

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENROLLED

House Bill 3082

BY DELEGATES ANDERSON, J. KELLY, ESPINOSA AND

RILEY

[Passed March 11, 2022; in effect ninety days from passage.]

1 AN ACT to amend and reenact §22-5-2 and §22-5-4 of the Code of West Virginia, 1931, as
2 amended, relating to air pollution control; providing the West Virginia Department of
3 Environmental Protection, Division of Air Quality, the authority to invest and reinvest funds
4 held in the Air Pollution Control Fund and the Air Pollution Education and Environment
5 Fund and to receive interest thereon from lawful investments of public funds to offset
6 decreasing permit fee collections; providing that at the end of each fiscal year,
7 unexpended balances, including accrued interest, shall not be transferred or redesignated
8 to other accounts or the General Revenue Fund, but shall remain in the two funds for
9 expenditure by the West Virginia Department of Environmental Protection, Division of Air
10 Quality, in furtherance of its mission; and updating code language with technical
11 corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-2. Definitions.

1 The terms used in this article are defined as follows:
2 (1) "Air pollutants" means solids, liquids, or gases which, if discharged into the air, may
3 result in a statutory air pollution.
4 (2) "Board" means the air quality board continued pursuant to the provisions of §22B-2-1
5 *et seq.* of this code.
6 (3) "Director" means the Secretary of the Department of Environmental Protection or such
7 other person to whom the director has delegated authority or duties pursuant to §22-1-6 or §22-
8 1-8 of this code.
9 (4) "Discharge" means any release, escape, or emission of air pollutants into the air.
10 (5) "Person" means any and all persons, natural or artificial, including the state of West
11 Virginia or any other state, the United States of America, any municipal, statutory, public, or

12 private corporation organized or existing under the laws of this or any other state or country, and
13 any firm, partnership or association of whatever nature.

14 (6) "Statutory air pollution" means and is limited to the discharge into the air by the act of
15 man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount
16 as to be injurious to human health or welfare, animal or plant life, or property, or which would
17 interfere with the enjoyment of life or property.

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

1 (a) The director is authorized:

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

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

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

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

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

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

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

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

29 (9) To enter and inspect any property, premise, or place on or at which a source of air
30 pollutants is located or is being constructed, installed, or established at any reasonable time for
31 the purpose of ascertaining the state of compliance with this article and rules promulgated under
32 the provisions of this article. No person shall refuse entry or access to any authorized
33 representative of the director who requests entry for purposes of inspection, and who presents
34 appropriate credentials; nor shall any person obstruct, hamper or interfere with any such
35 inspection: *Provided*, That nothing contained in this article eliminates any obligation to follow any
36 process that may be required by law;

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

40 (11) To cooperate with, receive and expend money from the federal government and other
41 sources.

42 (12) To cooperate with any public or private agency or person and receive therefrom and
43 on behalf of the state gifts, donations, and contributions, which shall be deposited to the credit of

44 the "Air Pollution Education and Environment Fund" which is hereby continued in the state
45 Treasury.

46 (A) The moneys collected pursuant to this article which are directed to be deposited in the
47 "Air Pollution Education and Environment Fund" must be deposited in a separate account in the
48 state Treasury and expenditures for purposes set forth in this article are not authorized from
49 collection but are to be made only in accordance with appropriation and in accordance with the
50 provisions of §12-3-1 *et seq.* of this code and upon fulfillment of the provisions set forth in §5A-2-
51 1 *et seq.* of this code.

52 (B) Moneys in the fund, if not needed for immediate use or disbursement, may be invested
53 or reinvested by the agency in obligations or securities which are considered lawful investments
54 for public funds under this code.

55 (C) At the end of each fiscal year, any unexpended balance, including accrued interest,
56 on deposit in the Air Pollution Education and Environment Fund shall not be transferred to the
57 General Revenue Fund, but shall remain in the Air Pollution Education and Environment Fund for
58 expenditure pursuant to this section.

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

61 (14) To appoint advisory councils from such areas of the state as he or she may determine.
62 The members shall possess some knowledge and interest in matters pertaining to the regulation,
63 control, and abatement of air pollution. The council may advise and consult with the director about
64 all matters pertaining to the regulation, control, and abatement of air pollution within such area;

65 (15) To require any and all persons who are directly or indirectly discharging air pollutants
66 into the air to file with the director such information as the director may require in a form or manner
67 prescribed by him or her for such purpose, including, but not limited to, location, size and height
68 of discharge outlets, processes employed, fuels used and the nature and time periods of duration

69 of discharges. Such information shall be filed with the director, when and in such reasonable time,
70 and in such manner as the director may prescribe;

71 (16) To require the owner or operator of any stationary source discharging air pollutants
72 to install such monitoring equipment or devices as the director may prescribe and to submit
73 periodic reports on the nature and amount of such discharges to the director;

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

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

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

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

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

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

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

94 (i) The fees, penalties, and interest shall be deposited in a special account in the State
95 Treasury designated the "Air Pollution Control Fund", formerly the "Air Pollution Control
96 Commission Fund", which is hereby continued to be appropriated for the sole purpose of paying
97 salaries and expenses of the board, the division of air quality and their employees to carry out the
98 provisions of this article: *Provided*, That the fees, penalties and interest collected for operating
99 permits required by section twelve of this article shall be expended solely to cover all reasonable
100 direct and indirect costs required to administer the operating permit program.

101 (ii) The fees collected pursuant to this subdivision must be deposited in a separate account
102 in the State Treasury and expenditures for purposes set forth in this article are not authorized
103 from collections but are to be made only in accordance with appropriation and in accordance with
104 the provisions of §12-3-1 *et seq.* of this code and upon fulfillment of the provisions set forth in
105 §5A-2-1 *et seq.* of this code.

106 (iii) Moneys in the fund, if not needed for immediate use or disbursement, may be invested
107 or reinvested by the agency in obligations or securities which are considered lawful investments
108 for public funds under this code.

109 (iv) At the end of each fiscal year, any unexpended balance, including accrued interest,
110 on deposit in the Air Pollution Control Fund shall not be transferred to the General Revenue Fund,
111 but shall remain in the Air Pollution Control Fund for expenditure pursuant to this section.

112 (19) Receipt of any money by the director as a result of the entry of any consent order
113 shall be deposited in the State Treasury to the credit of the Air Pollution Education and
114 Environment Fund.

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

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2022.

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Governor