducts, pumping stations, and force mains, and all other  
80 constructions, facilities, devices and appliances appur-  
81 tenant thereto, used for collecting or conducting sewage,  
82 industrial wastes, or other wastes to a point of disposal  
83 or treatment;

84 (l) "Treatment works" shall mean any plant, fa-  
85 cility, means, system, disposal field, lagoon, pumping  
86 station, constructed drainage ditch or surface water  
87 intercepting ditch, diversion ditch above or below the  
88 surface of the ground, settling tank or pond, inciner-  
89 ator, area devoted to sanitary landfills, or other works  
90 not specifically mentioned herein, installed for the pur-  
91 pose of treating, neutralizing, stabilizing, holding or dis-  
92 posing of sewage, industrial wastes, or other wastes  
93 and/or for the purpose of regulating or controlling the  
94 quality and rate of flow thereof;

95 (m) "Disposal system" shall mean a system for dis-  
96 posing of sewage, industrial wastes, or other wastes, and  
97 shall be construed to include sewer systems and treat-  
98 ment works;

99 (n) "Outlet" shall mean the terminus of a sewer sys-  
100 tem or the point of emergence of any water-carried  
101 sewage, industrial wastes, or other wastes, or the effluent  
102 therefrom, into any of the waters of this state;

103 (o) "Activity" or "activities" shall mean any activity  
104 or activities for which a permit is required by the pro-  
105 visions of section five of this article; and

106 (p) "Code" shall mean the code of West Virginia,  
107 one thousand nine hundred thirty-one, as amended.

**§20-5A-3. General powers and duties of chief of division and  
board with respect to water pollution.**

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

7 (1) To encourage voluntary cooperation by all per-  
8 sons in controlling and reducing the pollution of the  
9 waters of this state, and to advise, consult and cooperate  
10 with all persons, all agencies of this state, the federal  
11 government or other states, and with interstate agencies  
12 in the furtherance of the purposes of this article, and  
13 to this end and for the purpose of studies, scientific  
14 or other investigations, research, experiments and dem-  
15 onstrations pertaining thereto, the department may re-  
16 ceive moneys from such agencies, officers and persons  
17 on behalf of the state: *Provided*, That the department  
18 shall pay all moneys so received into a special fund  
19 hereby created in the state treasury, which fund shall  
20 be expended under the direction of the chief solely for  
21 the purpose or purposes for which the grant, gift or con-  
22 tribution shall have been made;

23 (2) To encourage the formulation and execution of  
24 plans by cooperative groups or associations of municipal  
25 corporations, industries, and other users of waters of  
26 the State, who, jointly or severally, are or may be the

27 source of pollution of the same waters, for the control  
28 and reduction of pollution;

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

36 (4) To study and investigate all problems concern-  
37 ing water flow, water pollution and the control and  
38 reduction of such pollution, and to make reports and  
39 recommendations with respect thereto;

40 (5) To collect and disseminate information relating  
41 to water pollution and the control and reduction there-  
42 of;

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

46 (7) To sample ground and surface water with suffi-  
47 cient frequency to ascertain the standards of purity

48 or quality from time to time of the waters of the  
49 state;

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

52 (9) To exercise general supervision over the admin-  
53 istration 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, scien-  
58 tific 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  
66 moneys which such agency may contribute as its part  
67 of the expenses thereof, and all gifts, donations or con-  
68 tributions received as aforesaid shall be expended by

69 the chief according to the requirements or directions of  
70 the donor or contributor without the necessity of an  
71 appropriation therefor, except that an accounting thereof  
72 shall be made 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 exer-  
76 cise the following powers and authority and shall perform  
77 the following duties:

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

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

88 (c) The board is hereby authorized to hire one or  
89 more individuals to serve as hearing examiners on a

90 full or part-time basis. Such individuals may be attorneys  
91 at law admitted to practice before any circuit court of  
92 this state. All such hearing examiners shall be indi-  
93 viduals authorized to take depositions under the laws of  
94 this state.

