

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1969

**ENROLLED**

SENATE BILL NO. 169

(By Mr. Jackson, Mr. President,  
and Mr. Carrigan)

PASSED February 20, 1969

In Effect from  Passage

FILED IN THE OFFICE  
JOEL D. MORSEMAN, IV  
SECRETARY OF STATE

THIS DATE 3-3-69

691 #

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**Senate Bill No. 169**

(By MR. JACKSON, MR. PRESIDENT, AND MR. CARRIGAN)

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[Passed February 20, 1969; in effect from passage.]

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AN ACT to amend and reenact sections two and three, article one-g, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the Ohio-West Virginia interstate air pollution control compact.

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

That sections two and three, article one-g, chapter twenty-nine of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 1G. INTERSTATE COMPACT ON AIR POLLUTION.**

**§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 the  
2 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 pollu-  
5 tion, and where appropriate, develop and implement  
6 ambient air quality standards in any designated air  
7 quality control region common to the party states.

8 Each of the party states pledges to the other faithful co-  
9 operation in the control of air pollution which originates  
10 in one state and endangers human health or welfare,  
11 animal or plant life, or property, or which interferes with  
12 the enjoyment of life or property, in the other state.

13 The party states recognize that no single standard for  
14 outdoor atmosphere is applicable to all areas within the  
15 party states due to such variables as population densities,

16 topographic and climatic characteristics and existing or  
17 projected land use and economic development. The guid-  
18 ing principle of this compact is that air pollution shall  
19 not endanger human health or welfare, animal or plant  
20 life, or property, or interfere with the enjoyment of life  
21 or property.

#### 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 inorganic)  
4 in a locality, manner and amount as to endanger human  
5 health or welfare, animal or plant life, or property, or  
6 which would interfere with the enjoyment of life or  
7 property.

#### Article III

1 The party states hereby create the Ohio-West Virginia  
2 interstate air pollution control commission, hereafter  
3 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. In addition, the chairman of

7 the commission shall request the President of the United  
8 States to designate a federal representative to the com-  
9 mission who shall serve as an ex officio member of the  
10 commission, but without vote except as hereinafter pro-  
11 vided. The commissioners from each party state shall be  
12 chosen by the governor of such state in accordance with  
13 the laws of such state, as follows:

14 Two of the members from each state shall be chosen  
15 from appropriate state agencies, one of whom is the  
16 officer responsible for air pollution control, and one of  
17 whom is the director of health. The governor of each  
18 party state, or his designee, shall be the third member  
19 of the commission. Two other members shall be chosen,  
20 one of whom is experienced in the field of municipal  
21 government and one of whom is experienced in the field  
22 of industrial activities. In choosing said two other mem-  
23 bers, the governor shall provide for adequate representa-  
24 tion of appropriate local interests in any air quality con-  
25 trol region designated by the secretary of health, educa-  
26 tion and welfare, pursuant to the provisions of Section 107

27 (a) (2) of the Air Quality Act of 1967; 81 Stat. 491;  
28 Public Law 90-148.

29 The governor of each state, unless he appoints a de-  
30 signee, shall serve during his term of office, and if the  
31 governor of any state appoints a designee, such de-  
32 signee shall serve at the will of the governor appointing  
33 him until the expiration of the governor's term. The  
34 commissioners who shall be appointed by virtue of the  
35 offices which they hold shall serve during their con-  
36 tinuance in office. The term of the other two commission-  
37 ers shall be five years. However, the commissioner ap-  
38 pointed by reason of his experience in the field of muni-  
39 cipal government and the commissioner appointed by  
40 reason of his experience in the field of industrial activities  
41 shall be appointed, one for an initial term of one year  
42 and the other for an initial term of two years. Upon the  
43 expiration of each such initial term, commissioners ap-  
44 pointed to fill any vacancy shall be appointed for a term  
45 of five years.

46 Vacancies on the commission shall be filled for the un-  
47 expired term in the same manner as appointments to full  
48 terms.

