

H. B. 2141

(By Delegate J. Nelson, Householder, Moffatt, Walters, Smith, R., McGeehan, Folk, Faircloth,
Gearheart, Hill and Evans, D.)

[Introduced January 20, 2015; referred to the
Committee on the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §22-5-21, relating to air pollution control; providing that regulation of wood burning appliances is subject to the approval of the Legislature under the authority of the Tenth Amendment to the Constitution of the United States; and providing that rules relating to enforcement of performance standards for residential wood burning heaters or appliances may not become effective unless first approved by the Legislature.

Be it enacted by the Legislature of West Virginia:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new section, designated §22-5-21, to read as follows:

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-21. Regulating wood burning appliances subject to approval of Legislature.

(a) Notwithstanding any other provision of this code to the contrary and under the authority

1 of the Tenth Amendment to the Constitution of the United States which provides that "The powers
2 not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved
3 to the states respectively, or to the people", the Director of the Department of Environmental
4 Protection, may promulgate rules for legislative approval in accordance with article three, chapter
5 twenty-nine-a of this code, to establish standards and guidelines to ensure that the State of West
6 Virginia is in compliance with the provisions of the federal Clean Air Act, as amended (42 U.S.C.
7 Section 7401, et seq.). The standards and guidelines so established may not be any stricter than those
8 required under the provisions of the federal Clean Air Act, as amended; nor may those standards and
9 guidelines be enforced in any area of the state prior to the time required by the federal Clean Air Act,
10 as amended. The restrictions of this section may not apply to the parts of a state implementation plan
11 developed by the director to bring a nonattainment area into compliance and to maintain compliance
12 when needed to have a United States Environmental Protection Agency approved state
13 implementation plan. The determination of which parts of a state implementation plan are not
14 subject to the restrictions of this section shall be based upon specific findings of fact by the
15 Department of Environmental Protection as to the rules and criteria that are needed to have a United
16 States Environmental Protection Agency approved plan.

17 (b) Under the authority of the Tenth Amendment to the Constitution of the United States, the
18 West Virginia Department of Environmental Protection may also grant exceptions and variances
19 from the rules when the person applying for the exception or variance can show that compliance with
20 such rules:

21 (1) Would cause economic hardship; or

22 (2) Is physically impossible; or

1 (3) Is more detrimental to the environment than the variance would be; or

2 (4) Is impractical or of insignificant value under the existing conditions.

3 (c) Also under the authority of the Tenth Amendment to the Constitution of the United States,
4 the department may not regulate the manufacture, performance, or use of residential wood burning
5 heaters or appliances through a state implementation plan or otherwise, unless first specifically
6 authorized to do so by the Legislature. No rule respecting the establishment or the enforcement of
7 performance standards for residential wood burning heaters or appliances may become effective
8 unless first approved by the Legislature.

9 (d) New rules may not be applied to existing wood burning furnaces, stoves, fireplaces or
10 heaters that individuals are currently using as their source of heat for their homes or businesses. All
11 wood burning furnaces, stoves, fireplaces, and heaters existing on July 1, 2014, may not be subject
12 to any rules enacted after that date. No employee of the state or state agency may enforce any new
13 rules against such existing wood burning furnaces, stoves, fireplaces and heaters.

NOTE: The purpose of this bill is to provide that air pollution control regulation of wood burning appliances is subject to the approval of the Legislature under the authority of the Tenth Amendment to the Constitution of the United States. The bill also provides that rules relating to enforcement of performance standards for residential wood burning heaters or appliances may not become effective unless first approved by the Legislature.

§22-5-21 is new; therefore, it has been completely underscored.