95 (d) The board, any member thereof and the chief,  
96 and their duly authorized representatives, shall have the  
97 power and authority to make investigations, inspections  
98 and inquiries concerning compliance with the provi-  
99 sions of this article, any order made and entered in  
100 accordance with the provisions of this article, any rule  
101 or regulation promulgated by the board, and with the  
102 terms and conditions of any permit issued in accordance  
103 with the provisions of section seven of this article. In  
104 order to make such investigations, inspections and in-  
105 quiries, the board, any member thereof and the chief,  
106 and their duly authorized representatives, shall have  
107 the power and authority to enter at all reasonable times  
108 upon any private or public property, subject to respon-  
109 sibility for their own safety and for any damage to the  
110 property entered. All persons shall cooperate fully with

111 the person entering such property for such purposes.  
112 Upon refusal of the person owning or controlling such  
113 property to permit such entrance or the making of such  
114 inspections, investigations and inquiries, the board or  
115 the chief may apply to the circuit court of the county in  
116 which such property is located, or to the judge thereof  
117 in vacation, for an order permitting such entrance and  
118 the making of such inspections, investigations and in-  
119 quires; and jurisdiction is hereby conferred upon such  
120 court to enter such order upon a showing that the relief  
121 asked is necessary for the proper enforcement of this  
122 article: *Provided, however,* That a dwelling occupied  
123 for residential purposes shall not be entered without a  
124 search warrant.

125 (e) The board is hereby authorized and empowered  
126 to investigate and ascertain the need and factual bases for  
127 the establishment of public service districts as a means  
128 of controlling and reducing pollution from unincorporated  
129 communities and areas of the state, and to present re-  
130 ports and recommendations thereon to the county court  
131 or courts of the areas concerned, together with a re-

132 quest that such county court or courts create a public  
133 service district, or districts, as therein shown to be needed  
134 and required and as provided in article thirteen-a, chap-  
135 ter sixteen of this code.

**§20-5A-5. When permits required.**

1 (a) It shall be unlawful for any person, until the  
2 department's permit therefor has been granted, to:

3 (1) Allow sewage, industrial wastes, or other wastes,  
4 or the effluent therefrom, produced by or emanating  
5 from an establishment to flow into the waters of this  
6 state;

7 (2) Make, cause or permit to be made any outlet,  
8 or substantially enlarge or add to the load of any exist-  
9 ing outlet, for the discharge of sewage, industrial wastes,  
10 or other wastes, or the effluent therefrom, into the waters  
11 of this state;

12 (3) Acquire, construct, install or operate a disposal  
13 system for the direct or indirect discharge or deposit  
14 of sewage, industrial wastes, or other wastes or the efflu-  
15 ent therefrom, into the waters of this state, or;

16 (4) Substantially extend, modify or add to a new  
17 or existing disposal system for the direct or indirect

18 discharge or deposit of sewage, industrial wastes, or other  
19 wastes or the effluent therefrom, in the waters of this  
20 state.

21 (b) Where a person has a number of outlets emerg-  
22 ing into the waters of this state in close proximity to one  
23 another, such outlets may be treated as a unit for the  
24 purposes of this section, and only one permit issued for  
25 all of such outlets.

26 (c) Unless such permit was obtained and remains  
27 in full force and effect, it shall also be unlawful for any  
28 person to operate or use any such outlet, or to operate  
29 or use such disposal system, or to operate or use such  
30 extension or modification of, or addition to, such new  
31 or existing disposal system.

**§20-5A-7. Procedure concerning permits required under arti-  
cle; transfer of permits.**

1 (a) The director of the division of sanitary engineer-  
2 ing shall promptly make his determination concerning  
3 the health aspects of any proposed activity relating solely  
4 to sewage. If the plans and specifications of the pro-  
5 posed activity are in accord with all reasonable require-

6 ments of the department of health, the director of the  
7 division of sanitary engineering shall approve the appli-  
8 cation and issue the department of health's certificate  
9 or permit therefor. If the application is approved, the  
10 director of the division of sanitary engineering shall  
11 promptly forward his department's certificate or permit,  
12 together with the application and the information and  
13 data submitted therewith, to the division of water re-  
14 sources for the action of the chief thereof. Any denial  
15 of the application by the director of the division of sani-  
16 tary engineering shall be governed by the provisions  
17 of chapter sixteen of this code and not by the provisions  
18 of this article.

