

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1967



ENROLLED

HOUSE BILL No. 669

(By Mr. Specker, Mr. White, and
Mr. Jones, of Mason)



PASSED March 8, 1967

In Effect Ninety days from Passage



FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-16-67

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(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 1G. INTERSTATE COMPACT ON AIR POLLUTION.

§29-1G-1. Definitions.

1 As used in this article, unless the context requires oth-

2 erwise:

3 (1) "Compact" means the interstate compact on air

4 pollution;

5 (2) "Commission" means the Ohio-West Virginia in-

6 terstate air pollution control commission.

§29-1G-2. Enactment of compact.

1 The "Interstate Compact on Air Pollution" is hereby

2 ratified, enacted into law, and entered into by the state

3 of West Virginia, with the state of Ohio legally joining

4 therein in accordance with its terms, in the form sub-

5 stantially as follows:

6 "INTERSTATE COMPACT ON AIR POLLUTION

7 "The contracting states solemnly agree that:

"ARTICLE I

1 "The party states to this compact hereby provide for

2 the control of the interstate movement of air pollutants

3 through the establishment of an interstate agency with

4 powers to prevent, abate, and control interstate air pol-

5 lution.

6 "Each of the party states pledges to the other faithful
7 cooperation in the control of air pollution which originates
8 in one state and is injurious to human health or welfare,
9 animal or plant life, or property, or which interferes with
10 the enjoyment of life or property, in the other state.

11 "The party states recognize that no single standard for
12 outdoor atmosphere is applicable to all areas within the
13 two party states due to such variables as population den-
14 sities, topographic and climatic characteristics, and exist-
15 ing or projected land use and economic development. The
16 guiding principle of this compact is that air pollution or-
17 iginating within a party state shall not be injurious to
18 human health or welfare, animal or plant life, or prop-
19 erty, or interfere with the enjoyment of life or property,
20 in the other party state.

"ARTICLE II

1 As used in this compact "air pollution" means and shall
2 be limited to the discharge into the air by the act of man
3 of substances (liquid, solid, gaseous, organic or inor-
4 ganic) in a locality, manner and amount as to be injur-
5 ious to human health or welfare, animal or plant life,

6 or property, or which would interfere with the enjoy-
7 ment of life or property.

“ARTICLE III

1 “The party states hereby create the Ohio-West Vir-
2 ginia interstate air pollution control commission, here-
3 after called ‘the commission.’

4 “The commission shall consist of five commissioners
5 from each party state, each of whom shall be a citizen
6 of the state he represents. The commissioners from
7 each party state shall be chosen by the governor of
8 such state in accordance with the laws of such state,
9 as follows:

10 “Two of the members from each state shall be chosen
11 from appropriate state agencies, one of whom is the officer
12 responsible for air pollution control, and one of whom is
13 the director of health. Three other members shall be cho-
14 sen, one of whom is experienced in the field of municipal
15 government, one of whom is experienced in the field of in-
16 dustrial activities, and one of whom represents the public.

17 “Except for the commissioners who shall be appointed
18 by virtue of the offices which they hold and who may

19 be commissioners during their continuance in office, the
20 term of each commissioner shall be five years. How-
21 ever, the commissioner experienced in the field of munici-
22 pal government, the commissioner experienced in the
23 field of industrial activities, and the commissioner ap-
24 pointed to represent the public shall be appointed, one
25 for an initial term of one year, one for an initial term
26 of two years, and one for an initial term of three years.
27 As the term of each such initial appointee expires,
28 the successor to fill the vacancy created by such expired
29 term shall be appointed for a term of five years.

30 "Vacancies on the commission shall be filled for
31 the unexpired term in the same manner as appoint-
32 ments to full terms.

33 Each commissioner of each party state shall be en-
34 titled to one vote in the commission. No action of the
35 commission shall be binding unless taken at a meet-
36 ing in which a majority of the commissioners from each
37 party state are present and unless a majority of those
38 present at the meeting from each party state concur,
39 but any action not binding for such a reason may be

40 ratified within thirty days by the concurrence of a
41 majority of the commissioners of each party state. In
42 the absence of any commissioner, his vote may be cast
43 by another commissioner of his state if such commis-
44 sioner casting the vote shall have a written proxy in
45 such form as may be required by the commission. Any
46 tie or stalemate resulting from the above voting shall
47 be decided by a majority vote of the commissioners
48 from each separate state voting as a unit and the vote
49 of a representative selected by the secretary of the
50 United States department health, education, and wel-
51 fare, who shall cast the deciding vote.

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

54 "The commission shall elect annually, from among
55 its members, a chairman and vice chairman. The com-
56 mission shall appoint an executive director who shall
57 act as secretary, and who, together with such other
58 commission personnel as the commission may determine,
59 shall be bonded in such amount or amounts as the com-
60 mission may require.

