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WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

House Bill No. 4228

(By Mr. Speaker, Mr. Kiss, and Delegates Martin,
Varner, Staton, Kuhn, Collins and Linch)



Passed March 14, 1998

In Effect from Passage

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COMMITTEE SUBSTITUTE

FOR

H. B. 4228

(BY MR. SPEAKER, MR. KISS, AND DELEGATES MARTIN,
VARNER, STATON, KUHN, COLLINS AND LINCH)

[Passed March 13, 1998; in effect from passage.]

AN ACT to amend chapter twenty-two of the code of West Virginia, one thousand nine hundred thirty-one, as amended by adding thereto a new article, designated article twenty-three, relating to prohibiting the state division of environmental protection from modifying any agency rule which implements the provisions of the united nations framework convention on global climate change treaty and its proposed reductions of limitations on greenhouse gases emissions; providing legislative findings relating thereto; prohibiting the division of environmental protection from entering into any agreement with any federal agency relating to limiting state emission of greenhouse gases resulting from the Kyoto protocol; allowing continuation of voluntary reduction efforts; and providing that this article be effective until a federal treaty supersedes the requirements of this article.

Be it enacted by the Legislature of West Virginia:

That chapter twenty-two 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-three, to read as follows:

ARTICLE 23. KYOTO PROTOCOL; ENFORCEMENT PROHIBITIONS.

§22-23-1. Findings and purposes.

1 The West Virginia Legislature hereby finds that:

2 (a) The United States is a signatory to the one
3 thousand nine hundred ninety-two United Nations
4 Framework Convention on Global Climate Change
5 Treaty (“FCCC”);

6 (b) A protocol to expand the scope of the FCCC was
7 negotiated in December, one thousand nine hundred
8 ninety-seven in Kyoto, Japan (“Kyoto Protocol”),
9 requiring the United States to reduce emissions of
10 greenhouse gases such as carbon dioxide and methane by
11 seven percent from one thousand nine hundred ninety
12 emission levels during the years two thousand eight to two
13 thousand twelve, with similar reduction obligations for
14 other major industrial nations;

15 (c) Developing nations, including China, India,
16 Mexico, Indonesia and Brazil, are exempt from
17 greenhouse gas emission limitation requirements in the
18 FCCC;

19 (d) Developing nations refused in the Kyoto
20 negotiations to accept any new commitments for
21 greenhouse gas emission limitations through the Kyoto
22 Protocol or other agreements;

23 (e) With respect to new commitments under the FCCC,
24 President William J. Clinton pledged on the twenty-second
25 day of October, one thousand nine hundred ninety-seven,
26 that “The United States will not assume binding
27 obligations unless key developing nations meaningfully
28 participate in this effort”;

29 (f) On the twenty-fifth day of July, one thousand nine
30 hundred ninety-seven, the United States Senate adopted
31 Senate Resolution Number Ninety-eight by a vote of
32 ninety-five to zero, expressing the sentiment of the Senate

33 that “the United States should not be a signatory to any
34 protocol to other agreement regarding, the Framework
35 Convention on Climate Change... which would require the
36 advice and consent of the Senate to ratification, and which
37 would mandate new commitments to mitigate greenhouse
38 gas emissions for the Developed Country Parties, unless
39 the protocol or other agreement also mandates specific
40 scheduled commitments within the same compliance
41 period to mitigate greenhouse gas emissions for
42 Developing Country Parties”;

43 (g) The Kyoto Protocol fails to meet the tests
44 established for acceptance of new climate change
45 commitments by President Clinton and by United States
46 Senate Resolution Number ninety-eight;

47 (h) Achieving the emission reductions proposed by
48 the Kyoto Protocol would require more than a thirty-five
49 percent reduction in projected United States carbon
50 dioxide and other greenhouse gas emissions during the
51 period between two thousand eight to two thousand twelve;

52 (i) Developing countries exempt from emission
53 limitations under the Kyoto Protocol are expected to
54 increase their rates of fossil fuel use over the next two
55 decades, and to surpass the United States and other
56 industrialized countries in total emissions of greenhouse
57 gases;

58 (j) Increased emissions of greenhouse gases by
59 developing countries would offset any potential
60 environmental benefits associated with emissions
61 reductions achieved by the United States and by other
62 industrial nations;

63 (k) Economic impact studies by the United States
64 government estimate that legally binding requirements for
65 the reduction of United States greenhouse gases to one
66 thousand nine hundred ninety, emission levels would
67 result in the loss of more than nine hundred thousand jobs
68 in the United States, sharply increased energy prices,
69 reduced family incomes and wages, and severe losses of
70 output in energy-intensive industries important to the West