19 (b) The chief and his duly authorized representa-  
20 tives shall conduct such investigation as is deemed  
21 necessary and proper in order to determine whether  
22 any such application should be granted or denied.

23 (c) The department's permit shall be issued upon  
24 such reasonable terms and conditions as the chief may  
25 direct if (1) the certificate or permit of the depart-  
26 ment of health was issued (in those cases where the

27 director of the division of sanitary engineering was re-  
28 quired to act as aforesaid) and/or (2) the application,  
29 together with all supporting information and data and  
30 other evidence, establishes that any and all discharges  
31 or deposits of sewage, industrial wastes, or other wastes  
32 or the effluent therefrom resulting from such proposed  
33 activity will be treated and the quality and rate of  
34 flow thereof regulated or controlled to the fullest extent  
35 technically feasible in view of modern technology and  
36 scientific methods for the treatment, regulation or con-  
37 trol of sewage, industrial wastes, or other wastes, or  
38 the effluent therefrom.

39 (d) An application for a permit incident to remedial  
40 action in accordance with the provisions of section  
41 eleven of this article shall be processed and decided  
42 as any other application for a permit to acquire, con-  
43 struct, install or operate a disposal system, or to ex-  
44 tend, modify or add to a new or existing disposal  
45 system.

46 (e) An application for any such permit shall be  
47 acted upon by the chief (and by the director of the

48 division of sanitary engineering of the state depart-  
49 ment of health in those cases in which such director  
50 is by this section required to act) and the department's  
51 permit (and the certificate or permit of the department  
52 of health where the proposed activity relates solely  
53 to sewage) delivered or mailed, or a copy of any order  
54 of the chief denying any such application mailed as  
55 hereinafter specified, as the case may be, to the appli-  
56 cant by the chief within forty-five days after the date  
57 upon which such complete application was received for  
58 the applicant by the division of sanitary engineering  
59 or within thirty days after the date upon which such  
60 complete application was received from the applicant  
61 by the division of water resources. Every effort shall  
62 be made by the division of sanitary engineering and  
63 the division of water resources to expedite all applica-  
64 tions.

65 (f) When it is established that an application for a  
66 permit should be denied, the chief shall make and enter  
67 an order to that effect, which order shall specify the

68 reasons for such denial, and shall cause a copy of such  
69 order to be served on the applicant by registered or  
70 certified mail. The chief shall also cause a notice to  
71 be served with the copy of such order, which notice  
72 shall advise the applicant of his right to appeal to the  
73 board by filing a notice of appeal, on the form pre-  
74 scribed by the board for such purpose, with the board,  
75 in accordance with the provisions of section fifteen of  
76 this article, within thirty days after the date upon which  
77 the applicant received the copy of such order. How-  
78 ever, an applicant may alter the plans and specifications  
79 for the proposed activity and submit a new application  
80 for any such permit, in which event the procedure here-  
81 inbefore outlined with respect to an original application  
82 shall apply.

83     Upon the sale of property which includes an activity  
84 for which the department's permit was granted, the  
85 permit shall be transferable to the new owner, but the  
86 transfer shall not become effective until it is made in the  
87 records of the division of water resources.

