

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

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WEST VIRGINIA
STATE HOUSE

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Com. Sub. For

HOUSE BILL No. 4523

(By Delegates Kiss, Staton, Collins
Breece, J. Martin, Kuhn and Whitman)

Passed March 9, 1996

In Effect Ninety Days From Passage

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COMMITTEE SUBSTITUTE
FOR
H. B. 4523

(BY DELEGATES KISS, STATON, COLLINS, PREECE,
J. MARTIN, KUHN AND WHITMAN)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to amend article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section seventeen, relating to requiring legislative approval prior to the execution of an agreement related to the transport of ozone; and requiring certain hearings and reports concerning the energy use, tax, economic development, utility costs and rates, competitiveness and employment impacts of any proposed interstate agreement related to the transport of ozone.

Be it enacted by the Legislature of West Virginia:

That article five, chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section seventeen, to read as follows:

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-17. Interstate ozone transport.

- 1 (a) This section of the Air Pollution Control Act may
- 2 be referred to as the Interstate Ozone Transport Oversight

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3 Act.

4 (b) The Legislature hereby finds that:

5 (1) The federal Clean Air Act, as amended, contains a
6 comprehensive regulatory scheme for the control of emis-
7 sions from mobile and stationary sources, which will im-
8 prove ambient air quality and health and welfare in all
9 parts of the nation.

10 (2) The number of areas unable to meet national
11 ambient air quality standards for ozone has been declining
12 steadily and will continue to decline with air quality im-
13 provements resulting from implementation of the federal
14 Clean Air Act Amendments of 1990, and the mobile and
15 stationary source emission controls specified therein.

16 (3) Scientific research on the transport of atmospher-
17 ic ozone across state boundaries is proceeding under the
18 auspices of the United States Environmental Protection
19 Agency (U.S. EPA), state agencies, and private entities,
20 which research will lead to improved scientific understand-
21 ing of the causes and nature of ozone transport, and emis-
22 sion control strategies potentially applicable thereto.

23 (4) The Northeast Ozone Transport Commission
24 established by the federal Clean Air Act Amendments of
25 1990 has proposed emission control requirements for
26 stationary and mobile sources in certain northeastern states
27 and the District of Columbia in addition to those specified
28 by the federal Clean Air Act Amendments of 1990.

29 (5) Membership of the Northeast Ozone Transport
30 Commission includes, by statute, representatives of state
31 environmental agencies and governors' offices; similar
32 representation is required in the case of other ozone trans-
33 port commissions established by the Administrator of the
34 United States Environmental Protection Agency pursuant
35 to Section 176A of the federal Clean Air Act, as amended.

36 (6) The Northeast Ozone Transport Commission
37 neither sought nor obtained state legislative oversight or
38 approval prior to reaching its decisions on mobile and

39 stationary source requirements for states included within
40 the Northeast Ozone Transport Region.

41 (7) The Commonwealth of Virginia and other parties
42 have challenged the constitutionality of the Northeast
43 Ozone Transport Commission and its regulatory proposals
44 under the Guarantee, Compact, and Joinder Clauses of the
45 United States Constitution.

46 (8) The United States Environmental Protection
47 Agency, acting outside of the aforementioned statutory
48 requirements for the establishment of new interstate trans-
49 port commissions, is encouraging the state of West Virgin-
50 ia and twenty-four other states outside of the Northeast to
51 participate in multistate negotiations through the Ozone
52 Transport Assessment Group; such negotiations are in-
53 tended to provide the basis for an interstate memorandum
54 of understanding or other agreement on ozone transport
55 requiring reductions of emissions of nitrogen oxides or
56 volatile organic compounds in addition to those specified
57 by the federal Clean Air Act Amendments of 1990, mem-
58 bership of the Ozone Transport Assessment Group con-
59 sists of state and federal air quality officials, without state
60 legislative representation or participation by the governor.

61 (9) Emission control requirements exceeding those
62 specified by federal law can adversely affect state econom-
63 ic development, competitiveness, employment, and income
64 without corresponding environmental benefits; in the case
65 of electric utility emissions of nitrogen oxides, it is esti-
66 mated that control costs in addition to those specified by
67 the federal Clean Air Act could exceed five billion dollars
68 annually in a thirty-seven state region of the eastern Unit-
69 ed States, including the state of West Virginia.

