West Virginia Legislature

Regular Session, 1967

Enrolled

House Bill No. 669

(By Mr. Speaker, Mr. White and
Mr. James Y. Brown)

Passed March 9, 1967

In Effect Ninety days from Passage

Filed in the Office
Robert D. Cole
Secretary of State
This Date 3-16-67
ENROLLED

House Bill No. 669
(By MR. SPEAKER, MR. WHITE, and MR. JONES, of Mason)

[Passed March 8, 1967; in effect ninety days from passage.]

AN ACT to amend chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article one-g, providing for ratification of the interstate compact on air pollution between the states of Ohio and West Virginia, for the appointment and terms of the members of the Ohio-West Virginia interstate air pollution control commission, and the powers and duties of such commission.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended, by adding thereto a new article, designated article one-g, to read as follows:
ARTICLE IG. INTERSTATE COMPACT ON AIR POLLUTION.

§29-1G-1. Definitions.

1 As used in this article, unless the context requires otherwise:

2 (1) "Compact" means the interstate compact on air pollution;

3 (2) "Commission" means the Ohio-West Virginia interstate air pollution control commission.

§29-1G-2. Enactment of compact.

1 The "Interstate Compact on Air Pollution" is hereby ratified, enacted into law, and entered into by the state of West Virginia, with the state of Ohio legally joining therein in accordance with its terms, in the form substantially as follows:

"INTERSTATE COMPACT ON AIR POLLUTION

"The contracting states solemnly agree that:

"ARTICLE I

1 "The party states to this compact hereby provide for the control of the interstate movement of air pollutants through the establishment of an interstate agency with powers to prevent, abate, and control interstate air pollution."
“Each of the party states pledges to the other faithful cooperation in the control of air pollution which originates in one state and is injurious to human health or welfare, animal or plant life, or property, or which interferes with the enjoyment of life or property, in the other state.

“The party states recognize that no single standard for outdoor atmosphere is applicable to all areas within the two party states due to such variables as population densities, topographic and climatic characteristics, and existing or projected land use and economic development. The guiding principle of this compact is that air pollution originating within a party state shall not be injurious to human health or welfare, animal or plant life, or property, or interfere with the enjoyment of life or property, in the other party state.

“ARTICLE II

As used in this compact “air pollution” means and shall be limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life,
or property, or which would interfere with the enjoyment of life or property.

"ARTICLE III"

"The party states hereby create the Ohio-West Virginia interstate air pollution control commission, hereafter called 'the commission.'

"The commission shall consist of five commissioners from each party state, each of whom shall be a citizen of the state he represents. The commissioners from each party state shall be chosen by the governor of such state in accordance with the laws of such state, as follows:

"Two of the members from each state shall be chosen from appropriate state agencies, one of whom is the officer responsible for air pollution control, and one of whom is the director of health. Three other members shall be chosen, one of whom is experienced in the field of municipal government, one of whom is experienced in the field of industrial activities, and one of whom represents the public.

"Except for the commissioners who shall be appointed by virtue of the offices which they hold and who may
be commissioners during their continuance in office, the
term of each commissioner shall be five years. How-
ever, the commissioner experienced in the field of munici-
pal government, the commissioner experienced in the
field of industrial activities, and the commissioner ap-
pointed to represent the public shall be appointed, one
for an initial term of one year, one for an initial term
of two years, and one for an initial term of three years.
As the term of each such initial appointee expires,
the successor to fill the vacancy created by such expired
term shall be appointed for a term of five years.
"Vacancies on the commission shall be filled for
the unexpired term in the same manner as appoint-
ments to full terms.
Each commissioner of each party state shall be en-
titled to one vote in the commission. No action of the
commission shall be binding unless taken at a meet-
ing in which a majority of the commissioners from each
party state are present and unless a majority of those
present at the meeting from each party state concur,
but any action not binding for such a reason may be
ratified within thirty days by the concurrence of a majority of the commissioners of each party state. In the absence of any commissioner, his vote may be cast by another commissioner of his state if such commissioner casting the vote shall have a written proxy in such form as may be required by the commission. Any tie or stalemate resulting from the above voting shall be decided by a majority vote of the commissioners from each separate state voting as a unit and the vote of a representative selected by the secretary of the United States department health, education, and welfare, who shall cast the deciding vote.

"The commission may sue and be sued, and shall have a seal.