**§20-5A-10. Orders of chief to stop or prevent discharges or deposits or take remedial action; service of orders.**

1 If the chief, on the basis of investigations, inspections  
2 and inquiries, determines that any person is causing the  
3 pollution of any of the waters of the state, or does on  
4 occasions cause pollution by not regulating and con-  
5 trolling the quality and rate of flow of sewage, indus-  
6 trial wastes, or other wastes or the effluent therefrom,  
7 or otherwise, and that the same should be controlled  
8 or reduced, considering existing permits, the amount  
9 and effect of such pollution, the technical feasibility of  
10 controlling or reducing such pollution, the health and  
11 welfare of the public and other present and future uses  
12 of the waters in question, he shall make and enter an  
13 order directing such person in the alternative to either  
14 (1) stop or prevent such discharges or deposits of sew-  
15 age, industrial wastes, or other wastes or the effluent  
16 therefrom determined to be causing such pollution, or  
17 (2) take remedial action by acquiring, constructing or  
18 installing, and using and operating a new disposal sys-  
19 tem, or extending, modifying or adding to an existing

20 disposal system so as to control or reduce such pollu-  
21 tion, by treating and/or regulating or controlling the  
22 quantity and rate of flow of any and all discharges or  
23 deposits of sewage, industrial waste, or other wastes or  
24 the effluent therefrom to the fullest extent technically  
25 feasible in view of modern technology and scientific  
26 methods for the treatment, regulation or control of sew-  
27 age, industrial wastes, or other wastes or the effluent  
28 therefrom and with regard for the rights and interests  
29 of all persons concerned: *Provided*, That, if the chief  
30 shall find that such person has been convicted of two  
31 or more prior violations of the provisions of this ar-  
32 ticle, the chief shall make and enter an order directing  
33 such person to stop or prevent such discharges or de-  
34 posits of sewage, industrial wastes or other wastes or  
35 the effluent therefrom determined to be causing such pol-  
36 lution. The chief shall fix a reasonable time in such  
37 order by which any and all such discharges or deposits  
38 must stop or be prevented or any such remedial action  
39 must be completed. Such order shall also direct such  
40 person to apply forthwith for a permit in accordance

41 with the provisions of sections five, six, and seven of  
42 this article.

43 The chief shall cause a copy of any such order to be  
44 served by registered or certified mail or by a conserva-  
45 tion officer or other law enforcement officer upon such  
46 person. The chief shall also cause a notice to be served  
47 with the copy of such order, which notice shall advise  
48 such person of his right to appeal to the board by filing  
49 a notice of appeal, on the form prescribed by the board  
50 for such purpose, with the board, in accordance with  
51 the provisions of section fifteen of this article.

52 In the sole discretion of the chief, he may postpone  
53 issuing any such order if he feels such pollution can  
54 best be controlled or reduced by cooperative efforts with  
55 the persons or persons responsible therefor.

**§20-5A-12. Duty to proceed with remedial action promptly  
upon receipt of permit; progress reports required;  
finances and funds.**

1 When such person elects to comply with such final  
2 order by taking remedial action, such person shall im-  
3 mediately after receipt of such permit, take or begin

4 appropriate steps or proceedings to carry out such rem-  
5 edial action. In any such case it shall be the duty of  
6 each individual offender, each member of a partner-  
7 ship, each member of the governing body of a municipi-  
8 pal corporation and each member of the board of di-  
9 rectors or other governing body of a private corpora-  
10 tion, association or other legal entity whatever, upon  
11 receipt of such permit by such individual, partnership,  
12 municipal corporation, private corporation, association  
13 or other legal entity whatever, to see that appropriate  
14 steps or proceedings to comply with such order are  
15 taken or begun immediately after such receipt. The  
16 chief may require progress reports, at such time inter-  
17 vals as he deems necessary, setting forth the steps taken,  
18 the proceedings started and the progress made toward  
19 completion of such remedial action. All such remedial  
20 action shall be diligently prosecuted to completion.

21 Failure of the governing body of a municipal corpora-  
22 tion, or the board of directors or other governing body  
23 of any private corporation, association, or other legal  
24 entity whatever, to provide immediately for the financ-

25 ing and carrying out of such remedial action, as may  
26 be necessary to comply with said order, by appropriate  
27 ordinance or resolution shall constitute failure to take  
28 or begin appropriate steps or proceedings to comply  
29 with such order. If such person be a municipal cor-  
30 poration, the cost of all such remedial action as may be  
31 necessary to comply with said order shall be paid out  
32 of funds on hand available for such purpose, or out of  
33 the general funds of such municipal corporation, not  
34 otherwise appropriated, and if there be not sufficient  
35 funds on hand or unappropriated, then the necessary  
36 funds shall be raised by the issuance of bonds, any direct  
37 general obligation bond issue to be subject to the ap-  
38 proval of the state sinking fund commission and the  
39 attorney general of the State of West Virginia.

