WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1969

ENROLLED
SENATE BILL NO. 169

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

PASSED .......... February 20, 1969

In Effect .......... Passage

Filed in the Office
JOHN D. ROYAL, IV
SECRETARY OF STATE
THIS DATE 3-3-69
ENROLLED

Senate Bill No. 169

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

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

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 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 sub-
stantially as follows:

INTERSTATE COMPACT ON AIR POLLUTION

The contracting states solemnly agree that:

Article I

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, and where appropriate, develop and implement ambient air quality standards in any designated air quality control region common to the party states.

Each of the party states pledges to the other faithful co-
operation in the control of air pollution which originates in one state and endangers 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 party states due to such variables as population densities,
topographic and climatic characteristics and existing or
projected land use and economic development. The guid-
ing principle of this compact is that air pollution shall
not endanger human health or welfare, animal or plant
life, or property, or interfere with the enjoyment of life
or property.

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 endanger 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. In addition, the chairman of
the commission shall request the President of the United States to designate a federal representative to the commission who shall serve as an ex officio member of the commission, but without vote except as hereinafter provided. 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. The governor of each party state, or his designee, shall be the third member of the commission. Two other members shall be chosen, one of whom is experienced in the field of municipal government and one of whom is experienced in the field of industrial activities. In choosing said two other members, the governor shall provide for adequate representation of appropriate local interests in any air quality control region designated by the secretary of health, education 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.
Each state shall have but one vote and every decision, authorization or other action shall require the majority vote of the party states. The vote of each state shall be determined by a majority of the commissioners from each party state present at the meeting where such vote is to be cast. In the event of a tie or stalemate, the federal representative to the commission 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 States 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 convey 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**

The commission may, whenever it finds air pollution which originates within the area of its jurisdiction in one of the party states and has an adverse effect in the
other party state, make a report recommending measures
for the prevention, abatement, or control of any such
air pollution. Copies of such report shall be furnished
to all existing state and local air pollution control agen-
cies with jurisdiction over the source or sources of air
pollution identified in the report. In preparing any such
report, the commission may confer with any appropriate
national, regional or local planning body, and any gov-
ernmental agency authorized to deal with matters re-
lating to air pollution problems and may conduct such
hearings and investigations as it may deem appropriate.
The commission may consult with and advise the
states and local governments, corporations, persons, or
other entities with regard to the adoption of programs
and the installation of equipment and works for the
prevention, abatement, or control of air pollution.
Without restricting the generality of the powers and
duties of the commission elsewhere herein provided, the
commission shall:
(a) Develop and implement ambient air quality stand-
ards and, in accordance with such data as are available
on the latest technology and economic feasibility of complying therewith, emission standards in order to prevent and control air pollution located within the area over which it has jurisdiction.

(b) Revise and modify such standards to reflect improvements in knowledge of air pollution and its prevention and control and in accordance with such data as are available on the latest technology and economic feasibility of complying with such standards.

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

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

(e) Have authority to enter at reasonable times upon any private or public property (excluding any federal building, installation or other property) for the purpose of investigating the source, type, character and amount of any air pollutant or emission alleged to violate the
standards at any time established by the commission pursuant to the provisions of this compact: Provided, however, That no such investigations shall extend to information relating to secret processes or methods of manufacturing or production.

(f) Have authority, upon reasonable evidence of a violation of the standards established by the commission pursuant to the provisions of this compact, which violation presents an imminent and substantial hazard to public health, to issue public notice of such hazard and the cause thereof, by any and all appropriate means, and to issue a cease and desist order or such other reasonable order as may be deemed necessary by the commission to cause such violation to be discontinued, at such time and upon such conditions as the commission may determine, and to enforce such order by appropriate proceedings, including but not limited to injunctive proceedings in any court of competent jurisdiction. And, further, the commission is hereby empowered to institute proceedings in any court of competent jurisdiction to enjoin any air pollution or emission which presents
such an imminent and serious hazard to public health as
to create an emergency.

