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Date 3-27-79

Time 9:45 A.M.

19 MAR 27 P11:47

OFFICE
CLERK OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979

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ENROLLED

Committee Substitute for

SENATE BILL NO. 539

(By Mr. *Palumbo & Mr. Gilligan*)

—•—

PASSED *March 9,* 1979

In Effect *from* Passage



No. 539

79 MAR 27 PH: 47

ENROLLED
COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 539

(MR. PALUMBO and MR. GILLIGAN, *original sponsors*)

[Passed March 9, 1979; in effect from passage.]

AN ACT to amend chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article twenty, relating to the governor's commission on Willow Island; continuing the existence of such commission; making certain legislative findings; declaring purposes and intent with respect to said commission; providing for the composition of the commission and the appointment of members; permitting certain members of the Legislature to serve on said commission; establishing the powers and duties of the commission; authorizing the commission to examine witnesses; empowering the commission to administer oaths and to issue subpoenas and subpoenas duces tecum; outlining the duties of the circuit courts with respect to the enforcement of said subpoenas or subpoenas duces tecum; providing for the employment of legal, technical, investigative and other personnel to assist the commission; providing for the compensation and expenses of the members of the commission and the method of payment; permitting the commission to hold executive sessions in certain cases; granting immunity to members of the commission in certain instances; providing that certain findings, reports and evidence shall be privileged; providing for reports to be made by the commission; and relating to the interpretation of the provisions of this section.

Be it enacted by the Legislature of West Virginia:

That chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding

thereto a new article, designated article twenty, to read as follows:

ARTICLE 20. THE GOVERNOR'S COMMISSION ON WILLOW ISLAND.

§5-20-1. Legislative findings, purposes and intent.

1 The Legislature hereby finds and declares:

2 (a) That on the twenty-seventh day of April, one
3 thousand nine hundred seventy-eight, at Willow Island,
4 Pleasants County, West Virginia, a cooling tower then
5 under construction collapsed, resulting in the loss of a
6 great many lives;

7 (b) That every effort should be made to prevent the
8 repetition of any similar tragic occurrence or incident in
9 the future and, toward that end, it is proper and desirable
10 that a complete, detailed and thorough investigation into
11 the reasons for and causes of the collapse of such cooling
12 tower be made; which investigation should be indepen-
13 dent of and free from any litigation which has been or may
14 be instituted with respect to such collapse;

15 (c) That toward this end, the governor, by executive
16 order No. 15-78, dated the sixth day of October, one thou-
17 sand nine hundred seventy-eight, created and established
18 the governor's commission on Willow Island, comprised of
19 nine members, consisting of and generally representative
20 of the public and of various interests, bodies, groups and
21 organizations as specified in subsection (b) of this section;

22 (d) That in furtherance of the intent and purposes of
23 the aforesaid executive order it is the intent of the Legis-
24 lature to continue the governor's commission on Willow
25 Island and to expand upon its powers, duties and respon-
26 sibilities in order to facilitate its investigative purposes
27 and assure the orderly execution of its functions and
28 duties;

29 (e) That it recognizes that the provisions of section 1,
30 article V of the constitution of West Virginia prohibit any
31 person from exercising the powers of more than one
32 branch or department of government at the same time;
33 however, it is the express purpose, intent and finding of
34 the Legislature that those members of the commission
35 who are members of the Legislature are acting as mem-

36 bers of Legislature while serving on the commission and
 37 in the furtherance of the Legislature's inherent right and
 38 power to investigate and inquire into and report on those
 39 matters which are legitimately within its powers, and
 40 that since the commission's role and duties are investi-
 41 gative and reportive in nature, the service upon the com-
 42 mission by its legislative members and the service of its
 43 chairman are not violative of nor inimical to the consti-
 44 tutional mandate with respect to the separation of gov-
 45 ernmental powers.

**§5-20-2. Governor's commission on Willow Island continued;
 composition; appointment of members.**

1 The governor's commission on Willow Island, herein-
 2 after denominated "commission," heretofore created and
 3 existing under the authority of an executive order dated
 4 the sixth day of October, one thousand nine hundred
 5 seventy-eight, is hereby continued. The commission shall
 6 continue to consist of nine members appointed by the
 7 governor as follows: One shall be the commissioner of
 8 labor, who shall serve as chairman of the commission;
 9 two shall be members of the West Virginia Legislature,
 10 one from the Senate and one from the House of Delegates;
 11 two shall be representatives of and shall be nominated
 12 by an organization composed of and representing the
 13 interests of the surviving members of the families of
 14 those persons killed at the Willow Island cooling tower
 15 collapse; two shall be representatives of organized labor;
 16 one shall be representative of the business community;
 17 and one shall be representative of the general public.
 18 Those persons previously appointed who are members
 19 of the commission upon the effective date of this article
 20 shall continue as members of the commission and shall
 21 remain members of the commission until their resigna-
 22 tion, death or removal by the governor, in which case
 23 or event the governor shall appoint a new member from
 24 or representative of the same group or interests as the
 25 former member.

§5-20-3. Powers of the commission.

