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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1989



ENROLLED

Com. Sub. for
HOUSE BILL No. 2382

(By Mr. Speaker, M. Chambers, + Del. R. Bunk)
[By Request of the Executive]



Passed April 8, 1989

In Effect Ninety Days from Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 2382

(By MR. SPEAKER, MR. CHAMBERS, and DELEGATE R. BURK)
[By Request of the Executive]

[Passed April 8, 1989; in effect ninety days from passage.]

AN ACT to repeal article thirty-one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend chapter fifteen of said code by adding thereto a new article, designated article five-a, relating to the West Virginia Emergency Response And Community Right-to-Know Act; setting forth purpose; creating the West Virginia Emergency Response Commission; setting forth responsibilities; providing definitions; referencing certain federal legislation; setting forth composition, organization, qualifications, terms, removal, compensation and meeting requirements for the State Emergency Response Commission; setting forth powers and duties of the commissions; providing for procedural rules; providing for certain fees; setting forth powers and duties of the office of emergency services; providing for the establishment of emergency planning districts and committees; relating to facility fees and a special account to receive such fees; providing for a local grant program; setting forth a mechanism to collect and disseminate information to the public on certain hazardous chemicals and toxic chemicals and to assure that state and local authorities and the public are

adequately prepared to respond to releases of hazardous chemicals and toxic chemicals into the environment; providing commission standards and requirements more stringent than federal law; providing for penalties; authorizing the commission to utilize the attorney general in initiating legal actions and penalties; and authorizing the commission to comply with the obligations of the state under federal law.

Be it enacted by the Legislature of West Virginia:

That article thirty-one, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; and that chapter fifteen of said code be amended by adding thereto a new article, designated article five-a, to read as follows:

ARTICLE 5A. WEST VIRGINIA EMERGENCY RESPONSE AND COMMUNITY RIGHT-TO-KNOW ACT.

§15-5A-1. Declaration of purpose.

1 The Legislature recognizes that Title III of the
2 Superfund Amendments and Reauthorization Act of
3 1986: The Emergency Planning and Community Right-
4 to-Know Act of 1986, P.L. 99-499, enacted by the United
5 States congress and signed into law on the seventeenth
6 day of October, one thousand nine hundred eighty-six,
7 has two primary objectives, i.e., to require states and
8 local communities to develop comprehensive emergency
9 response plans, and to establish a program for the
10 collection and dissemination to the public of information
11 on certain hazardous chemicals and toxic chemicals in
12 their communities.

13 The purpose of this article is to enable and authorize
14 this state to fulfill its obligations under the federal
15 statute.

§15-5A-2. Jurisdiction of West Virginia emergency response commission.

1 The state emergency response commission shall have
2 within its jurisdiction and supervision the preparation
3 and implementation of comprehensive emergency
4 response plans for each designated emergency planning
5 district within the state so as to comply with the

6 requirements of 42 U.S.C. §11001, et seq. The commis-
7 sion, through the office of emergency services, shall also
8 be responsible for providing the citizens of this state
9 with information in accordance with the requirements
10 of 42 U.S.C. §11001, et seq., and this article. All state
11 agencies shall cooperate with and assist the commission
12 in all commission duties and responsibilities.

§15-5A-3. Definitions.

1 Unless the context in which used clearly requires a
2 different meaning, as used in this article:

3 (a) "Best management practices" means any practices
4 made applicable to a facility pursuant to section 304(e)
5 of the Clean Water Act and the federal regulations
6 promulgated thereunder.

7 (b) "Clean Water Act" means the Federal Water
8 Pollution Control Act, P.L. 92-500, enacted on the
9 eighteenth day of October, one thousand nine hundred
10 seventy-two, and all subsequent amendments to that act.

11 (c) "Code" means the code of West Virginia, one
12 thousand nine hundred thirty-one, as amended.

13 (d) "Commission" means the state emergency response
14 commission.

15 (e) "Committee" means a local emergency planning
16 committee.

17 (f) "Emergency planning district" means a geogra-
18 phic area designated by the commission as requiring its
19 own comprehensive emergency response plan. The
20 commission may designate existing political subdivi-
21 sions or multijurisdictional planning organizations as
22 such districts.

23 (g) "Facility" means a facility subject to the provisions
24 of 42 U.S.C. §11001, et seq., and this article, pursuant
25 to the provisions of 42 U.S.C. §11002.