"The commission shall elect annually, from among its members, a chairman and vice chairman. The commission shall appoint an executive director who shall act as secretary, and who, together with such other commission personnel as the commission may determine, shall be bonded in such amount or amounts as the commission may require.
“Notwithstanding the civil service, personnel, or other merit systems laws of any of the party states, the commission shall appoint, remove or discharge, and fix the compensation of such personnel as may be necessary for the performance of the commission’s functions. To the extent practicable, terms and conditions of employment for members of the staff of the commission shall be similar to those pertaining to comparable employees of the individual party states.

“The commission may establish and maintain, independently or in conjunction with one or more of the party states, a suitable retirement system for its employees. Employees of the commission shall be eligible for social security coverage in respect to old-age and survivors insurance, provided that the commission takes such steps as may be necessary pursuant to federal law to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as may be appropriate to afford employees of the commission terms and conditions of
employment similar to those enjoyed by employees of the party states generally.

"The commission may accept or contract for the services of personnel and other services or materials from any state, the United or any subdivision or agency of either, from any interstate agency, or from any institution, person, firm, or corporation.

"The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and services conditional or otherwise, from the United States, or any agency thereof, from any state or any subdivision or agency thereof, or from any institution, person, firm, or corporation, and may receive, utilize, and dispose of the same. The identity of any donor, the amount and character of any assistance, and the conditions, if any, attached thereto shall be set forth in the annual report of the commission.

"The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and con-
very real and personal property and any interest therein.

"The commission shall have power to formulate and adopt rules and regulations and perform any act which it may find necessary to carry out the provisions of this compact, and to amend such rules and regulations. All such rules and regulations shall be filed in the office of the commission for public inspection and copies of such rules and regulations shall be filed in the office in each party state in which rules and regulations of state agencies are filed and shall thereafter be made available to interested persons upon request.

"The commission annually shall make to the governor and legislature of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been adopted by the commission. The commission may issue such additional reports as it may deem desirable. These reports shall be available for public examination.

"The commission shall have the authority to collect and disseminate information relating to its functions under, and the purpose of, this compact."
"ARTICLE IV

1 "The commission may, whenever it finds air pollution
2 which originates in one of the party states and has an
3 adverse effect in the other party state, make a report
4 recommending measures for the prevention, abatement,
5 or control of any such air pollution. Copies of such re-
6 port shall be furnished to all existing state and local
7 air pollution control agencies with jurisdiction over the
8 source or sources of air pollution identified in the report.
9 In preparing any such report, the commission may confer
10 with any appropriate national, regional, or local plan-
11 ning body, and any governmental agency authorized to
12 deal with matters relating to air pollution problems and
13 may conduct such hearings and investigations as it may
14 deem appropriate. The commission may consult with
15 and advise the states and local governments, corpora-
16 tions, persons, or other entities with regard to the adop-
17 tion of programs and the installation of equipment and
18 works for the prevention, abatement, or control of air
19 pollution. For the enforcement of this compact the com-
mission may also establish standards consistent with the
provisions of this compact and any standards which may be adopted by the party states.

“Before any report of the commission which specifically identifies a particular industrial or other installation, structure, or facility as a source of air pollution becomes final, the commission shall give the owner or operator of such installation, structure, or facility notice by certified mail of the anticipated adoption of such report and shall afford the owner or operator of the installation, structure, or facility not less than ten days after the mailing of such notice to file with the commission its written objections thereto. If no such objections are filed with the commission within such specified period, the report shall become final. If such objections are filed with the commission within such specified period, the commission shall afford such owner or operator not less than ten days from its receipt of such objections to discuss with the commission the findings,
39 conclusions, and recommendations of the report before
40 it is finally adopted by the commission.
41 "Within a reasonable time after the commission fur-
42 nishes a report to the appropriate existing state and local
43 air pollution control agencies pursuant to this Article
44 and, if the recommendations made in such report for
45 the prevention, abatement, or control of air pollution
46 from a specific source or sources have not been imple-
47 mented, or if the appropriate state or local air pollution
48 control agencies have not taken sufficient action to pre-
49 vent, abate, or control the air pollution, the commis-
50 sion may, after a duly conducted and constituted hear-
51 ing, on due notice issue an order or orders upon any mu-
52 nicipality, corporation, person, or other entity causing or
53 contributing to interstate air pollution. At any such hear-
54 ing evidence may be received and a finding made on
55 whether, in fact, interstate air pollution exists and on
56 the sources of such pollution. Any such order or orders
57 may prescribe a time-table for the abatement or con-
58 trol of the air pollution involved. Any such order shall
59 become final and binding unless a petition for review of
the same shall be filed and prosecuted pursuant to the provisions of Article V of this compact.