40 If the estimated cost of the remedial action to be taken  
41 by a municipal corporation to comply with such final  
42 order is such that any bond issue necessary to finance  
43 such action would not raise the total outstanding bonded  
44 indebtedness of such municipal corporation in excess  
45 of the constitutional limit imposed upon such indebted-

46 ness by the constitution of this state, then and in that  
47 event the necessary bonds may be issued as a direct  
48 obligation of such municipal corporation, and retired  
49 by a general tax levy to be levied against all property  
50 within the limit of such municipal corporation listed  
51 and assessed for taxation. If the amount of such bonds  
52 necessary to be issued would raise the total outstand-  
53 ing bonded indebtedness of such municipal corporation  
54 above said constitutional limitation on such indebted-  
55 ness, or if such municipal corporation by its governing  
56 body shall decide against the issuance of direct obliga-  
57 tion bonds, then such municipal corporation shall issue  
58 revenue bonds and provide for the retirement thereof  
59 in the same manner and subject to the same conditions  
60 as provided for the issuance and retirement of bonds  
61 in chapter twenty-five, acts of the Legislature, first ex-  
62 traordinary session, one thousand nine hundred thirty-  
63 three, and any amendment thereof: *Provided*, That the  
64 provisions of section six of the abovementioned act, al-  
65 lowing objections to be filed with the governing body,  
66 and providing that a written protest of thirty per cent

67 or more of the owners of real estate shall require a four-  
68 fifths vote of the governing body for the issuance of said  
69 revenue bonds, shall not apply to bond issues proposed  
70 by any municipal corporation to comply with a final  
71 order made and entered under the authority of this  
72 article, and such objections and submission of written  
73 protest shall not be authorized, nor shall the same, if  
74 made or had, operate to justify or excuse failure to com-  
75 ply with such final order.

76 The funds made available by the issuance of either  
77 direct obligation bonds or revenue bonds, as herein pro-  
78 vided, shall constitute a "sanitary fund," and shall be  
79 used for no other purpose than for carrying out such  
80 final order; no public money so raised shall be ex-  
81 pended by any municipal corporation for any purpose  
82 enumerated in this article, unless such expenditure and  
83 the amount thereof have been approved by the board.  
84 The acquisition, construction or installation, use and  
85 operation, repair, modification, alteration, extension,  
86 equipment, custody and maintenance of any disposal sys-  
87 tem by any municipal corporation, as herein provided,

88 and the rights, powers and duties with respect thereto,  
89 of such municipal corporation and the respective offi-  
90 cers and departments thereof, whether the same shall  
91 be financed by the issuance of revenue or direct obli-  
92 gation bonds, shall be governed by the provisions of said  
93 chapter twenty-five, acts of the Legislature, first extra-  
94 ordinary session, one thousand nine hundred thirty-  
95 three, and any amendments thereof.

**§20-5A-15. Appeal to water resources board.**

1 (a) Any person adversely affected by an order made  
2 and entered by the chief in accordance with the provi-  
3 sions of this article, or aggrieved by failure or refusal  
4 of the chief to act within the time required by section  
5 seven of this article on an application for a permit or  
6 aggrieved by the terms and conditions of a permit  
7 granted under the provisions of this article, may appeal  
8 to the water resources board for an order vacating or  
9 modifying such order, or for such order, action or terms  
10 and conditions as the chief should have entered, taken  
11 or imposed. The person so appealing shall be known as

12 the appellant and the chief shall be known as the appel-  
13 lee.