26 (h) "Local emergency planning committee" means
27 that group of persons, for each emergency planning
28 district, who are appointed by the state emergency
29 response commission in accordance with the provisions

30 of section seven of this article.

31 (i) "Resource Conservation and Recovery Act" means
32 P.L. 94-580, enacted on the twenty-first day of October,
33 one thousand nine hundred seventy-six, and all subse-
34 quent amendments to that act.

35 (j) "Spill prevention control and countermeasure
36 plan" means any plan developed pursuant to section
37 112.3 of title 40 of the code of federal regulations.

38 (k) "Title III" means the Emergency Planning and
39 Community Right-to-Know Act of 1986, P.L. 99-499.

**§15-5A-4. State emergency response commission created;
composition and organization, qualifications,
terms, removal, compensation, meetings.**

1 (a) There is hereby created the state emergency
2 response commission.

3 (b) The state emergency response commission shall
4 consist of eleven members, including the director of the
5 department of natural resources, the director of the
6 health department, the director of the air pollution
7 control commission, the director of the office of emer-
8 gency services, the superintendent of the department of
9 public safety, the commissioner of the department of
10 highways; one designee of the public service commission
11 and one designee of the state fire marshal, all of whom
12 shall be members ex officio. A representative from the
13 chemical industry, a representative of a municipal or
14 volunteer fire department and a representative of the
15 public who shall be knowledgeable in the area of
16 emergency response shall be appointed by the governor
17 as public members of the state emergency response
18 commission. The director of the office of emergency
19 services shall serve as the chairman of the commission
20 and shall cast a vote only in the event of a tie vote.
21 Members shall serve without compensation, but shall be
22 reimbursed for all reasonable and necessary expenses
23 actually incurred in the performance of their duties
24 under this article. The initial public members appointed
25 by the governor shall serve for a term ending on the first
26 day of July, one thousand nine hundred ninety-one. A

27 successor to a public member of the commission shall
28 be appointed in the same manner as the original public
29 members and shall have a term of office expiring two
30 years from the date of the expiration of the term for
31 which his predecessor was appointed. In cases of any
32 vacancy among the public members, such vacancy shall
33 be filled by appointment by the governor. Any member
34 appointed to fill a vacancy on the commission occurring
35 prior to the expiration of the term for which his
36 predecessor was appointed shall be appointed for the
37 remainder of such term. Members appointed by the
38 governor may be removed by the governor in case of
39 incompetency, neglect of duty, gross immorality or
40 malfeasance in office.

41 (c) The commission shall elect from its membership
42 a vice chairman and appoint a secretary. The secretary
43 need not be a member of the commission. The vice
44 chairman shall preside over the meetings and hearings
45 of the commission in the absence of the chairman. The
46 commission may appoint and employ such personnel as
47 may be required, whose duties shall be defined by the
48 commission and whose compensation, to be fixed by the
49 commission, shall be paid out of the state treasury, upon
50 the requisition of the commission, from moneys approp-
51 riated for such purposes.

52 (d) The commission may establish procedural rules in
53 accordance with chapter twenty-nine-a of the code for
54 the regulation of its affairs and the conduct of all
55 proceedings before it. All proceedings of the commission
56 shall be entered in a permanently bound record book,
57 properly indexed, and the same shall be carefully
58 preserved and attested by the secretary of the commis-
59 sion. The commission shall meet at such times and
60 places as may be agreed upon by the commissioners, or
61 upon the call of the chairman of the commission or any
62 two members of the commission, all of which meetings
63 shall be general meetings for the consideration of any
64 and all matters which may properly come before the
65 commission. A majority of the commission shall consti-
66 tute a quorum for the transaction of business.

§15-5A-5. Powers and duties of the commission.

1 The commission shall have and may exercise the
2 following powers and authority and shall perform the
3 following duties:

4 (a) Designate emergency planning districts;

5 (b) Appoint local emergency planning committees for
6 each emergency planning district and supervise and
7 coordinate the activities of such committees;

8 (c) Revise any designations and appointments made
9 under subsections (a) and (b) of this section as it deems
10 appropriate: *Provided*, That any interested person may
11 petition the state emergency response commission to
12 modify the membership of a local emergency planning
13 commission;

14 (d) Designate, if necessary, additional facilities which
15 shall be subject to the requirements of this article,
16 provided such designation is made after public notice
17 and opportunity for comment as provided under article
18 three, chapter twenty-nine-a of the code;

19 (e) Review the emergency response plans submitted
20 by the local emergency planning committees and make
21 recommendations to the local committees on revisions of
22 the plan that may be necessary to ensure coordination
23 of such plan with the plans of other emergency planning
24 districts and other existing state and local emergency
25 response plans;

26 (f) Enter into cooperative agreements with other state
27 agencies designating specific responsibilities to be
28 performed by such state agencies to implement the
29 provisions of this article;

30 (g) Promulgate procedural rules in accordance with
31 the provisions of article three, chapter twenty-nine-a of
32 this code, establishing rules of practice before the
33 commission.

