ENROLLED

Committee Substitute for Senate Bill No. 518

(By Mr. Bratton, M. President)

PASSED March 10, 1979

In Effectivity nine months from Passage
ENROLLED
COMMITTEE SUBSTITUTE FOR

Senate Bill No. 518
(Mr. Brotherton, Mr. President, original sponsor)

[Passed March 10, 1979; in effect ninety days from passage.]

AN ACT to amend and reenact sections one, two, three, four, five and eight, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; all relating to bringing the West Virginia Air Pollution Control Law into accord with the Federal Clean Air Act, as amended; making it unlawful to violate this article or rules and regulations promulgated thereunder; prohibiting any person from knowingly misrepresenting to any person in the state of West Virginia that the sale of air pollution control equipment will meet standards; providing for the election of a vice-chairman and specifying his duties; requiring that no rule or regulation of the commission shall specify the manufacturer, type of construction, or particular method of compliance except as specifically required by the Federal Clean Air Act, as amended, or apply to any aspect employer-employee relationship; providing that the state rules and regulations may not be more stringent than those of the federal government; and requiring that a copy of proposed rules or regulations be filed in the office of the secretary of state sixty days prior to hearing.

Be it enacted by the Legislature of West Virginia:

That sections one, two, three, four, five and eight, article twenty, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted 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 and the purpose of this article to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

To these ends it is the purpose of this article to provide for a coordinated statewide program of air pollution prevention, abatement and control; to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; and to provide a framework within which all values may be balanced in the public interest.

Further, it is the public policy of this state to fulfill its primary responsibility for assuring air quality pursuant to the "Federal Clean Air Act", as amended.

§16-20-2. Definitions.

The terms used in this article are defined as follows:

The term "person" means any and all persons, natural or artificial, including the state of West Virginia or any other state, the United States of America, any municipal, statutory, public or private corporation organized or existing under the laws of this or any other state or country, and any firm, partnership or association of whatever nature.

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

The term "air pollutants" means solids, liquids or gases which, if discharged into the air, may result in a statutory air pollution.

The term "discharge" refers to the release, escape or emission of air pollutants into the air.

The term "statutory air pollution" means and is limited
to the discharge into the air by the act of man of sub-
stances (liquid, solid, gaseous, organic or inorganic) in
a locality, manner and amount as to be injurious to hu-
man health or welfare, animal or plant life, or property,
or which would interfere with the enjoyment of life or
property.

The term "director" means the director of the West
Virginia air pollution control commission appointed as
hereinafter provided.

§16-20-3. Causing statutory pollution unlawful; article not to
provide persons with additional legal remedies.

It shall be unlawful for any person to cause a statu-
tory air pollution, to violate the provisions of this
article, to violate any rules or regulations promulgated
pursuant to this article, to operate any facility subject
to the permit requirements of the commission without
a valid permit, or to knowingly misrepresent to any
person in the state of West Virginia that the sale of air
pollution control equipment will meet the standards of
this article or any rules and regulations promulgated
thereto: Provided, however, That nothing contained in
this article shall be construed to provide any person
with a legal remedy or basis for damages or other relief
not otherwise available to such person immediately prior
to enactment of this article.

§16-20-4. Air pollution control commission—Composition; ap-
pointment and terms of members; vacancies; compen-
sation and expenses of members; organization
and personnel; appointment of director; records;
meetings.

The "air pollution control commission," heretofore
created, shall continue in existence as an agency of the
state but on and after the effective date of this act shall
consist of seven members, including the state director of
health and the commissioner of agriculture, who shall
be members ex officio, and five other members to be
appointed by the governor with the advice and consent
of the Senate, two of whom shall be representative of
industries engaged in business in this state, and three
The three appointed members of the commission in office on the effective date of this act shall, unless sooner removed, continue to serve until their terms expire and until their successors have been appointed and have qualified. On or before June fifteen, one thousand nine hundred sixty-seven, the governor shall appoint one member to serve until June thirty, one thousand nine hundred seventy, and one member to serve until June thirty, one thousand nine hundred seventy-one, or until their successors have been appointed and have qualified. As the terms of the three appointed members of the commission in office on the effective date of this act expire and as the terms of the two members to be appointed by the governor on or before June fifteen, one thousand nine hundred sixty-seven, expire, members shall be appointed for overlapping terms of five years, so that one term expires each year, or until their successors have been appointed and have qualified. Any vacancy in the office of an appointed member of the commission shall be filled by appointment by the governor for the unexpired term of the appointed member whose office shall be vacant.