14 (b) Such appeal shall be perfected by filing a notice  
15 of appeal, on the form prescribed by the board for such  
16 purpose, with the board within thirty days after the date  
17 upon which the appellant received the copy of such  
18 order or received such permit, as the case may be. The  
19 filing of the notice of appeal shall not stay or suspend  
20 the execution of the order appealed from: *Provided,*  
21 That if it appears to the director or the board that an  
22 unjust hardship to the appellant will result from the  
23 execution of the chief's order pending determination of  
24 the appeal, the director or the board may grant a sus-  
25 pension of such order and fix its terms. The notice of  
26 appeal shall set forth the order or terms and conditions  
27 complained of and the grounds upon which the appeal is  
28 based. A copy of the notice of appeal shall be filed by the  
29 board with the chief within three days after the notice of  
30 appeal is filed with the board.

31 (c) Within seven days after receipt of his copy of the  
32 notice of appeal, the chief shall prepare and certify to

33 the board a complete record of the proceedings out of  
34 which the appeal arises including all documents and  
35 correspondence in the chief's file relating to the matter  
36 in question. With the consent of the board and upon  
37 such terms and conditions as the board may prescribe,  
38 any persons affected by any such activity or by such  
39 alleged pollution may by petition intervene as a party  
40 appellant or appellee. The board shall hear the appeal  
41 de novo, and evidence may be offered on behalf of the  
42 appellant and appellee, and, with the consent of the  
43 board, by any intervenors.

44 (d) All of the pertinent provisions of article five,  
45 chapter twenty-nine-a of this code shall apply to and  
46 govern the hearing on appeal authorized by this section  
47 and the administrative procedures in connection with  
48 and following such hearing, with like effect as if the pro-  
49 visions of said article five were set forth in extenso in  
50 this section, with the following modifications or excep-  
51 tions:

52 (1) Unless the board directs otherwise, the appeal

53 hearing shall be held in the city of Charleston, Kana-  
54 wha county, West Virginia; and

55 (2) In accordance with the provisions of section one,  
56 article five of said chapter twenty-nine-a, all of the testi-  
57 mony at any such hearing shall be recorded by steno-  
58 graphic notes and characters or by mechanical means.  
59 Such reported testimony shall in every appeal hearing  
60 under this article be transcribed.

61 (e) Any such appeal hearing shall be conducted by  
62 a quorum of the board, but the parties may by stipula-  
63 tion agree to take evidence before a hearing examiner  
64 employed by the board. Upon request of any party to  
65 the appeal, the evidence taken before a hearing examiner  
66 shall be taken in the county in which the activity is  
67 proposed to take place, or in which the activity is situ-  
68 ate or would be situate upon completion thereof, or in  
69 which the pollution is alleged to have occurred or to be  
70 taking place, as the case may be. For the purpose of  
71 conducting such appeal hearing, any member of the  
72 board and the secretary thereof shall have the power  
73 and authority to issue subpoenas and subpoenas duces

74 tecum in the name of the board, in accordance with the  
75 provisions of section one, article five, chapter twenty-  
76 nine-a of this code. All subpoenas and subpoenas duces  
77 tecum shall be issued and served within the time and  
78 for the fees and shall be enforced, as specified in sec-  
79 tion one, article five of said chapter twenty-nine-a, and  
80 all of the said section one provisions dealing with sub-  
81 poenas and subpoenas duces tecum shall apply to sub-  
82 poenas and subpoenas duces tecum issued for the pur-  
83 poses of an appeal hearing hereunder.

84 (f) Any such hearing shall be held within twenty  
85 days after the date upon which the board received the  
86 timely notice of appeal, unless there is a postponement  
87 or continuance. The board may postpone or continue any  
88 hearing upon its own motion, or upon application of the  
89 appellant, the appellee or any intervenors for good cause  
90 shown. The chief shall be represented at any such hear-  
91 ing by the attorney general or his assistants. At any  
92 such hearing the appellant and any intervenor may  
93 represent himself or be represented by an attorney at

94 law admitted to practice before any circuit court of this  
95 state.

