

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-28-79

Time 9:55 p.m.

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1979

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ENROLLED

Committee Substitute for
SENATE BILL NO. 518

(By Mr. Brotherton, Mr. President)

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PASSED March 10, 1979

In Effect ninty days from Passage



No. 518

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.

1 It is hereby declared to be the public policy of this
2 state and the purpose of this article to achieve and main-
3 tain such levels of air quality as will protect human
4 health and safety, and to the greatest degree practicable,
5 prevent injury to plant and animal life and property,
6 foster the comfort and convenience of the people, promote
7 the economic and social development of this state and
8 facilitate the enjoyment of the natural attractions of this
9 state.

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

17 Further, it is the public policy of this state to fulfill
18 its primary responsibility for assuring air quality pur-
19 suant to the "Federal Clean Air Act", as amended.

§16-20-2. Definitions.

1 The terms used in this article are defined as follows:

2 The term "person" means any and all persons, natural
3 or artificial, including the state of West Virginia or any
4 other state, the United States of America, any municipal,
5 statutory, public or private corporation organized or
6 existing under the laws of this or any other state or
7 country, and any firm, partnership or association of what-
8 ever nature.

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

12 The term "air pollutants" means solids, liquids or gases
13 which, if discharged into the air, may result in a statu-
14 tory air pollution.

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

17 The term "statutory air pollution" means and is limited

18 to the discharge into the air by the act of man of sub-
19 stances (liquid, solid, gaseous, organic or inorganic) in
20 a locality, manner and amount as to be injurious to hu-
21 man health or welfare, animal or plant life, or property,
22 or which would interfere with the enjoyment of life or
23 property.

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

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

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

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

1 The "air pollution control commission," heretofore
2 created, shall continue in existence as an agency of the
3 state but on and after the effective date of this act shall
4 consist of seven members, including the state director of
5 health and the commissioner of agriculture, who shall
6 be members ex officio, and five other members to be
7 appointed by the governor with the advice and consent
8 of the Senate, two of whom shall be representative of
9 industries engaged in business in this state, and three

10 of whom shall be representative of the public at large.
11 The three appointed members of the commission in
12 office on the effective date of this act shall, unless sooner
13 removed, continue to serve until their terms expire and
14 until their successors have been appointed and have
15 qualified. On or before June fifteen, one thousand nine
16 hundred sixty-seven, the governor shall appoint one
17 member to serve until June thirty, one thousand nine
18 hundred seventy, and one member to serve until June
19 thirty, one thousand nine hundred seventy-one, or until
20 their successors have been appointed and have qualified.
21 As the terms of the three appointed members of the
22 commission in office on the effective date of this act
23 expire and as the terms of the two members to be ap-
24 pointed by the governor on or before June fifteen, one
25 thousand nine hundred sixty-seven, expire, members
26 shall be appointed for overlapping terms of five years,
27 so that one term expires each year, or until their suc-
28 cessors have been appointed and have qualified. Any
29 vacancy in the office of an appointed member of the
30 commission shall be filled by appointment by the gov-
31 ernor for the unexpired term of the appointed member
32 whose office shall be vacant.

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

39 As compensation for his services on the commission,
40 each appointed member shall receive, out of moneys
41 appropriated for such purpose, the sum of fifty dollars
42 for each day or substantial portion thereof that he is
43 actually engaged in the work of the commission. Each
44 member shall also be entitled to be reimbursed, out of
45 moneys appropriated for such purpose, for any reason-
46 able and necessary expenses actually incurred in the
47 discharge of his duties as a member of the commission.

48 At its first meeting the commission shall elect from its
49 membership a chairman, and at the first meeting in each

50 fiscal year thereafter the commission shall elect from its
 51 membership a chairman to act during such fiscal year.
 52 At similar times the commission shall elect from its
 53 membership a vice-chairman and appoint a secretary.
 54 The secretary need not be a member of the commission.
 55 The vice-chairman shall preside over the meetings and
 56 hearings of the commission in the absence of the chair-
 57 man. The commission shall appoint and employ a direc-
 58 tor and such personnel as may be required, whose duties
 59 shall be defined by the commission and whose compen-
 60 sation, to be fixed by the commission, shall be paid out
 61 of the state treasury, upon the requisition of the com-
 62 mission, from moneys appropriated for such purposes.

63 The commission may establish rules for the regulation
 64 of its affairs and the conduct of all proceedings before it.
 65 All proceedings of the commission shall be entered in a
 66 permanently bound record book, properly indexed, and
 67 the same shall be carefully preserved. Copies of orders
 68 entered by the commission, as well as copies of papers
 69 or documents filed with it, or the records of proceedings
 70 before the commission, shall be attested by the secretary
 71 of the commission. The commission shall meet at such
 72 times and places as may be agreed upon by the commis-
 73 sioners, or upon the call of the chairman of the commis-
 74 sion or any two commissioners, all of which meetings
 75 shall be general meetings for the consideration of any
 76 and all matters which may properly come before the
 77 commission.