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

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

At its first meeting the commission shall elect from its membership a chairman, and at the first meeting in each
fiscal year thereafter the commission shall elect from its membership a chairman to act during such fiscal year. At similar times the commission shall elect from its membership a vice-chairman and appoint a secretary. The secretary need not be a member of the commission. The vice-chairman shall preside over the meetings and hearings of the commission in the absence of the chairman. The commission shall appoint and employ a director and such personnel as may be required, whose duties shall be defined by the commission and whose compensation, to be fixed by the commission, shall be paid out of the state treasury, upon the requisition of the commission, from moneys appropriated for such purposes.

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

§16-24-5. Same—Powers and duties; legal services; rules and regulations; public hearings.

The commission is hereby authorized and empowered:

(1) To develop ways and means for the regulation and control of pollution of the air of the state;

(2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries, and with affected groups in furtherance of the declared purposes of this article;

(3) To encourage and conduct such studies and re-
search relating to air pollution and its control and abatement as the commission may deem advisable and necessary;

(4) To adopt and to promulgate reasonable rules and regulations, not inconsistent with the provisions of this article, relating to the control of air pollution: Provided, That no rule or regulation of the commission shall specify a particular manufacturer of equipment nor a single specific type of construction nor a particular method of compliance except as specifically required by the "Federal Clean Air Act", as amended, nor shall any such rule or regulation apply to any aspect of an employer-employee relationship: Provided further, That no rule, regulation, standard, program or plan of the commission to control air pollution from any source hereafter promulgated, adopted or implemented, may be more stringent than any federal rule, regulation, standard, program or plan applicable to the control of air pollution from that source;

(5) To enter orders requiring compliance with the provisions of this article and the rules and regulations lawfully promulgated hereunder;

(6) To consider complaints, subpoena witnesses, administer oaths, make investigations, and hold hearings relevant to the promulgation of rules and regulations and the entry of compliance orders hereunder;

(7) To encourage voluntary cooperation by municipalities, counties, industries and others in preserving the purity of the air within the state;

(8) To employ personnel, including specialists and consultants, purchase materials and supplies, and enter into contracts necessary, incident or convenient to the accomplishment of the purpose of this article;

(9) To enter and inspect any property, premise on or at which a source of air pollutants is located or is being constructed, installed or established at any reasonable time for the purpose of ascertaining the state of compliance with this article and rules and regulations in force pursuant thereto. No person shall refuse entry or access to any authorized representative of the commission who requests entry for purposes of inspection, and
who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection: Provided, however, That nothing contained in this article shall be construed to allow a search of a private dwelling, including the curtilage thereof, without a proper warrant;

(10) Upon reasonable evidence of a violation of this article, which presents an imminent and serious hazard to public health, to give notice to the public or to that portion of the public which is in danger by any and all appropriate means;

(11) To cooperate with, receive and expend money from the federal government and other sources;

(12) To represent the state in any and all matters pertaining to plans, procedures and negotiations for interstate compacts in relation to the control of air pollution;

(13) To appoint advisory councils from such areas of the state as it may determine. Each such council so appointed shall consist of not more than five members appointed from the general public, for each area so designated. Such members shall possess some knowledge and interest in matters pertaining to the regulation, control and abatement of air pollution. The council may advise and consult with the commission about all matters pertaining to the regulation, control and abatement of air pollution within such area;