96 (g) After such hearing and consideration of all of  
97 the testimony, evidence and record in the case, the board  
98 shall make and enter an order affirming, modifying  
99 or vacating the order of the chief, or shall make and  
100 enter such order as the chief should have entered, or  
101 shall make and enter an order approving or modifying  
102 the terms and conditions of any permit issued. In de-  
103 termining its course of action, the board shall take into  
104 consideration not only the factors which the chief was  
105 authorized to consider in making his order and in fixing  
106 the terms and conditions of any permit, but also the  
107 economic feasibility of treating and/or controlling the  
108 sewage, industrial wastes or other wastes involved.

109 (h) Such order shall be accompanied by findings of  
110 fact and conclusions of law as specified in section three,  
111 article five, chapter twenty-nine-a of this code, and a  
112 copy of such order and accompanying findings and con-  
113 clusions shall be served upon the appellant, and any  
114 intervenors, and their attorneys of record, if any, and

115 upon the appellee in person or by registered or certified  
116 mail.

117 (i) The board shall also cause a notice to be served  
118 with the copy of such order, which notice shall advise  
119 the appellant, the appellee and any intervenors of their  
120 right to judicial review, in accordance with the provi-  
121 sions of section sixteen of this article. The order of the  
122 board shall be final unless vacated or modified upon  
123 judicial review thereof in accordance with the provisions  
124 of section sixteen of this article.

**§20-5A-16. Judicial review.**

1 (a) Any person or the chief adversely affected by a  
2 final order made and entered by the board after such  
3 appeal hearing, held in accordance with the provisions  
4 of section fifteen of this article, is entitled to judicial  
5 review thereof. All of the pertinent provisions of sec-  
6 tion four, article five, chapter twenty-nine-a of this code  
7 shall apply to and govern such review with like effect  
8 as if the provisions of said section four were set forth  
9 in extenso in this section, with the following modifica-  
10 tions or exceptions:

11 (1) As to cases involving an order denying an appli-  
12 cation for a permit, or approving or modifying the terms  
13 and conditions of a permit, the petition shall be filed,  
14 within the time specified in said section four, in the  
15 circuit court of the county in which any activity or  
16 activities are proposed to take place;

17 (2) As to cases involving an order revoking or sus-  
18 pending a permit and directing any and all work on  
19 any such activity to stop or suspending such work, or  
20 directing all discharges or deposits of sewage, indus-  
21 trial wastes, or other wastes or the effluent therefrom  
22 resulting from any such activity to stop or suspending  
23 such discharges or deposits, or directing that affirmative  
24 action be taken to correct alleged and specified deficien-  
25 cies concerning any such activity, the petition shall be  
26 filed, within the time specified in said section four, in  
27 the circuit court of the county in which any such activity  
28 or activities are situate or would be situate upon com-  
29 pletion thereof; and

30 (3) As to cases involving an order directing that  
31 any and all discharges or deposits of sewage, industrial

32 wastes, or other wastes or the effluent therefrom de-  
33 termined to be causing pollution be stopped or prevented  
34 or else that remedial action be taken, the petition shall  
35 be filed, within the time specified in said section four,  
36 in the circuit court of the county in which the pollution  
37 is alleged to have occurred or to be taking place.

38 (b) The judgment of the circuit court shall be final  
39 unless reversed, vacated or modified on appeal to the  
40 supreme court of appeals, in accordance with the pro-  
41 visions of section one, article six, chapter twenty-nine-a  
42 of this code, except that notwithstanding the provisions  
43 of said section one the petition seeking such review must  
44 be filed with said supreme court of appeals within  
45 ninety days from the date of entry of the judgment of  
46 the circuit court.

47 (c) Legal counsel and services for the chief in all  
48 appeal proceedings in the circuit courts and in the su-  
49 preme court of appeals of this state shall be provided  
50 by the attorney general or his assistants and in appeal  
51 proceedings in the circuit courts by the prosecuting  
52 attorneys of the several counties as well, all without

53 additional compensation, or the board or chief, with the  
54 written approval of the attorney general may employ  
55 special counsel to represent the board or chief in a par-  
56 ticular proceeding.

