

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Committee Substitute

for

Senate Bill 271

By Senators Martin and Rose

[Reported March 11, 2025, from the Committee on
Energy, Industry, and Mining]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new article,
2 designated §22-35-1, §22-35-2, §22-35-3, §22-35-4, and §22-35-5, 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,
6 or regulation relating to coal, oil, gas, timber, or other extractive resources which do not
7 exist under the laws of this state; prohibiting assets or funds of the state from being used in
8 activity assisting enforcement of any federal act, law, order, rule, or regulation relating to
9 coal, oil, gas, timber, or other extractive resources which do not exist under the laws of this
10 state; providing penalties therefor; and providing for severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 35. NATURAL RESOURCES ANTI-COMMANDEERING ACT.

§22-35-1. **Short** **title.**

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

§22-35-2. **Legislative** **findings.**

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

2 (1) 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 (2) Pursuant to and in furtherance of the principles of federalism enshrined in the
8 Constitution of the United States, and recognized by the United States Supreme Court, the federal
9 government may not commandeer this state's officers, agents, or employees to participate in the
10 enforcement or facilitation of any federal act or regulatory program; and

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

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

§22-35-3.

Prohibitions.

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

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

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

§22-35-4. Attorney General authorized and directed to challenge unconstitutional federal

actions related to natural resource commandeering.

1 Whenever any federal statute, presidential executive order, agency order, federal law, rule,
2 or regulation is determined by the Attorney General of this state to infringe upon the right to be free
3 from the federal commandeering of natural resources, the Attorney General shall commence and
4 prosecute legal challenges to the federal action. In exercising and discharging the duties required
5 by this section, the Attorney General shall pursue all available appeals in the courts of the United
6 States, and he or she may expend the public moneys necessary for these purposes. The Attorney
7 General may solicit the participation in these efforts of attorneys general of the other states of the
8 United States and join actions brought by attorneys general of other states or other persons
9 seeking _____ to _____ protect _____ such _____ rights.

§22-35-5. Attorney General to publish model policies.

1 On or before January 1, 2026, and as often thereafter as he or she shall consider
2 necessary, the Attorney General shall publish policies for agents and agencies of this state and of
3 the political subdivisions of this state, providing guidance on resistance to federal commandeering
4 and lawful measures which can be taken by the law-enforcement agencies and departments of
5 this state and its political subdivisions to protect the citizens of this state from the consequences of
6 any attempts or efforts at federal commandeering.

§22-35-6. Immunity.

1 (a) No agent or officer of this state, or its subdivisions, may be required, at the direction of
2 an agency of the federal government, to act in a law-enforcement capacity to enforce a federal
3 statute, executive order, agency order, rule or regulation determined by the Attorney General to
4 infringe upon rights granted by the Tenth Amendment of the Constitution of the United States.

5 (b) No agent or officer of this state or its subdivisions may be held liable civilly or criminally,
6 nor shall his or her employment be terminated, nor shall he or she be decertified as a law-
7 enforcement officer, for refusing to enforce a federal statute, executive order, agency order, rule, or
8 regulation determined by the Attorney General of West Virginia to infringe upon the right to be free

9 from federal commandeering of natural resources of this state while the constitutionality of the
10 statute, executive order, agency order, rule, or regulation is being challenged judicially pursuant to
11 §22-35-4 of this code, nor thereafter if the challenge is successful.

12 (c) Any head of an agency of this state or its subdivisions, officer under his or her
13 command, who is charged criminally or civilly, or who has had his or her employment terminated,
14 or who has had his or her certification as a law enforcement officer suspended or revoked, for
15 failing or refusing to enforce a federal statute executive order, agency order, rule, or regulation
16 referenced in subsection (a) of this section is entitled to reimbursement of reasonable attorney's
17 fees related to his or her defense.

§22-35-7. **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.