70 (10) Requiring certain eastern states to meet emission
71 control requirements more stringent than those otherwise
72 applicable to other states and unnecessary for environ-
73 mental protection would unfairly affect interstate competi-
74 tion for new industrial development and employment
75 opportunities.

76 (c) It is therefore directed that:

77 (1) Not later than ten days subsequent to the receipt
78 by the director of the division of environmental protection
79 of any proposed memorandum of understanding or other
80 agreement by the Ozone Transport Assessment Group, or
81 similar group, potentially requiring the state of West Vir-
82 ginia to undertake emission reductions in addition to those
83 specified by the federal Clean Air Act, the director of the
84 division of environmental protection shall submit such
85 proposed memorandum or other agreement to the Presi-
86 dent of the Senate and the Speaker of the House of Dele-
87 gates for consideration.

88 (2) Upon receipt of the aforesaid memorandum of
89 understanding or agreement, the President and the Speak-
90 er shall refer the understanding or agreement to one or
91 more appropriate legislative committees with a request that
92 such committees convene one or more public hearings to
93 receive comments from agencies of government and other
94 interested parties on its prospective economic and environ-
95 mental impacts on the state of West Virginia and its citi-
96 zens, including impacts on energy use, taxes, economic
97 development, utility costs and rates, competitiveness, and
98 employment.

99 (3) Upon completion of the public hearings re-
100 quired by the preceding subdivision, the committees(s)
101 shall forward to the President and the Speaker a report
102 containing its findings and recommendations concerning
103 any proposed memorandum of understanding or other
104 agreement related to the interstate transport of ozone. The
105 report shall make findings with respect to the economic,
106 health, safety and welfare and environmental impacts on
107 the state of West Virginia and its citizens, including im-
108 pacts on energy use, taxes, economic development, utility
109 costs and rates, competitiveness and employment.

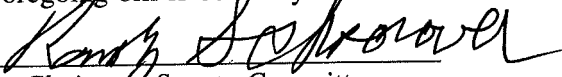
110 (4) Upon receipt of the report required by the pre-
111 ceding subdivision, the President and Speaker shall there-
112 after transmit the report to the governor for such further
113 consideration or action as may be warranted.

114 (5) Nothing in this section shall be construed to
115 preclude the Legislature from taking such other action
116 with respect to any proposed memorandum of under-
117 standing or other agreement related to the interstate trans-
118 port of ozone as it deems appropriate.

119 (6) No person is authorized to commit the state of
120 West Virginia to the terms of any such memorandum or
121 agreement unless specifically approved by an act of the
122 Legislature.

Enr. Com. Sub. for H. B. 4523] 6

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



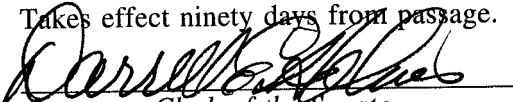
Chairman Senate Committee



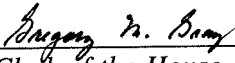
Chairman House Committee

Originating in the House.

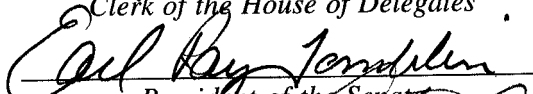
Takes effect ninety days from passage.



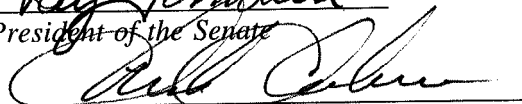
Clerk of the Senate



Clerk of the House of Delegates

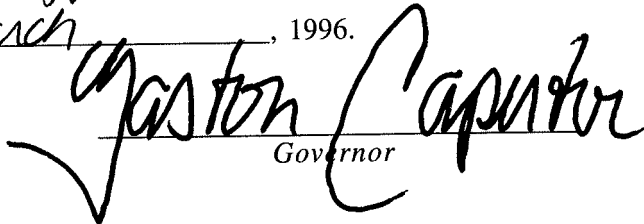


President of the Senate



Speaker of the House of Delegates

The within is approved this the 21st
day of March, 1996.



Governor

PRESENTED TO THE

GOVERNOR,

Date 3/19/96

Time 3:27 pm