

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 681

BY SENATORS MARTIN, KARNES, AND PHILLIPS

[Introduced March 22, 2021; referred
to the Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §22-32-1, §22-32-2, §22-32-3, §22-32-4, and §22-32-5, all relating generally to
 3 creating the Natural Resources Anti-Commandeering Act; stating legislative findings;
 4 prohibiting agencies of this state and political subdivisions or employees thereof from
 5 knowingly and willingly participating in the enforcement of any federal act, law, order, rule, or
 6 regulation relating to coal, oil, gas, timber, or other extractive resources which do not exist
 7 under the laws of this state; prohibiting assets or funds of the state from being used in activity
 8 assisting enforcement of any federal act, law, order, rule, or regulation relating to coal, oil,
 9 gas, timber, or other extractive resources which do not exist under the laws of this state;
 10 providing penalties therefore; and providing for severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 32. NATURAL RESOURCES ANTI-COMMANDEERING ACT.

§22-32-1. Short title.

1 This article shall be known and may be cited as the “Natural Resources Anti-Commandeering
 2 Act.”

§22-32-2. Legislative findings.

1 The Legislature of the State of West Virginia finds that:

2 (a) It is the intent of the Legislature in enacting this act to protect West Virginia employees,
 3 including law-enforcement officers, from being directed, through federal executive orders, agency
 4 orders, statutes, laws, rules, or regulations in effect on or after the effective date of this article, to
 5 violate their oath of office and rights affirmed under the Tenth Amendment to the Constitution of the
 6 United States;

7 (b) Pursuant to and in furtherance of the principles of federalism enshrined in the Constitution
 8 of the United States, and recognized by the United States Supreme Court, the federal government
 9 may not commandeer this state’s officers, agents, or employees to participate in the enforcement or
 10 facilitation of any federal act or regulatory program, and

11 (c) This right to be free from the commandeering hand of the federal government has been
12 recognized by the United States Supreme Court in *New York v. United States* (1992) and *Printz v.*
13 *United States* (1997), among other cases, with the court consistently holding that the Federal
14 Government may neither issue directives requiring the states to address particular problems, nor
15 command the states' officers, or those of their political subdivisions, to administer or enforce a federal
16 regulatory program, and;

17 (d) The anti-commandeering principles recognized by the Supreme Court in *New York v.*
18 *United States* (1992) and *Printz v. United States* (1997), among other cases, are predicated upon the
19 advice of James Madison, who in Federalist Number 46 advised "a refusal to cooperate with officers
20 of the Union" in response to either unconstitutional federal measures or constitutional but unpopular
21 federal measures.

§22-32-3. Prohibitions.

1 Other than compliance with an order of the court, notwithstanding any law, regulation, rule,
2 or order to the contrary, no agency of this state, political subdivision of this state, or employee of
3 an agency or political subdivision of this state acting in his or her official capacity may:

4 (a) Knowingly and willingly participate in any way in the enforcement of any federal act,
5 law, order, rule, or regulation relating to coal, oil, gas, timber, or other extractive resources, or
6 downstream industries related to such extractive resources, if the act, law, order, rule, or
7 regulation does not exist under the laws of this state; or

8 (b) Utilize any assets, state funds, or funds allocated by the state to local entities on or
9 after the effective date of this article, in whole or in part, to engage in any activity that aids a
10 federal agency, federal agent, or corporation providing services to the federal government in the
11 enforcement or any investigation pursuant to the enforcement of any federal act, law, order, rule,
12 or regulation relating to coal, oil, gas, timber, or other extractive resources, or downstream
13 industries related to such extractive resources, if the act, law, order, rule, or regulation does not
14 exist under the laws of this state.

§22-32-4. Penalties.

1 (a) Any agent or employee of this state, or of any political subdivision of this state who
2 knowingly violates the prohibitions in §22-32-3 of this code shall, on a first violation, be liable for
3 a civil penalty not to exceed \$3,000 which shall be paid into the General Revenue Fund of the
4 state, and on a second or subsequent violation is guilty of a misdemeanor and, upon conviction
5 thereof, fined not more than \$1,000 or confined in jail for not less than 60 days nor more than one
6 year or, or both fined and confined.

7 (b) A political subdivision of this state may not receive state grant funds if the political
8 subdivision adopts a rule, order, ordinance, or policy under which the political subdivision violates
9 §22-32-3 of this code. State grant funds for the political subdivision shall be denied for the fiscal
10 year following the year in which a final judicial determination in an action brought under this
11 section is made that the political subdivision has intentionally required actions which violate the
12 prohibitions in §22-32-3 of this code.

§22-32-5. Severability.

1 The provisions of this article are declared to be severable and if any provision of this article
2 or the application of such provision to any person or circumstance is declared invalid for any
3 reason, such declaration may not affect the validity of the remaining portions of this article.

NOTE: The purpose of this bill is to protect employees of the State of West Virginia and its political subdivisions from being commandeered by a federal agency or other agent to enforce federal regulations and other actions, related to extractive resources or related downstream industries, which do not exist in state law.

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