WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1979

ENROLLED
Committee Substitute for
SENATE BILL NO. 539
(By Mr. Coleman and Mr. Gilliam)

PASSED March 29, 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
thereunto 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 thousand nine hundred seventy-eight, at Willow Island, Pleasants County, West Virginia, a cooling tower then under construction collapsed, resulting in the loss of a great many lives;
3 (b) That every effort should be made to prevent the repetition of any similar tragic occurrence or incident in the future and, toward that end, it is proper and desirable that a complete, detailed and thorough investigation into the reasons for and causes of the collapse of such cooling tower be made, which investigation should be independent of and free from any litigation which has been or may be instituted with respect to such collapse;
4 (c) That toward this end, the governor, by executive order No. 15-78, dated the sixth day of October, one thousand nine hundred seventy-eight, created and established the governor's commission on Willow Island, comprised of nine members, consisting of and generally representative of the public and of various interests, bodies, groups and organizations as specified in subsection (b) of this section;
5 (d) That in furtherance of the intent and purposes of the aforesaid executive order it is the intent of the Legislature to continue the governor's commission on Willow Island and to expand upon its powers, duties and responsibilities in order to facilitate its investigative purposes and assure the orderly execution of its functions and duties;
6 (e) That it recognizes that the provisions of section 1, article V of the constitution of West Virginia prohibit any person from exercising the powers of more than one branch or department of government at the same time; however, it is the express purpose, intent and finding of the Legislature that those members of the commission who are members of the Legislature are acting as mem-
bers of Legislature while serving on the commission and
in the furtherance of the Legislature’s inherent right and
power to investigate and inquire into and report on those
matters which are legitimately within its powers, and
that since the commission’s role and duties are investi-
gative and reportive in nature, the service upon the com-
mission by its legislative members and the service of its
chairman are not violative of nor inimical to the consti-
tutional mandate with respect to the separation of gov-
ernmental powers.

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

The governor’s commission on Willow Island, herein-
after denominated “commission,” heretofore created and
existing under the authority of an executive order dated
the sixth day of October, one thousand nine hundred
seventy-eight, is hereby continued. The commission shall
continue to consist of nine members appointed by the
governor as follows: One shall be the commissioner of
labor, who shall serve as chairman of the commission;
two shall be members of the West Virginia Legislature,
one from the Senate and one from the House of Delegates;
two shall be representatives of and shall be nominated
by an organization composed of and representing the
interests of the surviving members of the families of
those persons killed at the Willow Island cooling tower
collapse; two shall be representatives of organized labor;
one shall be representative of the business community;
and one shall be representative of the general public.
Those persons previously appointed who are members
of the commission upon the effective date of this article
shall continue as members of the commission and shall
remain members of the commission until their resigna-
tion, death or removal by the governor, in which case
or event the governor shall appoint a new member from
or representative of the same group or interests as the
former member.


The commission has the power, duty and responsibility:
(a) To conduct a comprehensive and detailed investi-
gation into the collapse of the cooling tower at Willow Island, to evaluate the facts and circumstances surround-
ing such collapse and, if possible, to determine the cause
or causes of such collapse;

(b) To analyze and evaluate the findings and reports
of the occupational health and safety administration with
respect to the collapse of the cooling tower at Willow
Island and to report to the governor and the Legislatu-
re with respect thereto;

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

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

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

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

Except for those members of the commission who are
members of the Legislature, the members of the commission shall be reimbursed for all of their reasonable and necessary travel and other expenses incurred in connection with carrying out their duties as members of the commission, which expenses shall be paid in the manner and form prescribed by law or by any rule or regulation and which expenses shall be paid from the governor's civil contingency fund upon approval of the governor. Members of the commission who are also members of the Legislature shall be reimbursed for any such expenses from the appropriation under "Account No. 103 for Joint Expenses," upon approval of the joint committee on government and finance.

Other expenses of the commission, including any fees, salaries, wages and other expenses, shall be paid from the appropriations made to the governor's civil contingency fund, upon approval of the governor.

Members of the commission may receive no other compensation for their services on or with the commission.

§5-20-5. Executive sessions authorized.

Notwithstanding any provisions of article nine-a, chapter six of the code to the contrary, the commission shall have the power and authority to hold executive sessions for the purpose of establishing policy or an agenda and for the purpose of interrogating any witness or witnesses. If a witness desires to testify or be interrogated in a public or open hearing, such witness shall have the right to demand the same and shall not be heard otherwise. Conversely, if a witness desires to testify or be heard in executive session, he shall notify the commission of his desire and shall assign reasons therefor and the commission may, after consideration of the reasons assign for such request, grant the same. If such request is refused, such refusal shall not constitute grounds for the refusal to testify. The commission may permit members of the staff of the commission to attend and be present during any executive session of the commission, whether for the taking of evidence or otherwise.

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

No member of the commission may be held liable,
either civilly or criminally, for delivering an opinion, uttering a speech, or for statements made in debate during any meeting of the commission or of any committee or subcommittee thereof, nor for the contents of any report, document or other writing prepared by the commission or by any committee or subcommittee thereof, nor shall any member be subpoenaed to testify or questioned before or by any other tribunal or court with respect to any such opinion, utterance, speech, statement or report or as to any finding or findings of the commission.

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

None of the findings, reports, testimony, statements or other evidence of whatsoever nature adduced by, belonging to or made by the commission may be used as evidence in any court or other tribunal for any purpose whatsoever, nor shall the same be subject to any subpoena or subpoena duces tecum issued by any court or other tribunal.

§5-20-8. Reports of the commission.

The commission shall submit any report or reports as to its findings and conclusions, along with any recommendations which it deems appropriate, to the Legislature and the governor on or before July one, one thousand nine hundred eighty, after which date it shall cease its existence.

§5-20-9. Interpretation of section.

The provisions of this article shall be in addition to and not in derogation of the purposes of the commission as set forth in the aforesaid executive order No. 15-78, and none of the provisions of this section may be construed so as to limit the primary purpose of the commission as set forth in said executive order.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James L. Davis  
Chairman Senate Committee

Clarence E. Chastain  
Chairman House Committee

Originated in the Senate.

To take effect from passage.

J.C. Dillouge  
Clerk of the Senate

W.E. Blankenship  
Clerk of the House of Delegates

John M. Sheney Jr.  
President of the Senate

Roger L. Antrim  
Speaker House of Delegates

The within _____________________ this the 27th day of March, 1979.

John G. Bordeaux  
Governor