

H. B. 2269

(By Delegates Walters, R. Phillips, Storch, Ihle and Foster)
[Introduced January 23, 2015; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §22-1-3a and §22-5-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §29A-3-19, all relating to requiring rules of the Department of Environmental Protection, Department of Health and Human Resources, Division of Natural Resources and Department of Commerce be no more stringent than corresponding federal laws or regulations.

Be it enacted by the Legislature of West Virginia:

That §22-1-3a and §22-5-4 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §29A-3-19, all to read as follows:

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-3a. Rules -- New or amended environmental provisions.

Except for legislative rules promulgated for the purpose of implementing the provisions of section four, article twelve, section six, article seventeen, and section six, article eighteen, all of this chapter, and notwithstanding the provisions of section four, article five of this chapter, legislative rules promulgated by the director which become effective on or after July 1, 1994, may include new or amended environmental provisions which are more stringent than the counterpart federal rule or

1 ~~program to the extent that the director first provides specific written reasons which demonstrate that~~
2 ~~such provisions are reasonably necessary to protect, preserve or enhance the quality of West~~
3 ~~Virginia's environment or human health or safety, taking into consideration the scientific evidence,~~
4 ~~specific environmental characteristics of West Virginia or an area thereof, or stated legislative~~
5 ~~findings, policies or purposes relied upon by the director in making such determination. In the case~~
6 ~~of specific rules which have a technical basis, the director shall also provide the specific technical~~
7 ~~basis upon which the director has relied.~~

8 In the event that legislative rules promulgated by the director which become effective on or
9 after July 1, 1994, include new or amended environmental provisions which are less stringent than
10 a counterpart federal rule which recommends, but does not require, a particular standard or any
11 federally recommended environmental standard whether or not there be a counterpart federal rule,
12 the division shall first provide specific written reasons which demonstrate that such provisions are
13 not reasonably necessary to protect, preserve or enhance the quality of West Virginia's environment
14 or human health or safety, taking into consideration the scientific evidence, specific environmental
15 characteristic of West Virginia or an area thereof, or stated legislative findings, policies or purposes
16 relied upon by the director in making such determination. In the case of specific rules which have
17 a technical basis, the director shall also provide the specific technical basis upon which the director
18 has relied.

19 In the absence of a federal rule, the adoption of a state rule ~~shall~~ may not be construed to be
20 more stringent than a federal rule, unless the absence of a federal rule is the result of a specific
21 federal exemption.

22 **ARTICLE 5. AIR POLLUTION CONTROL.**

23 **§22-5-4. Powers and duties of director; and legal services; rules.**

24 (a) The director is authorized:

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

1 (2) To advise, consult and cooperate with other agencies of the state, political subdivisions
2 of the state, other states, agencies of the federal government, industries, and with affected groups in
3 furtherance of the declared purposes of this article;

4 (3) To encourage and conduct ~~such~~ studies and research relating to air pollution and its
5 control and abatement ~~as the director may deem~~ considers advisable and necessary;

6 (4) To ~~promulgate~~ propose legislative rules for approval by the Legislature in accordance
7 with the provisions of chapter twenty-nine-a of this code not inconsistent with the provisions of this
8 article, relating to the control of air pollution: *Provided*, That no rule of the director ~~shall~~ may
9 specify a particular manufacturer of equipment nor a single specific type of construction nor a
10 particular method of compliance except as specifically required by the "Federal Clean Air Act," as
11 amended, nor ~~shall~~ may any such rule apply to any aspect of an employer-employee relationship:
12 *Provided, however*, That no legislative rule or program of the director hereafter adopted ~~shall~~ may
13 be any more stringent than any federal rule or program. ~~except to the limited extent that the director~~
14 ~~first makes a specific written finding for any such departure that there exists scientifically~~
15 ~~supportable evidence for such rule or program reflecting factors unique to West Virginia or some~~
16 ~~area thereof~~

17 (5) To enter orders requiring compliance with the provisions of this article and the rules
18 lawfully promulgated hereunder;

19 (6) To consider complaints, subpoena witnesses, administer oaths, make investigations and
20 hold hearings relevant to the promulgation of rules and the entry of compliance orders hereunder;

21 (7) To encourage voluntary cooperation by municipalities, counties, industries and others in
22 preserving the purity of the air within the state;

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

26 (9) To enter and inspect any property, premise or place on or at which a source of air

1 pollutants is located or is being constructed, installed or established at any reasonable time for the
2 purpose of ascertaining the state of compliance with this article and rules promulgated under the
3 provisions of this article. No person ~~shall~~ may refuse entry or access to any authorized representative
4 of the director who requests entry for purposes of inspection, and who presents appropriate
5 credentials; nor ~~shall~~ may any person obstruct, hamper or interfere with any such inspection:
6 *Provided*, That nothing contained in this article eliminates any obligation to follow any process that
7 may be required by law;

8 (10) Upon reasonable evidence of a violation of this article, which presents an imminent and
9 serious hazard to public health, to give notice to the public or to that portion of the public which is
10 in danger by any and all appropriate means;

11 (11) To cooperate with, receive and expend money from the federal government and other
12 sources; and the director may cooperate with any public or private agency or person and receive
13 therefrom and on behalf of the state gifts, donations, and contributions, which shall be deposited to
14 the credit of the "Air Pollution Education and Environment Fund." ~~which is hereby continued in the~~
15 ~~state Treasury~~. The moneys collected pursuant to this article which are directed to be deposited in
16 the Air Pollution Education and Environment Fund must be deposited in a separate account in the
17 State Treasury and expenditures for purposes set forth in this article are not authorized from
18 collection but are to be made only in accordance with appropriation and in accordance with the
19 provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth
20 in article two, chapter five-a of this code. Amounts collected which are found from time to time to
21 exceed the funds needed for the purposes set forth in this article may be transferred to other accounts
22 or funds and redesignated for other purposes by appropriation of the Legislature;

