

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1967

ENROLLED

SENATE BILL NO. 200

(By Mr. Cason, Vice President)

PASSED March 11, 1967

In Effect thirty days from Passage

FILED IN THE OFFICE
ROBERT D. BAILEY
SECRETARY OF STATE
THIS DATE 3-21-67

#200

ENROLLED

Senate Bill No. 200

(By MR. CARSON, MR. PRESIDENT)

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

AN ACT to amend and reenact sections one, two, four, six, eight and nine, article twenty, chapter ~~sixty~~ ^{SIXTEEN - JHON.} of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to air pollution control, the declaration of policy and purpose, the definitions of certain terms used in the article, the composition of the air pollution control commission, the expenses and compensation of the members of said commission, certain functions of the commission, the appointment of a director of the commission and the compensation and expenses of such director; authorizing the director to make and enter cease and desist orders; authorizing an appeal from any such order to the commis-

sion; expressly making the administrative procedures act applicable; providing penalties; and providing for injunctive relief.

Be it enacted by the Legislature of West Virginia:

That sections one, two, four, six, eight and nine, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and re-enacted to read as follows:

ARTICLE 20. AIR POLLUTION CONTROL.

§16-20-1. Declaration of policy and purpose.

It is hereby declared to be the public policy of this state
2 and the purpose of this article to achieve and maintain
3 such levels of air quality as will protect human health and
4 safety, and to the greatest degree practicable, prevent in-
5 jury to plant and animal life and property, foster the com-
6 fort and convenience of the people, promote the economic
7 and social development of this state and facilitate the en-
8 joyment of the natural attractions of this state.

9 To these ends it is the purpose of this article to provide
10 for a coordinated statewide program of air pollution pre-
11 vention, abatement and control; to facilitate cooperation
12 across jurisdictional lines in dealing with problems of air

13 pollution not confined within single jurisdictions; and to
14 provide a framework within which all values may be
15 balanced in the public interest.

§16-20-2. Definitions.

The terms used in this article are defined as follows:

2 The term "person" shall mean any and all persons, nat-
3 ural or artificial, including any municipal, public or pri-
4 vate corporation organized or existing under the laws of
5 this or any other state or country, and any firm, partner-
6 ship or association of whatever nature.

7 The term "commission" shall mean the air pollution
8 control commission, and the term "commissioner" shall
9 mean a member of said commission.

10 The term "air pollutants" shall mean solids, liquids or
11 gases which, if discharged into the air, will result in a
12 statutory air pollution.

13 The term "discharge" shall refer to the release, escape
14 or emission of air pollutants into the air.

15 The term "statutory air pollution" shall mean and be
16 limited to the discharge into the air by the act of man of
17 substances (liquid, solid, gaseous, organic or inorganic)

18 in a locality, manner and amount as to be injurious to
19 human health or welfare, animal or plant life, or property,
20 or which would interfere with the enjoyment of life or
21 property.

22 The term "director" shall mean the director of the West
23 Virginia air pollution control commission appointed as
24 hereinafter provided.

**§16-20-4. Air pollution control commission; composition; ap-
pointment and terms of members; vacancies; compensa-
tion and expenses of members; organization and per-
sonnel; appointment of director; records; meetings.**

The "Air Pollution Control Commission", heretofore
2 created, shall continue in existence as an agency of the
3 state but on and after the effective date of this act shall
4 consist of seven members, including the state director of
5 health and the commissioner of agriculture, who shall be
6 members ex officio, and five other members to be ap-
7 pointed by the governor with the advice and consent of
8 the Senate, two of whom shall be representative of indus-
9 tries engaged in business in this state, and three of whom
10 shall be representative of the public at large. The three

11 appointed members of the commission in office on the
12 effective date of this act shall, unless sooner removed, con-
13 tinue to serve until their terms expire and until their suc-
14 cessors have been appointed and have qualified. On or
15 before June fifteen, one thousand nine hundred sixty-
16 seven, the governor shall appoint one member to serve
17 until June thirty, one thousand nine hundred seventy, and
18 one member to serve until June thirty, one thousand nine
19 hundred seventy-one, or until their successors have been
20 appointed and have qualified. As the terms of the three
21 appointed members of the commission in office on the
22 effective date of this act expire and as the terms of the two
23 members to be appointed by the governor on or before
24 June fifteen, one thousand nine hundred sixty-seven, ex-
25 pire, members shall be appointed for overlapping terms
26 of five years, so that one term expires each year, or until
27 their successors have been appointed and have qualified.
28 Any vacancy in the office of an appointed member of the
29 commission shall be filled by appointment by the gover-
30 nor for the unexpired term of the appointed member
31 whose office shall be vacant.