61 “Notwithstanding the civil service, personnel, or other
62 merit systems laws of any of the party states, the com-
63 mission shall appoint, remove or discharge, and fix the
64 compensation of such personnel as may be necessary
65 for the performance of the commission’s functions. To
66 the extent practicable, terms and conditions of employ-
67 ment for members of the staff of the commission shall
68 be similar to those pertaining to comparable employees
69 of the individual party states.

70 “The commission may establish and maintain, inde-
71 pendently or in conjunction with one or more of the
72 party states, a suitable retirement system for its em-
73 ployees. Employees of the commission shall be eligible
74 for social security coverage in respect to old-age and
75 survivors insurance, provided that the commission takes
76 such steps as may be necessary pursuant to federal law
77 to participate in such program of insurance as a gov-
78 ernmental agency or unit. The commission may establish
79 and maintain or participate in such additional programs
80 of employee benefits as may be appropriate to afford
81 employees of the commission terms and conditions of

82 employment similar to those enjoyed by employees of
83 the party states generally.

84 "The commission may accept or contract for the
85 services of personnel and other services or materials from
86 any state, the United ^{States} or any subdivision or agency of
87 either, from any interstate agency, or from any institu-
88 tion, person, firm, or corporation.

89 "The commission may accept for any of its purposes
90 and functions under this compact any and all donations,
91 and grants of money, equipment, supplies, materials,
92 and services conditional or otherwise, from the United
93 States, or any agency thereof, from any state or any
94 subdivision or agency thereof, or from any institution,
95 person, firm, or corporation, and may receive, utilize,
96 and dispose of the same. The identity of any donor, the
97 amount and character of any assistance, and the con-
98 ditions, if any, attached thereto shall be set forth in the
99 annual report of the commission.

100 "The commission may establish and maintain such
101 facilities as may be necessary for the transacting of its
102 business. The commission may acquire, hold, and con-

103 vey real and personal property and any interest therein.

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

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

121 “The commission shall have the authority to collect
122 and disseminate information relating to its functions
123 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-

20 mission may also establish standards consistent with the
21 provisions of this compact and any standards which may
22 be adopted by the party states.

23 "Before any report of the commission which specifi-
24 cally identifies a particular industrial or other installa-
25 tion, structure, or facility as a source of air pollution
26 becomes final, the commission shall give the owner or
27 operator of such installation, structure, or facility notice
28 by certified mail of the anticipated adoption of such
29 report and shall afford the owner or operator of the in-
30 stallation, structure, or facility not less than ten days
31 after the mailing of such notice to file with the com-
32 mission its written objections thereto. If no such objec-
33 tions are filed with the commission within such speci-
34 fied period, the report shall become final. If such ob-
35 jections are filed with the commission within such speci-
36 fied period, the commission shall afford such owner or
37 operator not less than ten days from its receipt of such
38 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

60 the same shall be filed and prosecuted pursuant to the
61 provisions of Article V of this compact.

62 "In a party state, any court of general jurisdiction
63 in any county in which the air pollution originates or
64 any United States district court for the district in which
65 such pollution originates shall entertain and determine
66 any action or proceeding brought by the commission to
67 enforce an order against any municipality, corporation,
68 person, or other entity domiciled or located within such
69 state and whose discharge of air pollution takes place
70 within or adjoining such state, or against any employee,
71 department, or subdivision of such municipality, cor-
72 poration, person, or other entity, and shall entertain and
73 determine any petition for review pursuant to the pro-
74 visions of Article V of this compact.

"ARTICLE V

1 "All hearings held by the commission shall be open
2 to the public. At any hearing held pursuant to Arti-
3 cle IV of this compact the party states, any agencies
4 thereof, and any affected person, corporation, municipal-
5 ity, 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

26 to in Article IV, setting out such order and alleging
27 specifically that said order is:

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

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

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

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

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

36 (f) Unsupported by the weight of the evidence.

37 "The petition for review shall be filed within thirty-
38 five days after receipt of written notice that such order
39 has been issued. Written notice of the filing of a petition
40 for review and a copy of said petition shall be personally
41 served upon the commission. Any party or person filing
42 a petition for review shall, within fifteen days thereafter,
43 secure from the commission a certified copy of the trans-
44 cript of any hearing or hearings held in connection with the
45 issuance of the order, review of which is sought, and shall
46 file the same with the clerk of the court in which the

47 action or proceeding for review is pending. An exten-
48 sion of time in which to file a transcript shall be granted
49 by said court in which such action or proceeding for re-
50 view is pending for good cause shown. Inability to ob-
51 tain a transcript within the specified time shall be good
52 cause. Failure to file a transcript within the period of
53 fifteen days, or to secure an extension of time therefor,
54 shall be cause for the dismissal of the petition for re-
55 view by the court or on petition of any party of record
56 to the original action or proceeding. Where more than
57 one person may be aggrieved by the order, only one
58 proceeding for review may be had and the court in
59 which a petition for review is first properly filed shall
60 have jurisdiction.