49 Each state shall have but one vote and every decision,  
50 authorization or other action shall require the majority  
51 vote of the party states. The vote of each state shall be  
52 determined by a majority of the commissioners from each  
53 party state present at the meeting where such vote is to  
54 be cast. In the event of a tie or stalemate, the federal rep-  
55 resentative to the commission shall cast the deciding vote.

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

58 The commission shall elect annually, from among its  
59 members, a chairman and vice-chairman. The commis-  
60 sion shall appoint an executive director who shall act as  
61 secretary, and who, together with such other commission  
62 personnel as the commission may determine, shall be  
63 bonded in such amount or amounts as the commission  
64 may require.

65 Notwithstanding the civil service, personnel, or other  
66 merit systems laws of any of the party states, the com-  
67 mission shall appoint, remove or discharge, and fix the  
68 compensation of such personnel as may be necessary for

69 the performance of the commission's functions. To the  
70 extent practicable, terms and conditions of employment  
71 for members of the staff of the commission shall be similar  
72 to those pertaining to comparable employees of the in-  
73 dividual party states.

74 The commission may establish and maintain, indepen-  
75 dently or in conjunction with one or more of the party  
76 states, a suitable retirement system for its employees.  
77 Employees of the commission shall be eligible for social  
78 security coverage in respect to old-age and survivors in-  
79 surance: *Provided*, That the commission takes such steps  
80 as may be necessary pursuant to federal law to partici-  
81 pate in such program of insurance as a governmental  
82 agency or unit. The commission may establish and main-  
83 tain or participate in such additional programs of em-  
84 ployee benefits as may be appropriate to afford employees  
85 of the commission terms and conditions of employment  
86 similar to those enjoyed by employees of the party states  
87 generally.

88 The commission may accept or contract for the serv-  
89 ices of personnel and other services or materials from any

90 state, the United States or any subdivision or agency of  
91 either, from any interstate agency, or from any institu-  
92 tion, person, firm or corporation.

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

104 The commission may establish and maintain such facili-  
105 ties as may be necessary for the transacting of its busi-  
106 ness. The commission may acquire, hold, and convey real  
107 and personal property and any interest therein.

108 The commission shall have power to formulate and  
109 adopt rules and regulations and perform any act which  
110 it may find necessary to carry out the provisions of this

111 compact, and to amend such rules and regulations. All  
112 such rules and regulations shall be filed in the office  
113 of the commission for public inspection and copies of  
114 such rules and regulations shall be filed in the office  
115 in each party state in which rules and regulations of  
116 state agencies are filed and shall thereafter be made  
117 available to interested persons upon request.

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

125 The commission shall have the authority to collect and  
126 disseminate information relating to its functions under,  
127 and the purpose of, this compact.

#### Article IV

1 The commission may, whenever it finds air pollution  
2 which originates within the area of its jurisdiction in  
3 one of the party states and has an adverse effect in the

4 other party state, make a report recommending measures  
5 for the prevention, abatement, or control of any such  
6 air pollution. Copies of such report shall be furnished  
7 to all existing state and local air pollution control agen-  
8 cies with jurisdiction over the source or sources of air  
9 pollution identified in the report. In preparing any such  
10 report, the commission may confer with any appropriate  
11 national, regional or local planning body, and any gov-  
12 ernmental agency authorized to deal with matters re-  
13 lating to air pollution problems and may conduct such  
14 hearings and investigations as it may deem appropriate.  
15 The commission may consult with and advise the  
16 states and local governments, corporations, persons, or  
17 other entities with regard to the adoption of programs  
18 and the installation of equipment and works for the  
19 prevention, abatement, or control of air pollution.

20 Without restricting the generality of the powers and  
21 duties of the commission elsewhere herein provided, the  
22 commission shall:

23 (a) Develop and implement ambient air quality stand-  
24 ards and, in accordance with such data as are available

25 on the latest technology and economic feasibility of com-  
26 plying therewith, emission standards in order to prevent  
27 and control air pollution located within the area over  
28 which it has jurisdiction.

29 (b) Revise and modify such standards to reflect im-  
30 provements in knowledge of air pollution and its pre-  
31 vention and control and in accordance with such data  
32 as are available on the latest technology and economic  
33 feasibility of complying with such standards.