23 (12) To represent the state in any and all matters pertaining to plans, procedures and
24 negotiations for interstate compacts in relation to the control of air pollution;

25 (13) To appoint advisory councils from ~~such~~ areas of the state as he or she may determine.
26 The members shall possess some knowledge and interest in matters pertaining to the regulation,

1 control and abatement of air pollution. The council may advise and consult with the director about
2 all matters pertaining to the regulation, control and abatement of air pollution within such area;

3 (14) To require any and all persons who are directly or indirectly discharging air pollutants
4 into the air to file with the director ~~such~~ information ~~as~~ the director may require in a form or manner
5 prescribed by him or her for such purpose, including, but not limited to, location, size and height of
6 discharge outlets, processes employed, fuels used and the nature and time periods of duration of
7 discharges. ~~Such~~ The information shall be filed with the director, when and in ~~such~~ a reasonable
8 time, and in ~~such~~ the manner ~~as~~ the director may prescribe;

9 (15) To require the owner or operator of any stationary source discharging air pollutants to
10 install ~~such~~ monitoring equipment or devices ~~as~~ the director may prescribe and to submit periodic
11 reports on the nature and amount of ~~such~~ the discharges to the director;

12 (16) To do all things necessary and convenient to prepare and submit a plan or plans for the
13 implementation, maintenance and enforcement of the "Federal Clean Air Act," as amended:
14 *Provided*, That in preparing and submitting each such plan the director shall establish in ~~such~~ the
15 plan that ~~such~~ the standard shall be first achieved, maintained and enforced by limiting and
16 controlling emissions of pollutants from commercial and industrial sources and locations and shall
17 only provide in ~~such~~ the plans for limiting and controlling emissions of pollutants from private
18 dwellings and the curtilage thereof as a last resort: *Provided, however*, That nothing herein
19 contained affects plans for achievement, maintenance and enforcement of motor vehicle emission
20 standards and of standards for fuels used in dwellings;

21 (17) To promulgate legislative rules, in accordance with the provisions of chapter
22 twenty-nine-a of this code, providing for the following:

23 (A) Procedures and requirements for permit applications, transfers and modifications and the
24 review thereof;

25 (B) Imposition of permit application and transfer fees;

26 (C) Establishment of criteria for construction, modification, relocation and operating permits;

1 (D) Imposition of permit fees and of certificate fees: *Provided*, That any person subject to
2 operating permit fees pursuant to section twelve of this article is exempt from imposition of the
3 certificate fee; and

4 (E) Imposition of penalties and interest for the nonpayment of fees.

5 The fees, penalties and interest shall be deposited in a special account in the State Treasury
6 designated the "Air Pollution Control Fund", formerly the "Air Pollution Control Commission
7 Fund", which is hereby continued to be appropriated for the sole purpose of paying salaries and
8 expenses of the board, the office of air quality and their employees to carry out the provisions of this
9 article: *Provided*, That the fees, penalties and interest collected for operating permits required by
10 section twelve of this article shall be expended solely to cover all reasonable direct and indirect costs
11 required to administer the operating permit program. The fees collected pursuant to this subdivision
12 must be deposited in a separate account in the State Treasury and expenditures for purposes set forth
13 in this article are not authorized from collections but are to be made only in accordance with
14 appropriation and in accordance with the provisions of article three, chapter twelve of this code and
15 upon fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts
16 collected which are found from time to time to exceed the funds needed for the purposes set forth
17 in this article may be transferred to other accounts or funds and redesignated for other purposes by
18 appropriation of the Legislature; *Provided, however*, That for fiscal year one thousand nine hundred
19 ~~ninety-three, expenditures are permitted from collections without appropriation by the Legislature~~
20 and

21 (18) Receipt of any money by the director as a result of the entry of any consent order shall
22 be deposited in the State Treasury to the credit of the Air Pollution Education and Environment
23 Fund.

24 (b) The Attorney General and his or her assistants and the prosecuting attorneys of the several
25 counties shall render to the director without additional compensation ~~such~~ legal services as the
26 director may require of them to enforce the provisions of this article.

1 **CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.**

2 **ARTICLE 3. RULE MAKING.**

3 **§29A-3-19. Certain rules more stringent than federal law or regulations prohibited.**

4 (a) This section applies only to the Department of Environmental Protection, Department of
5 Health and Human Resources, Division of Natural Resources and Department of Commerce.

6 (b) Notwithstanding any other provision of this code, an agency identified in subsection (a)
7 of this section may not promulgate emergency legislative rules or propose legislative rules that are
8 more stringent than corresponding federal laws or regulations, if any.

9 (c) Before December 1, 2015 each agency identified in subsection (a) of this section shall
10 review all of its rules to determine if the rules contain provisions that are more stringent than
11 corresponding federal law or regulations. If more stringent provisions are determined to be included,
12 the agency shall propose amendments to the rules to make them no more stringent than
13 corresponding federal law or regulations, no later than March 1, 2016.

NOTE: The purpose of this bill is to require rules of the Department of Environmental Protection, Department of Health and Human Resources, Division of Natural Resources and Department of Commerce be no more stringent than corresponding federal law or regulations.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

§29A-3-19 is new; therefore, it has been completely underscored.