1 The commission has the power, duty and responsibility:
 2 (a) To conduct a comprehensive and detailed investi-

3 gation into the collapse of the cooling tower at Willow
4 Island, to evaluate the facts and circumstances surround-
5 ing such collapse and, if possible, to determine the cause
6 or causes of such collapse;

7 (b) To analyze and evaluate the findings and reports
8 of the occupational health and safety administration with
9 respect to the collapse of the cooling tower at Willow
10 Island and to report to the governor and the Legislature
11 with respect thereto;

12 (c) To administer oaths, to examine witnesses, to com-
13 pel the attendance of witnesses to appear before the com-
14 mission and to compel the production of such books,
15 records, documents or other papers or tangible things
16 as the commission may require to conduct its investi-
17 gation, and to this end the commission is hereby given
18 authority to issue subpoenas or subpoenas duces tecum.
19 Any subpoena or subpoena duces tecum issued on behalf
20 of the commission shall be over the signature of the
21 chairman. If any person subpoenaed to appear before
22 the commission or before any committee or subcommittee
23 thereof refuses to appear or to answer inquiries pro-
24 pounded to such person, or fails or refuses to produce any
25 book, record, document or other paper or tangible thing
26 within his control when the same are demanded, the com-
27 mission or its chairman shall report the fact of such failure
28 or refusal to the circuit court of Kanawha County or
29 any other court of competent jurisdiction and such court
30 shall compel obedience to the subpoena or subpoena duces
31 tecum as though the subpoena or subpoena duces tecum
32 had been issued by such court in the first instance;

33 (d) To employ such legal, technical, investigative,
34 clerical, stenographic, advisory and other personnel as it
35 deems necessary and needful and to fix the reasonable
36 compensation of such persons as may be so employed;

37 (e) To perform every other act necessary or desirable
38 to carry out any of the other powers, duties or responsi-
39 bilities enumerated in this section.

**§5-20-4. Compensation and expenses of members; expenses of
the commission; how paid.**

1 Except for those members of the commission who are

2 members of the Legislature, the members of the com-
3 mission shall be reimbursed for all of their reasonable
4 and necessary travel and other expenses incurred in
5 connection with carrying out their duties as members
6 of the commission, which expenses shall be paid in the
7 manner and form prescribed by law or by any rule or
8 regulation and which expenses shall be paid from the
9 governor's civil contingency fund upon approval of the
10 governor. Members of the commission who are also
11 members of the Legislature shall be reimbursed for any
12 such expenses from the appropriation under "Account
13 No. 103 for Joint Expenses," upon approval of the joint
14 committee on government and finance.

15 Other expenses of the commission, including any fees,
16 salaries, wages and other expenses, shall be paid from
17 the appropriations made to the governor's civil contin-
18 gency fund, upon approval of the governor.

19 Members of the commission may receive no other com-
20 pensation for their services on or with the commission.

§5-20-5. Executive sessions authorized.

1 Notwithstanding any provisions of article nine-a, chap-
2 ter six of the code to the contrary, the commission shall
3 have the power and authority to hold executive sessions
4 for the purpose of establishing policy or an agenda and
5 for the purpose of interrogating any witness or witnesses.
6 If a witness desires to testify or be interrogated in a public
7 or open hearing, such witness shall have the right to
8 demand the same and shall not be heard otherwise.
9 Conversely, if a witness desires to testify or be heard in
10 executive session, he shall notify the commission of his
11 desire and shall assign reasons therefor and the commis-
12 sion may, after consideration of the reasons assign for
13 such request, grant the same. If such request is refused,
14 such refusal shall not constitute grounds for the refusal
15 to testify. The commission may permit members of the
16 staff of the commission to attend and be present during
17 any executive session of the commission, whether for
18 the taking of evidence or otherwise.

§5-20-6. Immunity granted to commission members.

1 No member of the commission may be held liable,

2 either civilly or criminally, for delivering an opinion,
3 uttering a speech, or for statements made in debate during
4 any meeting of the commission or of any committee or
5 subcommittee thereof, nor for the contents of any report,
6 document or other writing prepared by the commission or
7 by any committee or subcommittee thereof, nor shall any
8 member be subpoenaed to testify or questioned before
9 or by any other tribunal or court with respect to any
10 such opinion, utterance, speech, statement or report or
11 as to any finding or findings of the commission.

§5-20-7. Privilege granted to commission findings, reports and evidence.

1 None of the findings, reports, testimony, statements or
2 other evidence of whatsoever nature adduced by, belong-
3 ing to or made by the commission may be used as evidence
4 in any court or other tribunal for any purpose whatso-
5 ever, nor shall the same be subject to any subpoena or
6 subpoena duces tecum issued by any court or other
7 tribunal.

§5-20-8. Reports of the commission.

1 The commission shall submit any report or reports as
2 to its findings and conclusions, along with any recom-
3 mendations which it deems appropriate, to the Legisla-
4 ture and the governor on or before July one, one thousand
5 nine hundred eighty, after which date it shall cease its
6 existence.

§5-20-9. Interpretation of section.

1 The provisions of this article shall be in addition to
2 and not in derogation of the purposes of the commission
3 as set forth in the aforesaid executive order No. 15-78,
4 and none of the provisions of this section may be con-
5 strued so as to limit the primary purpose of the com-
6 mission as set forth in said executive order.

19 MAR 1979 Enr. Com. Sub. for S. B. No. 539

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

James L. Davis
Chairman Senate Committee

Clarence C. Thurston Jr.
Chairman House Committee

Originated in the Senate.

To take effect from passage.

J. C. Dillough
Clerk of the Senate

W. A. Blankenship
Clerk of the House of Delegates

W. H. Burdette
President of the Senate

W. H. Burdette
Speaker House of Delegates

The within *is approved* this the *27*
day of *March*, 1979.

John D. Ralston
Governor

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OFFICE OF THE GOVERNOR