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 cer-
tified 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 thereeto. 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, conclusions,
and recommendations of the report before it is finally
adopted by the commission.
Within a reasonable time, as determined by the commission, after the commission furnishes a report to the appropriate existing state and local air pollution control agencies pursuant to this article and, if the recommendations made in such report for the prevention, abatement, or control of air pollution from a specific source or sources have not been implemented, or if the appropriate state or local air pollution control agencies have not taken sufficient action to prevent, abate or control the air pollution, the commission may, after a duly conducted and constituted hearing, on due notice issue an order or orders upon any municipality, corporation, person, or other entity causing or contributing to a violation of ambient air quality standards. At any such hearing evidence may be received and a finding made on whether, in fact, a violation of the commission's air quality standards exists and on the sources of such pollution. Any such order or orders may prescribe a timetable for the abatement or control of the air pollution involved. Any such order shall become final and binding unless a petition for review of the same shall
be filed and prosecuted pursuant to the provisions of article five 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 five of this compact.

**Article V**

All hearings held by the commission shall be open to the public. At any hearing held pursuant to article four of this compact the party states, any agencies thereof, and any affected person, corporation, municipality or other entity shall be entitled to appear in person or by
representative, with or without counsel, and may make oral or written argument, offer testimony, or take any combination of such actions. All testimony taken before the commission shall be under oath and recorded in a written transcript. The transcript so recorded shall be made available to any member of the public or to any participant in such hearing upon payment of reasonable charges as fixed by the commission. No information relating to secret processes or methods of manufacture or production shall be disclosed at any public hearing or otherwise and all such information shall be kept confidential.

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

Any party state or person aggrieved by any order made by the commission shall be entitled to a judicial review thereof. Such review may be had by filing a verified petition in any of the appropriate courts referred to in article
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 exten-
sion 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 per-
son 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 con-
sider 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 any party state or any of its 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 any 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 any party state or any political subdivision thereof from adopting standards to achieve a higher level of ambient air quality than those adopted by the commission for the area covered by the commission's jurisdiction.

(d) Authorize any party state or any political subdivision thereof to adopt standards which will achieve a lower level of ambient air quality than those adopted by the commission for the area covered by the commission's jurisdiction.

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 three, 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 three 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 three, 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 officers of the party states and by any persons authorized by the commission.

Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government 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 any 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 termination of this compact shall be enforceable thereafter by any party state in the same manner as though this compact were still in force except that any appropriate officer or agency of the enforcing party state may act in the place and stead of the commission.

**Article X**

The provisions of this compact shall be reasonably and liberally construed. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision is declared to be contrary to the constitution of any party state or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected.

**Article XI**

The present party states hereto, namely, West Virginia and Ohio, hereby agree and consent to the commonwealth of Pennsylvania and the state of Kentucky, or either of them, becoming parties to this compact.
§29-1G-3. Appointment of members of commission; state di­
rector of health and director of the air pollution
commission members ex officio.

In pursuance to article three of said compact, there shall
be five members of the "Ohio-West Virginia interstate air
pollution commission" from the state of West Virginia.
The governor, by and with the advice and consent of
the Senate, shall appoint two persons as two of such
commissioners, each of whom shall be a resident and citi­
zen of this state. Said two commissioners shall be persons,
one of whom is experienced in the field of municipal
government, and one of whom is experienced in the field
of industrial activities. The term of one of said two com­
missioners first appointed shall be one year, of the other
two years. The third commissioner shall be the governor
or his designee. As the term of each such initial appointee
expires the successor to fill the vacancy 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. Va-
cancies occurring in the office of any such commissioner from any reason or cause shall be filled by appointment 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 commissioner 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 government of this state and its subdivisions in facilitating the proper administration of the compact and all such departments, agencies, and officers shall cooperate with the commissioners. The non ex officio members shall be paid fifty
dollars for each day spent in performing their duties hereunder and shall be reimbursed for all reasonable and necessary expenses actually incurred in performing their duties hereunder.
The Joint Committee on Enrolled Bills hereby certifies that
the foregoing bill is correctly enrolled.

William Tempo
Chairman Senate Committee

Clayton C. Donaldson
Chairman House Committee

Originated in the Senate.

To take effect from passage.

John M. Huey
Clerk of the Senate

C. A. Blandenship
Clerk of the House of Delegates

Leonard Yancey
President of the Senate

Jim F. Broach
Speaker House of Delegates

The within is approved this the 28th
day of February, 1969.

Arch A. Sanford, Jr.
Governor
PRESENTED TO THE GOVERNOR

Date 2/25/69
Time 3:25 p.m.