**§20-5A-17. Actions to abate nuisances; injunctive relief.**

1 (a) Whether any violation of the provisions of this  
2 article or the rules and regulations of the board, or any  
3 final order of the chief or the board shall result in  
4 prosecution or conviction or not, any such violation shall  
5 be deemed a nuisance which may be abated upon appli-  
6 cation by the chief to the circuit court of the county  
7 in which such nuisance or any part thereof shall exist,  
8 or to the judge thereof in vacation. Upon application  
9 by the chief, the circuit courts of this state may by  
10 mandatory or prohibitive injunction compel compliance  
11 with the provisions of this article, the rules and regula-  
12 tions of the board, or all final orders of such chief or  
13 board. Any application for an injunction to compel  
14 compliance with any final order of the chief or board  
15 shall be made to the circuit court of the county in which  
16 the activity to which the order relates is proposed to

17 take place, or in which the activity to which the order  
18 relates is situate or would be situate upon completion  
19 thereof, or in which the pollution to which the order  
20 relates is alleged to have occurred or to be taking place,  
21 as the case may be, or the judge thereof in vacation.  
22 Upon application by the chief to the circuit court of  
23 the county in which a municipal corporation is located,  
24 or in which any person resides or does business, or to  
25 the judge thereof in vacation, such court may by in-  
26 junction require the performance of any duty imposed  
27 upon such municipal corporation or persons by the  
28 provisions of this article. The court may issue a tem-  
29 porary injunction in any case pending a decision on  
30 the merits of any application filed.

31 In cases of aggravated pollution where irreparable  
32 damage will result from any delay incident to the ad-  
33 ministrative procedures set forth in this article, the  
34 chief, with the consent of the director, may forthwith  
35 apply to the circuit court of the county in which the  
36 pollution is taking place for a temporary injunction.  
37 Such court may issue a temporary injunction pending

38 final disposition of the case by the chief or the board, in  
39 the event an appeal is taken to the board.

40 The judgment of the circuit court upon any applica-  
41 tion permitted by the provisions of this section shall be  
42 final unless reversed, vacated or modified on appeal to  
43 the supreme court of appeals. Any such appeal shall be  
44 sought in the manner provided by law for appeals from  
45 circuit courts in other civil cases, except that the peti-  
46 tion seeking such review must be filed with said supreme  
47 court of appeals within ninety days from the date of  
48 entry of the judgment of the circuit court.

49 The chief shall be represented in all such proceedings  
50 by the attorney general or his assistants and in such  
51 proceedings in the circuit courts by the prosecuting at-  
52 torneys of the several counties as well, all without ad-  
53 ditional compensation.

**§20-5A-19. Violations; criminal penalties.**

1 Any person who fails or refuses to discharge any duty  
2 imposed upon him by this article or by any rules and  
3 regulations of the board, or by any final order of the  
4 chief or board, or who fails or refuses to apply for and

5 obtain a permit as required by the provisions of this  
6 article, shall be guilty of a misdemeanor, and, upon  
7 conviction thereof, shall be punished for a first offense  
8 by a fine of not less than twenty-five dollars nor more  
9 than one hundred dollars, and for a second offense by a  
10 fine of not less than two hundred dollars nor more  
11 than five hundred dollars, and for a third and each  
12 subsequent offense by a fine of not less than five hundred  
13 dollars nor more than one thousand dollars or by im-  
14 prisonment for a period not to exceed six months, or  
15 in the discretion of the court by both such fine and im-  
16 prisonment. Each day upon which such failure continues  
17 shall constitute a separate offense.

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

*William Tompco*  
Chairman Senate Committee

*Clayton Davidson*  
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

*J. Leonard Myers*  
Clerk of the Senate

*U. Blankenship*  
Clerk of the House of Delegates

*Howard W. Courso*  
President of the Senate

*W. Laban White*  
Speaker House of Delegates

The within *approved* this the *17*  
day of *March*, 1967.

*Hullett C. Smith*  
Governor

**PRESENTED TO THE  
GOVERNOR**

Date 3/12/67

Time 2:50 p.m.