34 (c) Engage in action which would insure the use of  
35 the latest technologically and economically feasible and  
36 effective techniques or devices for the prevention and  
37 control of air pollution in new installations proposed for  
38 construction in its area of jurisdiction.

39 (d) Undertake and carry on air monitoring activities  
40 as a continuing activity.

41 (e) Have authority to enter at reasonable times upon  
42 any private or public property (excluding any federal  
43 building, installation or other property) for the purpose  
44 of investigating the source, type, character and amount  
45 of any air pollutant or emission alleged to violate the

46 standards at any time established by the commission pur-  
47 suant to the provisions of this compact: *Provided, how-*  
48 *ever,* That no such investigations shall extend to in-  
49 formation relating to secret processes or methods of  
50 manufacturing or production.

51 (f) Have authority, upon reasonable evidence of a  
52 violation of the standards established by the commission  
53 pursuant to the provisions of this compact, which vio-  
54 lation presents an imminent and substantial hazard to  
55 public health, to issue public notice of such hazard and  
56 the cause thereof, by any and all appropriate means, and  
57 to issue a cease and desist order or such other reasonable  
58 order as may be deemed necessary by the commission  
59 to cause such violation to be discontinued, at such time  
60 and upon such conditions as the commission may deter-  
61 mine, and to enforce such order by appropriate pro-  
62 ceedings, including but not limited to injunctive pro-  
63 ceedings in any court of competent jurisdiction. And,  
64 further, the commission is hereby empowered to insti-  
65 tute proceedings in any court of competent jurisdiction  
66 to enjoin any air pollution or emission which presents

67 such an imminent and serious hazard to public health as  
68 to create an emergency.

69 Before any report of the commission which specifically  
70 identifies a particular industrial or other installation,  
71 structure, or facility as a source of air pollution becomes  
72 final, the commission shall give the owner or operator  
73 of such installation, structure, or facility notice by cer-  
74 tified mail of the anticipated adoption of such report and  
75 shall afford the owner or operator of the installation,  
76 structure, or facility not less than ten days after the  
77 mailing of such notice to file with the commission its  
78 written objections thereto. If no such objections are  
79 filed with the commission within such specified period,  
80 the report shall become final. If such objections are  
81 filed with the commission within such specified period,  
82 the commission shall afford such owner or operator not  
83 less than ten days from its receipt of such objections to  
84 discuss with the commission the findings, conclusions,  
85 and recommendations of the report before it is finally  
86 adopted by the commission.

87     Within a reasonable time, as determined by the com-  
88 mission, after the commission furnishes a report to the  
89 appropriate existing state and local air pollution con-  
90 trol agencies pursuant to this article and, if the recom-  
91 mendations made in such report for the prevention,  
92 abatement, or control of air pollution from a specific  
93 source or sources have not been implemented, or if the  
94 appropriate state or local air pollution control agencies  
95 have not taken sufficient action to prevent, abate or  
96 control the air pollution, the commission may, after a  
97 duly conducted and constituted hearing, on due notice  
98 issue an order or orders upon any municipality, cor-  
99 poration, person, or other entity causing or contributing  
100 to a violation of ambient air quality standards. At any  
101 such hearing evidence may be received and a finding  
102 made on whether, in fact, a violation of the commission's  
103 air quality standards exists and on the sources of such  
104 pollution. Any such order or orders may prescribe a  
105 timetable for the abatement or control of the air pollu-  
106 tion involved. Any such order shall become final and  
107 binding unless a petition for review of the same shall

108 be filed and prosecuted pursuant to the provisions of  
109 article five of this compact.

110 In a party state, any court of general jurisdiction in  
111 any county in which the air pollution originates or any  
112 United States district court for the district in which such  
113 pollution originates shall entertain and determine any  
114 action or proceeding brought by the commission to enforce  
115 an order against any municipality, corporation, person,  
116 or other entity domiciled or located within such state  
117 and whose discharge of air pollution takes place within  
118 or adjoining such state, or against any employee, de-  
119 partment, or subdivision of such municipality, corpora-  
120 tion, person or other entity, and shall entertain and  
121 determine any petition for review pursuant to the pro-  
122 visions of article five of this compact.