34 (h) Promulgate procedural rules in accordance with
35 the provisions of article three, chapter twenty-nine-a of
36 this code, establishing procedures for receiving and
37 processing requests from the public for information in
38 accordance with the provisions of 42 U.S.C. §11001, et

39 seq., and this article, and prescribing forms and
40 instructions for requesting such information;

41 (i) Promulgate procedural rules in accordance with
42 the provisions of article three, chapter twenty-nine-a of
43 this code, prescribing forms and instructions for the
44 submission and receipt of confidential information;

45 (j) Promulgate rules establishing the following fees
46 which shall be deposited in a special account for the
47 administration of this act and which shall be reasonably
48 calculated to recover the necessary expenses incurred by
49 the office of emergency services in the administration
50 of this article:

51 (1) An emergency planning notification fee not to
52 exceed one hundred dollars to be paid by a facility when
53 it makes the emergency planning notification required
54 under SARA, Title III, sections 301 through 303;

55 (2) An inventory form fee not to exceed one hundred
56 dollars to be paid annually by a facility when it submits
57 the emergency and hazardous chemical inventory forms
58 or material safety data sheet required under SARA,
59 Title III, sections 311 and 312; and

60 (3) A surcharge fee not to exceed twenty percent of
61 the fee otherwise payable to be paid by facilities which
62 fail to pay the fees in paragraphs (1) and (2) in a timely
63 manner;

64 (k) Establish an emergency planning grant program
65 to be administered by the commission. The grant
66 programs will be funded by fees collected to administer
67 this act pursuant to subdivision (j) of this section. The
68 commission shall promulgate rules which establish the
69 method of awarding such grants to local emergency
70 planning committees to assist them in performing their
71 responsibilities under this article; and

72 (l) Promulgate legislative rules in accordance with
73 the provisions of article three, chapter twenty-nine-a of
74 this code necessary to implement the provisions of this
75 article.

76 (m) The chairman of the commission may order a

77 facility owner or operator to comply with the require-
78 ments of applicable federal law, this article and any
79 rules or regulations promulgated thereunder. When the
80 chairman has reasonable cause to believe that there
81 exists a failure to comply with the provisions of
82 applicable federal law, this article or any rule or
83 regulation promulgated thereunder or any order
84 entered by the chairman, he may request the attorney
85 general to commence an action for civil penalties,
86 injunctive relief or other appropriate relief to enforce
87 such provisions, rules and regulations or order. Such
88 action may be brought in any federal district court
89 having jurisdiction, or in the circuit court of Kanawha
90 county or the county where the facility or a major
91 portion thereof is located.

§15-5A-6. Powers and duties of the office of emergency services.

1 The office of emergency services, as created by article
2 five, chapter fifteen of the code of West Virginia, shall
3 perform the administrative duties of the state emer-
4 gency response commission. The administrative duties
5 to be performed by the office of emergency services shall
6 include, but shall not be limited to, the following:

7 (a) Receive, catalogue and organize information
8 required to be submitted to the commission;

9 (b) Utilize existing state response organizations, plans
10 and facilities to the extent possible;

11 (c) Upon concurrence of the commission, enter into
12 training exercise agreements with federal response
13 agencies;

14 (d) Coordinate with other state agencies on training
15 for first responders and emergency service personnel;

16 (e) Respond to requests to the commission from the
17 public for information pursuant to this act;

18 (f) Perform such preliminary analysis and collect
19 such information as may be required to enable the
20 commission to fully review local emergency response
21 plans; and

22 (g) The director may employ such clerical and
23 technical personnel and acquire data management and
24 other equipment and office space as may be necessary
25 to carry out the provisions of this act.