61 The court may, for good cause shown, admit and con-
62 sider additional evidence bearing upon the issue or issues
63 before it.

64 "No review of a commission order shall be had ex-
65 cept in accordance with the provisions of this compact.

"ARTICLE VI

1 "The commission may establish one or more advisory

2 and technical committees composed of such as the fol-
3 lowing: private citizens, expert and lay personnel, rep-
4 resentatives of industry, labor, commerce, agriculture,
5 civic associations, and officials of local, state, and fed-
6 eral government, as it may determine, and may cooperate
7 with and use the services of any such committee and
8 the organizations which they represent in furthering
9 any of its activities under this compact.

“ARTICLE VII

1 “Nothing in this compact shall be construed to:

2 (a) Limit or otherwise affect the powers of either
3 party state or any of their subdivisions to enact and
4 enforce laws or ordinances for the prevention, abatement,
5 or control of air pollution within their respective bor-
6 ders.

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

11 (c) Prevent or restrict either party state or any sub-
12 division thereof in requiring or prescribing measures

13 of air pollution prevention, abatement, or control in ad-
14 dition to those which may be required by either party
15 state or the commission acting pursuant to this compact.

“ARTICLE VIII

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

6 “Each of the commission’s budgets of estimated ex-
7 penditures shall contain specific recommendations of the
8 amount or amounts to be appropriated by each of the
9 party states. Aside from such support as may be avail-
10 able to the commission pursuant to Article III, the cost
11 of operating and maintaining the commission shall be
12 borne equally by the party states.

13 “The commission may meet any of its obligations in
14 whole or in part with funds available to it under Arti-
15 cle III of this compact, provided that the commission
16 takes specific action setting aside such funds prior to
17 the incurring of any obligation to be met in whole or

18 in part in this manner. Except where the commission
19 makes use of funds available to it under Article III,
20 the commission shall not incur any obligations prior to
21 the allotment of funds by the party states adequate to
22 meet the same.

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

27 “The commission shall keep accurate accounts of all
28 receipts and disbursements. The receipts and disburse-
29 ments of the commission shall be subject to the audit
30 and accounting procedures established under its rules and
31 regulations. However, all receipts and disbursements of
32 funds handled by the commission shall be audited yearly
33 by a certified or licensed public accountant and the re-
34 port of the audit shall be included in and become a part
35 of the annual report of the commission.

36 “The accounts of the commission shall be open at any
37 reasonable time for inspection by duly constituted offi-

38 cers of the party states and by any persons authorized
39 by the commission.

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

"ARTICLE IX

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

8 "Any order of the commission issued prior to the ter-
9 mination of this compact shall be enforceable thereafter
10 by either party state in the same manner as though this
11 compact were still in force except that any appropriate
12 office or agency of the enforcing party state may act in
13 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-

8 sons, one of whom is experienced in the field of municipal
9 government, one of whom is experienced in the field of
10 industrial activities, and one of whom represents the pub-
11 lic. The term of one of said three commissioners first
12 appointed shall be one year, of another shall be two years,
13 and of the other shall be three years. As the term of each
14 such initial appointee expires the successor to fill the va-
15 cancy created by such expired term shall be appointed by
16 the governor, by and with the advice and consent of the
17 senate, for terms of five years each. Each commissioner
18 shall hold office until his successor shall be appointed and
19 qualified. Vacancies occurring in the office of any such com-
20 missioner from any reason or cause shall be filled by ap-
21 pointment by the governor, by and with the advice and
22 consent of the senate, for the unexpired term. The fourth
23 commissioner from this state shall be the state director
24 of health, ex officio, and the fifth commissioner
25 from this state shall be the director of the air pollution
26 control commission, ex officio, and the term of any such
27 ex officio commissioner shall terminate at the time he
28 ceases to hold said office, and his successor as a commis-

29 sioner shall be his successor as said state director of health
30 or director of the air pollution control commission.
31 These five commissioners, acting jointly with like officers
32 from the other party state, shall promulgate rules and
33 regulations to carry out more effectively the terms of the
34 compact. The commissioners shall cooperate with all
35 departments, agencies, and officers of and in the govern-
36 ment of this state and its subdivisions in facilitating the
37 proper administration of the compact and all such de-
38 partments, agencies, and officers shall cooperate with the
39 commissioners.

§29-1G-4. Appropriation.

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 Tompkins
Chairman Senate Committee

Clayton C. Davidson
Chairman House Committee

Originated in the House.

Takes effect ninety days from passage.

Thomas Nease
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

Howard W. Carson
President of the Senate

H. Fabian White
Speaker House of Delegates

The within approved this the 16

day of March, 1967.

Hubert C. Smith
Governor



**PRESENTED TO THE
GOVERNOR**

Date 3/13/67

Time 4:30 p.m.