#### Article V

1 All hearings held by the commission shall be open to  
2 the public. At any hearing held pursuant to article four  
3 of this compact the party states, any agencies thereof,  
4 and any affected person, corporation, municipality or  
5 other entity shall be entitled to appear in person or by

6 representative, with or without counsel, and may make  
7 oral or written argument, offer testimony, or take any  
8 combination of such actions. All testimony taken before  
9 the commission shall be under oath and recorded in a  
10 written transcript. The transcript so recorded shall be  
11 made available to any member of the public or to any  
12 participant in such hearing upon payment of reasonable  
13 charges as fixed by the commission. No information re-  
14 lating to secret processes or methods of manufacture or  
15 production shall be disclosed at any public hearing or  
16 otherwise and all such information shall be kept con-  
17 fidential.

18 All hearings shall be had before one or more members  
19 of the commission, or before an officer or employee of  
20 the commission expressly designated to act as a hearing  
21 officer.

22 Any party state or person aggrieved by any order made  
23 by the commission shall be entitled to a judicial review  
24 thereof. Such review may be had by filing a verified peti-  
25 tion in any of the appropriate courts referred to in article

26 four, setting out such order and alleging specifically that

27 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;

32 (c) In excess of authority or jurisdiction conferred by

33 this compact or statutes in implementation hereof; or

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

35 or

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

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

38 The petition for review shall be filed within thirty-five

39 days after receipt of written notice that such order has

40 been issued. Written notice of the filing of a petition for

41 review and a copy of said petition shall be personally

42 served upon the commission. Any party or person filing

43 a petition for review shall, within fifteen days thereafter,

44 secure from the commission a certified copy of the tran-

45 script of any hearing or hearings held in connection with

46 the issuance of the order, review of which is sought, and  
47 shall file the same with the clerk of the court in which  
48 the action or proceeding for review is pending. An exten-  
49 sion of time in which to file a transcript shall be granted  
50 by said court in which such action or proceeding for  
51 review is pending for good cause shown. Inability to  
52 obtain a transcript within the specified time shall be good  
53 cause. Failure to file a transcript within the period of  
54 fifteen days, or to secure an extension of time therefor,  
55 shall be cause for the dismissal of the petition for review  
56 by the court or on petition of any party of record to the  
57 original action or proceeding. Where more than one per-  
58 son may be aggrieved by the order, only one proceeding  
59 for review may be had and the court in which a petition  
60 for review is first properly filed shall 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 except  
65 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, repre-  
4 sentatives of industry, labor, commerce, agriculture, civic  
5 associations and officials of local, state and federal gov-  
6 ernment, as it may determine, and may cooperate with  
7 and use the services of any such committee and the  
8 organizations which they represent in furthering any  
9 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 any party  
3 state or any of its subdivisions to enact and enforce laws  
4 or ordinances for the prevention, abatement or control of  
5 air pollution within their respective borders.

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

10 (c) Prevent or restrict any party state or any political  
11 subdivision thereof from adopting standards to achieve  
12 a higher level of ambient air quality than those adopted  
13 by the commission for the area covered by the commis-  
14 sion's jurisdiction.

15 (d) Authorize any party state or any political sub-  
16 division thereof to adopt standards which will achieve  
17 a lower level of ambient air quality than those adopted  
18 by the commission for the area covered by the commis-  
19 sion's jurisdiction.

#### Article VIII

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

6 Each of the commission's budgets of estimated expendi-  
7 tures 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 available  
10 to the commission pursuant to article three, the cost of

11 operating and maintaining the commission shall be borne  
12 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 article  
15 three of this compact: *Provided*, That the commission  
16 takes specific action setting aside such funds prior to the  
17 incurring of any obligation to be met in whole or in part  
18 in this manner. Except where the commission makes  
19 use of funds available to it under article three, the com-  
20 mission shall not incur any obligations prior to the allot-  
21 ment of funds by the party states adequate to meet the  
22 same.