§16-20-5. Same—Powers and duties; legal services; rules and regulations; public hearings.

1 The commission is hereby authorized and empowered:

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

4 (2) To advise, consult and cooperate with other agen-
 5 cies of the state, political subdivisions of the state, other
 6 states, agencies of the federal government, industries,
 7 and with affected groups in furtherance of the declared
 8 purposes of this article;

9 (3) To encourage and conduct such studies and re-

10 search relating to air pollution and its control and abate-
11 ment as the commission may deem advisable and neces-
12 sary;

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

28 (5) To enter orders requiring compliance with the pro-
29 visions of this article and the rules and regulations law-
30 fully promulgated hereunder;

31 (6) To consider complaints, subpoena witnesses, ad-
32 minister oaths, make investigations, and hold hearings
33 relevant to the promulgation of rules and regulations and
34 the entry of compliance orders hereunder;

35 (7) To encourage voluntary cooperation by munici-
36 palities, counties, industries and others in preserving the
37 purity of the air within the state;

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

42 (9) To enter and inspect any property, premise or
43 place on or at which a source of air pollutants is located or
44 is being constructed, installed or established at any rea-
45 sonable time for the purpose of ascertaining the state of
46 compliance with this article and rules and regulations
47 in force pursuant thereto. No person shall refuse entry or
48 access to any authorized representative of the commis-
49 sion who requests entry for purposes of inspection, and

50 who presents appropriate credentials; nor shall any per-
51 son obstruct, hamper or interfere with any such inspec-
52 tion: *Provided, however,* That nothing contained in this
53 article shall be construed to allow a search of a private
54 dwelling, including the curtilage thereof, without a prop-
55 er warrant;

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

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

63 (12) To represent the state in any and all matters per-
64 taining to plans, procedures and negotiations for inter-
65 state compacts in relation to the control of air pollution;

66 (13) To appoint advisory councils from such areas of
67 the state as it may determine. Each such council so ap-
68 pointed shall consist of not more than five members ap-
69 pointed from the general public, for each area so desig-
70 nated. Such members shall possess some knowledge and
71 interest in matters pertaining to the regulation, control
72 and abatement of air pollution. The council may advise
73 and consult with the commission about all matters per-
74 taining to the regulation, control and abatement of air
75 pollution within such area;

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

86 (15) To require the owner or operator of any station-
87 ary source discharging air pollutants to install such mon-
88 itoring equipment or devices as the director may pre-

89 scribe and to submit periodic reports on the nature and
90 amount of such discharges to the commission;

91 (16) To do all things necessary and convenient to pre-
92 pare and submit a plan or plans for the implementation,
93 maintenance and enforcement of the "Federal Clean Air
94 Act", as amended: *Provided*, That in preparing and sub-
95 mitting each such plan the commission shall establish in
96 such plan that such standard shall be first achieved, main-
97 tained and enforced by limiting and controlling emissions
98 of pollutants from commercial and industrial sources and
99 locations and shall only provide in such plans for limiting
100 and controlling emissions of pollutants from private
101 dwellings and the curtilage thereof as a last resort:
102 *Provided further*, That nothing herein contained shall be
103 construed to affect plans for achievement, maintenance
104 and enforcement of motor vehicle emission standards and
105 of standards for fuels used in dwellings; and

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

114 The attorney general and his assistants and the prose-
115 cuting attorneys of the several counties shall render to
116 the commission without additional compensation such
117 legal services as the commission may require of them to
118 enforce the provisions of this article.

119 No rule and regulation of the commission pertaining to
120 the control, reduction or abatement of air pollution shall
121 become effective until after at least one public hearing
122 thereon shall have been held by the commission within
123 the state. Notice to the public of the time and place of
124 any such hearing shall be given by the commission at
125 least thirty days prior to the scheduled date of such hear-
126 ing by advertisement published as a Class II legal adver-
127 tisement in compliance with the provisions of article
128 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 prosecuting attorneys.

1 Any person who shall fail or refuse to comply with any
 2 final order made and entered hereunder to correct a statu-
 3 tory air pollution within the time fixed by such order, or
 4 any extension of time granted by the commission, shall
 5 be subject to a penalty of not more than one thousand
 6 dollars for each day that such failure or refusal continues
 7 after such time has expired, which penalty may be re-
 8 covered in a civil action brought by the commission in the
 9 name of the state of West Virginia in the circuit court of
 10 any county wherein such person resides or is engaged in
 11 the activity complained of. The amount of the penalty
 12 shall be fixed by the court without a jury. The amount of
 13 any such penalties collected by the commission shall be
 14 deposited in the general fund of the state treasury ac-
 15 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.

20 For the purpose of this section, violations on separate
21 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 T. Johnston Jr.
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

J. C. Dillon, Jr.
Clerk of the Senate

W. B. Crunkenship
Clerk of the House of Delegates

W. J. Bullock
President of the Senate

Lyde H. Lee, Jr.
Speaker House of Delegates

The within is approved this the 28
day of March, 1979.

John D. Rhyall
Governor



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