(14) To require any and all persons who are directly or indirectly discharging air pollutants into the air to file with the commission such information as the director may require in a form or manner prescribed by him for such purpose, including, but not limited to, location, size and height of discharge outlets, processes employed, fuels used and the nature and time periods of duration of discharges. Such information shall be filed with the director, when and in such reasonable time, and in such manner as the director may prescribe;

(15) To require the owner or operator of any stationary source discharging air pollutants to install such monitoring equipment or devices as the director may pre-
scribe and to submit periodic reports on the nature and amount of such discharges to the commission;

(16) To do all things necessary and convenient to prepare and submit a plan or plans for the implementation, maintenance and enforcement of the "Federal Clean Air Act", as amended: Provided, That in preparing and submitting each such plan the commission shall establish in such plan that such standard shall be first achieved, maintained and enforced by limiting and controlling emissions of pollutants from commercial and industrial sources and locations and shall only provide in such plans for limiting and controlling emissions of pollutants from private dwellings and the curtilage thereof as a last resort: Provided further, That nothing herein contained shall be construed to affect plans for achievement, maintenance and enforcement of motor vehicle emission standards and standards for fuels used in dwellings; and

(17) Whenever the commission achieves informally, by letter, or otherwise, an agreement with any person that said person will cease and desist in any act resulting in the discharge of pollutants or do any act to reduce or eliminate such discharge, such agreement shall be embodied in a consent order and entered as, and shall have the same effect as, an order entered after a hearing as provided in section six of this article.

The attorney general and his assistants and the prosecuting attorneys of the several counties shall render to the commission without additional compensation such legal services as the commission may require of them to enforce the provisions of this article.

No rule and regulation of the commission pertaining to the control, reduction or abatement of air pollution shall become effective until after at least one public hearing thereon shall have been held by the commission within the state. Notice to the public of the time and place of any such hearing shall be given by the commission at least thirty days prior to the scheduled date of such hearing by advertisement published as a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication
129 area for such publication shall be in at least one county
130 in each affected air quality control region defined by the
131 commission. A copy of any proposed rule or regulation of
132 the commission shall be filed in the office of the secretary
133 of state at least sixty days prior to the scheduled date of
134 any such hearing. Full opportunity to be heard shall be
135 accorded to all persons in attendance and any person,
136 whether or not in attendance at such hearing, may submit
137 in writing his views with respect to any such rule and
138 regulation to the commission within thirty days after such
139 hearing. After such thirty-day period, no views or com-
140 ments shall be received in writing or otherwise, unless
141 formally solicited by the commission. The proceedings at
142 the hearing before the commission shall be recorded by
143 mechanical means or otherwise as may be prescribed by
144 the commission. Such record of proceedings need not be
145 transcribed unless requested by an interested party in
146 which event the prevailing rates for such transcripts will
147 be required from such interested party.

§16-20-8. Penalties; recovery and disposition; duties of prose-
cutting attorneys.

1 Any person who shall fail or refuse to comply with any
2 final order made and entered hereunder to correct a statu-
tory air pollution within the time fixed by such order, or
3 any extension of time granted by the commission, shall
4 be subject to a penalty of not more than one thousand
5 dollars for each day that such failure or refusal continues
6 after such time has expired, which penalty may be re-
7 covered in a civil action brought by the commission in the
8 name of the state of West Virginia in the circuit court of
9 any county wherein such person resides or is engaged in
10 the activity complained of. The amount of the penalty
11 shall be fixed by the court without a jury. The amount of
12 any such penalties collected by the commission shall be
13 deposited in the general fund of the state treasury ac-
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 pros-
19 ecute all such actions on behalf of the commission.
For the purpose of this section, violations on separate days shall be considered separate offenses.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Clarence E. Constitution, Jr.  
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. Chilton J.  
Clerk of the Senate

C. B. Lamkin, Jr.  
Clerk of the House of Delegates

W. T. Battle Jr.  
President of the Senate

Clyde W. Reece  
Speaker House of Delegates

The within is approved this the 25

day of March, 1979.

[Signature]

Governor