23 The expenses and any other costs for each member of  
24 the commission shall be met by the commission in ac-  
25 cordance with such standards and procedures as it may  
26 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  
31 and regulations. However, all receipts and disbursements

32 of funds handled by the commission shall be audited  
33 yearly by a certified or licensed public accountant and  
34 the report of the audit shall be included in and become  
35 a part 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 officers  
38 of the party states and by any persons authorized by the  
39 commission.

40 Nothing contained herein shall be construed to prevent  
41 commission compliance with laws relating to audit or  
42 inspection of accounts by or on behalf of any government  
43 contributing to the support of the commission.

#### Article IX

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

8 Any order of the commission issued prior to the termina-  
9 tion of this compact shall be enforceable thereafter by  
10 any party state in the same manner as though this com-  
11 pact were still in force except that any appropriate  
12 officer 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 any party state or of the United States, or the applica-  
6 bility thereof to any government, agency, person, or cir-  
7 cumstance is held invalid, the validity of the remainder  
8 of this compact and the applicability thereof to any gov-  
9 ernment, agency, person or circumstance shall not be  
10 affected.

#### Article XI

1 The present party states hereto, namely, West Virginia  
2 and Ohio, hereby agree and consent to the commonwealth  
3 of Pennsylvania and the state of Kentucky, or either of  
4 them, becoming parties to this compact.

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

1 In pursuance to article three of said compact, there shall  
2 be five members of the "Ohio-West Virginia interstate air  
3 pollution commission" from the state of West Virginia.  
4 The governor, by and with the advice and consent of  
5 the Senate, shall appoint two persons as two of such  
6 commissioners, each of whom shall be a resident and citi-  
7 zen of this state. Said two commissioners shall be persons,  
8 one of whom is experienced in the field of municipal  
9 government, and one of whom is experienced in the field  
10 of industrial activities. The term of one of said two com-  
11 missioners first appointed shall be one year, of the other  
12 two years. The third commissioner shall be the governor  
13 or his designee. As the term of each such initial appointee  
14 expires the successor to fill the vacancy created by such  
15 expired term shall be appointed by the governor, by and  
16 with the advice and consent of the Senate, for terms of  
17 five years each. Each commissioner shall hold office  
18 until his successor shall be appointed and qualified. Va-

19 cancies occurring in the office of any such commissioner  
20 from any reason or cause shall be filled by appointment  
21 by the governor, by and with the advice and consent of  
22 the Senate, for the unexpired term. The fourth commis-  
23 sioner from this state shall be the state director of health,  
24 ex officio, and the fifth commissioner from this state shall  
25 be the director of the air pollution control commission,  
26 ex officio, and the term of any such ex officio commis-  
27 sioner shall terminate at the time he ceases to hold said  
28 office, and his successor as a commissioner shall be his  
29 successor as said state director of health or director of  
30 the air pollution control commission. These five commis-  
31 sioners, acting jointly with like officers from the other  
32 party state, shall promulgate rules and regulations to  
33 carry out more effectively the terms of the compact.  
34 The commissioners shall cooperate with all departments,  
35 agencies, and officers of and in the government of this  
36 state and its subdivisions in facilitating the proper ad-  
37 ministration of the compact and all such departments,  
38 agencies, and officers shall cooperate with the commis-  
39 sioners. The non ex officio members shall be paid fifty

40 dollars for each day spent in performing their duties  
41 hereunder and shall be reimbursed for all reasonable and  
42 necessary expenses actually incurred in performing their  
43 duties hereunder.

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

William Tomp  
Chairman Senate Committee

Clayton C. Davidson  
Chairman House Committee

Originated in the Senate.

To take effect from passage.

Thomas Myers  
Clerk of the Senate

W. Blankenship  
Clerk of the House of Delegates

Lee W. Yar  
President of the Senate

Wm. F. Brumby  
Speaker House of Delegates

The within is approved this the 28<sup>th</sup>  
day of February, 1969.

Arch. A. Shouse, Jr.  
Governor



PRESENTED TO THE  
GOVERNOR

Date 2/25/69

Time 3:25 p.m.

RECEIVED

MAR 3 10 24 AM '69

OFFICE OF THE  
GOVERNOR  
STATE OF MISSISSIPPI