32 The ex officio members of the commission shall receive
33 no salary or remuneration for their services as such but
34 they shall be reimbursed, out of moneys appropriated for
35 such purpose, for all reasonable and necessary expenses
36 actually incurred in the discharge of their duties as such.

37 As compensation for his services on the commission,
38 each appointed member shall receive, out of moneys ap-
39 propriated for such purpose, the sum of fifty dollars for
40 each day or substantial portion thereof that he is actually
41 engaged in the work of the commission. Each member
42 shall also be entitled to be reimbursed, out of moneys
43 appropriated for such purpose, for any reasonable and
44 necessary expenses actually incurred in the discharge of
45 his duties as a member of the commission.

46 At its first meeting the commission shall elect from its
47 membership a chairman, and at the first meeting in each
48 fiscal year thereafter the commission shall elect from its
49 membership a chairman to act during such fiscal year.
50 At similar times the commission shall appoint a secretary,
51 who need not be a member of the commission. The com-

52 mission shall appoint and employ a director and such
53 personnel as may be required, whose duties shall be de-
54 fined by the commission and whose compensation, to be
55 fixed by the commission, shall be paid out of the state
56 treasury, upon the requisition of the commission, from
57 moneys appropriated for such purposes.

58 The commission may establish rules for the regulation
59 of its affairs and the conduct of all proceedings before it.
60 All proceedings of the commission shall be entered in a
61 permanently bound record book, properly indexed, and
62 the same shall be carefully preserved. Copies of orders
63 entered by the commission, as well as copies of papers or
64 documents filed with it, or the records of proceedings be-
65 fore the commission, shall be attested by the secretary of
66 the commission. The commission shall meet at such times
67 and places as may be agreed upon by the commissioners,
68 or upon the call of the chairman of the commission or any
69 two commissioners, all of which meetings shall be general
70 meetings for the consideration of any and all matters
71 which may properly come before the commission.

§16-20-6. Orders of the director; appeal therefrom to commission.

If, from any investigation made by him or from any
2 complaint filed with him, the director shall be of the
3 opinion that a person is violating the provisions of this
4 article, or any rules and regulations promulgated pur-
5 suant thereto, he shall make and enter an order directing
6 such person to cease and desist such activity. The director
7 shall fix a reasonable time in such order by which such
8 activity must stop or be prevented. The order shall con-
9 tain the findings of fact upon which the director deter-
10 mined to make and enter such order.

11 The director shall cause a copy of any such order to be
12 served upon such person by registered or certified mail or
13 by any proper law enforcement officer.

14 Any person upon whom a copy of such final order has
15 been served may appeal such order to the air pollution
16 control commission in the manner hereinafter provided.
17 The person so appealing shall be known as the appellant
18 and the director shall be known as the appellee. Such
19 appeal shall be perfected by filing a notice of appeal, on

20 the form prescribed by the commission for such purpose,
21 with the commission within fifteen days after the date
22 upon which the appellant received a copy of the order.
23 The notice of appeal shall set forth the order complained
24 of and the grounds upon which the appeal is based. The
25 filing of such notice of appeal shall stay the effect of the
26 order complained of until final determination thereof is
27 made by the commission. A copy of the notice of appeal
28 shall be filed by the commission with the director within
29 eight days after the notice of appeal is filed with the com-
30 mission.

31 Within seven days after receipt of his copy of the notice
32 of appeal, the director shall prepare and certify to the
33 commission a complete record of the proceedings out of
34 which the appeal arises, including all documents and
35 correspondence in the director's file relating to the matter
36 in question. The commission shall hear the appeal de
37 novo, and evidence may be offered on behalf of the ap-
38 pellant and appellee.