71 Virginia economy such as aluminum, steel, rubber,
72 chemicals and utilities;

73 (l) The failure to provide for commitments by
74 developing countries in the Kyoto Protocol creates an
75 unfair competitive imbalance between industrial and
76 developing nations, potentially leading to the transfer of
77 jobs and industrial development from the United States to
78 developing countries;

79 (m) Federal implementation of the Kyoto Protocol, if
80 ratified by the United States Senate, would entail new
81 congressional legislation whose form and requirements
82 cannot be predicted at this time, but could include national
83 energy taxes or emission control allocation schemes that
84 would preempt state-specific programs intended to reduce
85 emissions of greenhouse gases;

86 (n) Piecemeal or other uncoordinated state regulatory
87 initiatives intended to reduce emissions of greenhouse
88 gases may be inconsistent with subsequent congressional
89 determinations concerning the Kyoto Protocol, and with
90 federal legislation implementing the Kyoto Protocol;

91 (o) Individual state responses to the Kyoto Protocol,
92 including development of new regulatory programs
93 intended to reduce greenhouse gas emissions, are
94 premature prior to Senate ratification of that Protocol, in
95 its current or amended form, and congressional enactment
96 of related implementing legislation.

§22-23-2. Restrictions on state rules related to greenhouse gas emissions.

1 (a) The West Virginia division of environmental
2 protection shall refrain from proposing or promulgating
3 any new rule intended, in whole or in part, to reduce
4 emissions of greenhouse gases from the residential,
5 commercial, industrial, electric utility or transportation
6 sectors in order to comply with the Kyoto Protocol;

7 (b) In the absence of an act of the Legislature of the
8 state of West Virginia approving same, the West Virginia
9 division of environmental protection shall not submit to
10 the United States environmental protection agency or to

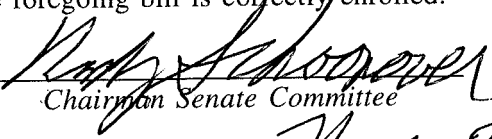
11 any other agency of the federal government any legally
12 enforceable commitments related to the reduction of
13 greenhouse gases, as such gases are defined by the Kyoto
14 Protocol;

15 (c) Nothing in this section shall be construed to limit
16 or to impede state or private participation in any on-going
17 voluntary initiatives to reduce emissions of greenhouse
18 gases, including, but not limited to, the federal
19 environmental protection agency's "Green Lights"
20 program, the federal department of energy's climate
21 challenge program, and similar State and federal initiatives
22 relying on voluntary participation.

23 (d) This article shall remain in effect until repealed by
24 an act of the Legislature of the state of West Virginia, or
25 until ratification of the Kyoto Protocol by the United
26 States Senate and enactment of federal legislation
27 implementing the Kyoto Protocol.

Enr. Com. Sub. for H. B. 4228] 6

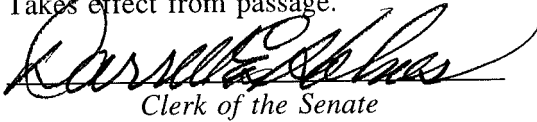
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

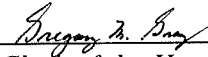

Chairman Senate Committee

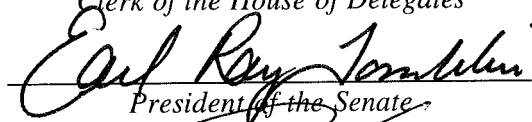

Chairman House Committee

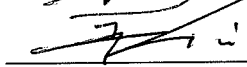
Originating in the House.

Takes effect from passage.

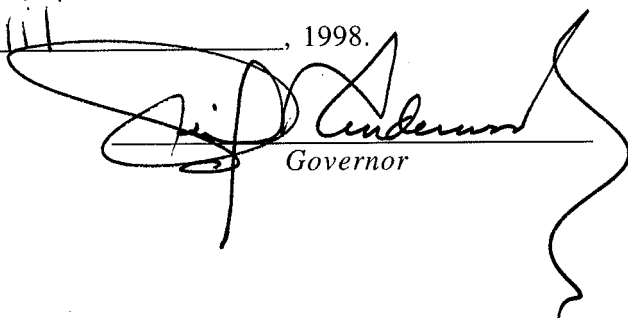

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 1st
day of April, 1998.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/26/98

Time 10:30 am