"In a party state, any court of general jurisdiction in any county in which the air pollution originates or any United States district court for the district in which such pollution originates shall entertain and determine any action or proceeding brought by the commission to enforce an order against any municipality, corporation, person, or other entity domiciled or located within such state and whose discharge of air pollution takes place within or adjoining such state, or against any employee, department, or subdivision of such municipality, corporation, person, or other entity, and shall entertain and determine any petition for review pursuant to the provisions of Article V of this compact.

"ARTICLE V

1 "All hearings held by the commission shall be open to the public. At any hearing held pursuant to Article IV of this compact the party states, any agencies thereof, and any affected person, corporation, municipality, or other entity shall be entitled to appear in per-
6 son or by representative, with or without counsel, and
7 may make oral or written argument, offer testimony,
8 or take any combination of such actions. All testimony
9 taken before the commission shall be under oath and
10 recorded in a written transcript. The transcript so re-
11 corded shall be made available to any member of the
12 public or to any participant in such hearing upon pay-
13 ment of reasonable charges as fixed by the commission.
14 No information relating to secret processes or methods
15 of manufacture or production shall be disclosed at any
16 public hearing or otherwise and all such information
17 shall be kept confidential.
18 "All hearings shall be had before one or more mem-
19 bers of the commission, or before an officer or employee
20 of the commission expressly designated to act as a hear-
21 ing officer.
22 "Any party state or person aggrieved by any order
23 made by the commission shall be entitled to a judicial
24 review thereof. Such review may be had by filing a
25 verified petition in any of the appropriate courts referred
to in Article IV, setting out such order and alleging specifically that said order is:

(a) Arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; or

(b) Contrary to constitutional right, power, privilege, or immunity; or

(c) In excess of authority or jurisdiction conferred by this compact or statutes in implementation hereof; or

(d) Without observance of procedure required by law; or

(e) Not within the purposes of this compact; or

(f) Unsupported by the weight of the evidence.

"The petition for review shall be filed within thirty-five days after receipt of written notice that such order has been issued. Written notice of the filing of a petition for review and a copy of said petition shall be personally served upon the commission. Any party or person filing a petition for review shall, within fifteen days thereafter, secure from the commission a certified copy of the transcript of any hearing or hearings held in connection with the issuance of the order, review of which is sought, and shall file the same with the clerk of the court in which the
action or proceeding for review is pending. An extension of time in which to file a transcript shall be granted by said court in which such action or proceeding for review is pending for good cause shown. Inability to obtain a transcript within the specified time shall be good cause. Failure to file a transcript within the period of fifteen days, or to secure an extension of time therefor, shall be cause for the dismissal of the petition for review by the court or on petition of any party of record to the original action or proceeding. Where more than one person may be aggrieved by the order, only one proceeding for review may be had and the court in which a petition for review is first properly filed shall have jurisdiction.

The court may, for good cause shown, admit and consider additional evidence bearing upon the issue or issues before it.

"No review of a commission order shall be had except in accordance with the provisions of this compact.

"ARTICLE VI

"The commission may establish one or more advisory
and technical committees composed of such as the following: private citizens, expert and lay personnel, representatives of industry, labor, commerce, agriculture, civic associations, and officials of local, state, and federal government, as it may determine, and may cooperate with and use the services of any such committee and the organizations which they represent in furthering any of its activities under this compact.

"ARTICLE VII"

"Nothing in this compact shall be construed to:

(a) Limit or otherwise affect the powers of either party state or any of their subdivisions to enact and enforce laws or ordinances for the prevention, abatement, or control of air pollution within their respective borders.

(b) Limit or otherwise affect the powers of either party state to enter into a compact or compacts with other states for the prevention, abatement, or control of interstate air pollution.

(c) Prevent or restrict either party state or any subdivision thereof in requiring or prescribing measures
of air pollution prevention, abatement, or control in addition to those which may be required by either party state or the commission acting pursuant to this compact.

"ARTICLE VIII"

"The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that state for presentation to the legislature thereof.

Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. Aside from such support as may be available to the commission pursuant to Article III, the cost of operating and maintaining the commission shall be borne equally by the party states.