39 All of the pertinent provisions of article five, chapter
40 twenty-nine-a of this code shall apply to and govern the

41 hearing on appeal authorized by the provisions of this sec-
42 tion and the administrative procedures in connection with
43 and following such hearing, with like effect as if the pro-
44 visions of said article five were set forth in extenso in this
45 section, except that any such appeal hearing shall be held
46 in the county wherein the alleged statutory air pollution
47 complained of originated.

48 Any such appeal hearing shall be conducted by a quo-
49 rum of the commission. For the purpose of conducting
50 any such appeal hearing, any member of the commission
51 and the secretary thereof shall have the power and au-
52 thority to issue subpoenas and subpoenas duces tecum in
53 the name of the commission, in accordance with the pro-
54 visions of section one, article five, chapter twenty-nine-a
55 of this code. All subpoenas and subpoenas duces tecum
56 shall be issued and served within the time and for the
57 fees and shall be enforced, as specified in section one,
58 article five of said chapter twenty-nine-a, and all of the
59 said section one provisions dealing with subpoenas and
60 subpoenas duces tecum shall apply to subpoenas and sub-
61 poenas duces tecum issued for the purpose of an appeal
62 hearing hereunder.

63 Any such hearing shall be held within twenty days after
64 the date upon which the commission received the timely
65 notice of appeal, unless there is a postponement or con-
66 tinuance. The commission may postpone or continue any
67 hearing on its own motion, or upon application of the ap-
68 pellant or the appellee for good cause shown. The director
69 shall be represented at any such hearing by the attorney
70 general or his assistants. At any such hearing the appel-
71 lant may represent himself or be represented by an at-
72 torney at law admitted to practice before any circuit court
73 of this state.

74 After such hearing and consideration of all of the testi-
75 mony, evidence and record in the case, the commission
76 shall make and enter an order affirming, modifying or
77 vacating the order of the director, or shall make and enter
78 such order as the director should have entered.

79 Such order shall be accompanied by findings of fact and
80 conclusions of law as specified in section three, article five,
81 chapter twenty-nine-a of this code, and a copy of such
82 order and accompanying findings and conclusions shall be
83 served upon the appellant, and his attorney of record, if

84 any, and upon the appellee in person or by registered or
85 certified mail. The order of the commission shall be final
86 unless vacated or modified upon judicial review thereof
87 in accordance with the provisions of section seven of this
88 article.

§16-20-8. Penalties.

Any person who shall fail or refuse to comply with any
2 final order made and entered hereunder to correct a statu-
3 tory air pollution within the time fixed by such order, or
4 any extension of time granted by the commission, shall
5 be subject to a penalty of not more than one thousand
6 dollars for each day that such failure or refusal continues
7 after such time has expired, which penalty may be re-
8 covered in a civil action brought by the commission in the
9 name of the state of West Virginia in the circuit court of
10 any county wherein such person resides or is engaged in
11 the activity complained of. The amount of the penalty
12 shall be fixed by the court without a jury. The amount
13 of any such penalties collected by the commission shall be
14 deposited in the general fund of the state treasury ac-
15 cording to law. Upon a request in writing from the com-

16 mission, it shall be the duty of the prosecuting attorney of
17 the county in which any such action for penalties accruing
18 under this section may be brought to institute and prose-
19 cute all such actions on behalf of the commission.

20 For the purpose of this section, violations on separate
21 days shall be considered separate offenses.

§16-20-9. Applications for injunctive relief.

In addition to the remedy provided for in section eight
2 of this article and in the absence of reasonable progress
3 toward correction of the statutory air pollution, the com-
4 mission may request the prosecuting attorney of the
5 county in which the person resides or is engaged in the
6 activity complained of to apply to the circuit court of such
7 county for an injunction to restrain all violations of any
8 final order entered pursuant to section six of this article.

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

William Tompau
Chairman Senate Committee

Clayton C Davidson
Chairman House Committee

Originated in the Senate.

To take effect 90 days from passage.

Howard Nease
Clerk of the Senate

C A Blankenship
Clerk of the House of Delegates

Howard W Carson
President of the Senate

H. 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 3/17/67
Time 4:00 p.m.