

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Introduced

House Bill 5018

By Delegates Anderson, Zatezalo, Street, Barnhart,
Fehrenbacher, Kelly, Riley, Heckert, Hott, Horst and
Foggin

[Introduced January 23, 2024; Referred to the
Committee on Energy and Manufacturing]

1 A BILL to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a
 2 new section, designated §22-5-21, related to providing for Department of Environmental
 3 Protection regulatory oversight and authority governing community air monitoring
 4 programs to ensure proper standards for data collection and evaluation through accurate
 5 scientific methods in order to help citizens protect State communities from air pollution;
 6 providing definitions; and limiting the use of said data by the Department.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-21. Community monitoring programs; qualifying data; use of qualifying data.

1 (a) Community air monitoring programs are measurement systems, testing equipment,
 2 tools, and processes used or developed for the purpose of collecting ambient air data: *Provided,*
 3 That community air monitoring programs do not include such systems, equipment, tools, or
 4 processes that are used or operated by the Secretary, the United States Environmental Protection
 5 Agency, or a stationary source for implementation of sections 110 and 319 of the Federal Clean Air
 6 Act, 42 U.S.C. § 7410 and 7619.

7 (b) The Secretary may consider community air monitoring data where the monitor is
 8 installed, operated, and maintained in accordance with the manufacturer's guidance or
 9 requirements and with all applicable United States Environmental Protection Agency standards or
 10 state quality control guidance and rules, if promulgated, with generated samples managed and
 11 analyzed by labs in accordance with minimum quality assurance criteria, to inform whether
 12 additional investigation may be necessary to protect communities that may be significantly
 13 affected by criteria or other air pollutants, if sufficient evidence is included with the data to support
 14 that the data was collected consistent with this provision.

15 (c) Data collected by community air monitoring programs which conduct monitoring of
 16 criteria air pollutants shall not be used by the Secretary for regulatory purposes in the state
 17 implementation plan under sections 110 and 319 of the Federal Clean Air Act, 42 U.S.C. § 7410

18 and 7619.

19 (d) Data collected by community air monitoring programs which conduct monitoring of
20 other air pollutants, including hazardous air pollutants, shall not be used by the Secretary for
21 regulatory purposes implementing section 112 of the Federal Clean Air Act, 42 U.S.C. § 7412.

22 (e) The Secretary may promulgate rules for the operation of these programs, including to
23 ensure that the parameters, equipment, and analytical methods used to obtain and evaluate the
24 community air monitoring data shall be scientifically validated and verified as technically and
25 practically feasible.

26 (f) Nothing in this section grants any right of entry or access to, or trespass upon, any
27 property for the purpose of performing community air monitoring.

28 (g) Data produced from community air monitoring programs shall not be used by the
29 Secretary or by any person for purposes of, or in support of:

30 (1) Issuing a fine, penalty, or notice of violation against any person, including the owner or
31 operator of a stationary source; or

32 (2) Bringing an administrative, regulatory, or judicial enforcement action, third-party lawsuit
33 or proceeding against any person, including the owner or operator of a stationary source.

NOTE: The purpose of this bill is to provide for DEP oversight and authority governing community air monitoring programs to ensure proper standards for data collection and evaluation through accurate scientific methods.

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