**§15-5A-7. Establishment of emergency planning districts
and committees; composition, organization,
duties.**

1 (a) The state emergency response commission shall
2 designate emergency planning districts in order to
3 facilitate preparation and implementation of emergency
4 plans. After designating emergency planning districts,
5 the state emergency response commission shall appoint
6 members of a local emergency planning committee for
7 each emergency planning district. Each committee shall
8 include representatives from each of the following
9 groups or organizations: (1) Elected state and local
10 officials; (2) law enforcement, civil defense, fire fighting,
11 first aid, health, local environmental, hospital and
12 transportation personnel; (3) broadcast and print media;
13 (4) community groups; and (5) owners and operators of
14 facilities subject to the requirements of this article. In
15 addition to the above members, each county commission
16 president from every county within the district, or a
17 member of the county commission designated by the
18 president, shall be appointed as a member of the
19 committee and such appointment may fulfill the
20 requirement to appoint elected local officials.

21 (b) Each local committee shall appoint a chairperson
22 and establish procedural rules by which the committee
23 shall function. Such rules shall include provisions for
24 public notification of committee activities, public
25 meetings to discuss the emergency plan, public com-
26 ments, response to such comments by the committee and
27 distribution of the emergency plan.

28 (c) The local committees shall submit their proposed
29 procedural rules to the state emergency response
30 commission for review and comment no later than the
31 first day of January, one thousand nine hundred ninety.
32 If any local committees fail to submit proposed proced-
33 ural rules, the state emergency response commission

34 shall itself promulgate rules applicable to such local
35 committees.

36 (d) The local emergency planning committee shall
37 have and may exercise the following powers and
38 authority and shall perform the following duties:

39 (1) Establish procedures for receiving and processing
40 requests from the public for information regarding any
41 emergency response plan, material safety data sheet,
42 emergency, first aid and medical treatment procedures,
43 list described in 42 U.S.C. §11021(a)(2), inventory form,
44 toxic chemical release form, or followup emergency
45 notice, including tier II information under 42 U.S.C.
46 §11022;

47 (2) Designate an official to serve as coordinator for
48 information for processing requests for information
49 from the public;

50 (3) Develop and implement a comprehensive emer-
51 gency response plan in accordance with 42 U.S.C.
52 §11003, and review such plan once a year, or more
53 frequently as changed circumstances in the community
54 or at any facility may require: *Provided*, That such
55 comprehensive emergency response plans may not
56 require a covered facility to revise, modify or otherwise
57 alter any emergency release response or release preven-
58 tion plan that has been prepared pursuant to any other
59 state or federal statute or regulation including, but not
60 limited to, contingency plans developed under the
61 Resource Conservation and Recovery Act, Spill Preven-
62 tion and Countermeasure Plans, or Best Management
63 Practices Plans developed under the Clean Water Act;

64 (4) Prior to implementation, submit a copy of the
65 prepared emergency response plan to the state emer-
66 gency response commission for review and
67 recommendation;

68 (5) Publish annually a notice in local newspapers that
69 the emergency response plan is available for review, as
70 are those material safety data sheets, emergency, first
71 aid and medical treatment procedures, inventory forms
72 and followup emergency notices which have been

73 submitted to the committee. The notice shall also state
74 that members of the public who wish to review any such
75 plan, sheet, form or followup notice may do so at a
76 designated location;

77 (6) Establish deadlines for responding to information
78 requests from the public; and

79 (7) Receive, catalogue and organize information
80 required to be submitted to the committee under the
81 provisions of 42 U.S.C. §11001, et seq.

§15-5A-8. Severability.

1 The provisions of this article are severable and if any
2 provision, section or part thereof shall be held invalid,
3 unconstitutional or inapplicable to any person or
4 circumstance, such invalidity, unconstitutionality or
5 inapplicability shall not affect or impair any of the
6 remaining provisions, sections or parts of the article or
7 their application to him or to other persons and
8 circumstances. It is hereby declared to be the legislative
9 intent that this article would have been adopted if such
10 invalid or unconstitutional provisions, section or part
11 had not been included therein.



Enr. Com. Sub. for H. B. 2382] 12

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

Frederick L. Parks
Chairman Senate Committee

J. L. Satter
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Jack C. Smith
Clerk of the Senate

Donald E. Hogg
Clerk of the House of Delegates

Sam W. Tucker
President of the Senate

Shelton
Speaker of the House of Delegates

The within *is approved* this the *26th*
day of *April*, 1989.

Yaston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 4/20/89

Time 10:23