"The commission may meet any of its obligations in whole or in part with funds available to it under Article III of this compact, provided that the commission takes specific action setting aside such funds prior to the incurring of any obligation to be met in whole or
in part in this manner. Except where the commission makes use of funds available to it under Article III, the commission shall not incur any obligations prior to the allotment of funds by the party states adequate to meet the same.

"The expenses and any other costs for each member of the commission shall be met by the commission in accordance with such standards and procedures as it may establish in its rules and regulations.

"The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its rules and regulations. However, all receipts and disbursements of funds handled by the commission shall be audited yearly by a certified or licensed public accountant and the report of the audit shall be included in and become a part of the annual report of the commission.

"The accounts of the commission shall be open at any reasonable time for inspection by duly constituted offi-
cers of the party states and by any persons authorized
by the commission.

"Nothing contained herein shall be construed to pre-
vent commission compliance with laws relating to audit
or inspection of accounts by or on behalf of any govern-
ment contributing to the support of the commission.

"ARTICLE IX

"This compact shall become effective when enacted
into law by the states of Ohio and West Virginia
and approved by the congress of the United States. The
compact shall continue in force and remain binding upon
each party state until expressly repealed by either party
state, but no such repeal shall take effect until one year
after the enactment of the statute repealing this compact.

"Any order of the commission issued prior to the ter-
mination of this compact shall be enforceable thereafter
by either party state in the same manner as though this
compact were still in force except that any appropriate
office or agency of the enforcing party state may act in
the place and stead of the commission.
"ARTICLE X"

1 "The provisions of this compact shall be reasonably and
2 liberally construed. The provisions of this compact shall
3 be severable and if any phrase, clause, sentence, or pro-
4 vision is declared to be contrary to the constitution of
5 either state or of the United States, or the applicability
6 thereof to any government, agency, person, or circum-
7 stance is held invalid, the validity of the remainder of
8 this compact and the applicability thereof to any gov-
9 ernment, agency, person, or circumstance shall not be
10 affected."

§29-1G-3. Appointment of members of commission; state direc-
tor of health and director of the air pollution com-
mission members ex officio.

1 In pursuance to article three of said compact, there shall
2 be five members of the "Ohio-West Virginia interstate
3 air pollution commission" from the state of West Vir-
4 ginia. The governor, by and with the advice and consent
5 of the senate, shall appoint three persons as three of such
6 commissioners, each of whom shall be a resident and citi-
7 zen of this state. Said three commissioners shall be per-
sons, one of whom is experienced in the field of municipal
government, one of whom is experienced in the field of
industrial activities, and one of whom represents the pub-
lic. The term of one of said three commissioners first
appointed shall be one year, of another shall be two years,
and of the other shall be three years. As the term of each
such initial appointee expires the successor to fill the va-
cancy created by such expired term shall be appointed by
the governor, by and with the advice and consent of the
senate, for terms of five years each. Each commissioner
shall hold office until his successor shall be appointed and
qualified. Vacancies occurring in the office of any such com-
missioner from any reason or cause shall be filled by ap-
pointment by the governor, by and with the advice and
consent of the senate, for the unexpired term. The fourth
commissioner from this state shall be the state director
of health, ex officio, and the fifth commissioner
from this state shall be the director of the air pollution
control commission, ex officio, and the term of any such
ex officio commissioner shall terminate at the time he
ceases to hold said office, and his successor as a commis-
sioner shall be his successor as said state director of health
or director of the air pollution control commission.

These five commissioners, acting jointly with like officers
from the other party state, shall promulgate rules and
regulations to carry out more effectively the terms of the
compact. The commissioners shall cooperate with all
departments, agencies, and officers of and in the govern-
ment of this state and its subdivisions in facilitating the
proper administration of the compact and all such de-
partments, agencies, and officers shall cooperate with the
commissioners.


1 The Legislature may appropriate such funds as it deems
2 necessary to carry out the provisions of this article.

§29-1G-5. Severability clause.

1 If for any reason any section or provision of this article
2 shall be held to be unconstitutional or invalid, such un-
3 constitutionality or invalidity shall not affect the remain-
4 der of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

William Jongs
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Thomas Pugh
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

J. Daley Trible
Speaker House of Delegates

The within approved this the 16

day of March, 1967.

Nelson C. Smith
Governor
PRESENTED TO THE
GOVERNOR

Date  5/18/67
Time  4:30 p.m.