

WEST VIRGINIA LEGISLATURE

2026 REGULAR SESSION

Introduced

Senate Bill 88

By Senator Tarr

[Introduced on January 14, 2026; referred
to the Committee on Government Organization]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding a new section,
2 designated §22-5-21, relating to providing for regulatory oversight and authority governing
3 community air monitoring programs; ensuring proper standards for data collection and
4 evaluation through use of accurate scientific methods are used; providing definitions,
5 including defining community air monitoring programs with exceptions; providing for
6 circumstances when the Department of Environmental Protection may use the collected
7 data and for what purposes; limiting the use of said data by the department and other
8 persons; providing that the data may not be used directly for regulating pollutants under the
9 Clean Air Act; providing that the data may not be used to issue a fine, penalty, or notice of
10 violation against the operator of a stationary source; providing that the data may not be
11 used as evidence in an administrative, regulatory, judicial enforcement action or
12 proceeding against the operator of a stationary source or as the basis for an permitting
13 action; and providing for rule-making authority.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AIR POLLUTION CONTROL.

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

1 (a) Community air monitoring data programs are measurement systems, testing
2 equipment, tools, and processes used or developed for the purpose of collecting ambient air data:
3 Provided, That community air monitoring data programs do not include such systems, testing
4 equipment, tools, or processes that are used or operated by the secretary, the United States
5 Environmental Protection Agency, or a stationary source, or that are required by a permit issued
6 pursuant to this article.

7 (b) Data collected by community air monitoring data programs which conduct monitoring of
8 criteria air pollutants shall not be used by the secretary for regulatory purposes in the state
9 implementation plan under sections 110 and 319 of the Federal Clean Air Act, 42 U.S.C. § 7410
10 and 7619.

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

14 (d) Any person may request that the secretary investigate a potential violation of this article
15 or a permit issued pursuant to this article. If community air monitoring data is offered in support of
16 such a request, the secretary shall consider when evaluating such data all of the following:
17 evidence that the monitoring equipment was installed, operated, and maintained, and that all
18 samples were managed and analyzed, in accordance with the manufacturer's guidance and all
19 applicable state and federal quality control guidance and rules; all results of monitoring generated
20 by each device; type of monitoring device, including model number, on which the results were
21 obtained; location of monitors when results were obtained, and how long at that location; the
22 device's error range; dates and times results were recorded; device calibration history; name of
23 the laboratory, if any, at which results were determined and reported; name(s) and identifying
24 information of device operator(s); and any other information the secretary determines relevant and
25 proper. Upon request, each device that generated the qualifying community air monitoring data
26 shall be provided to the secretary for evaluation.

27 (e) The secretary may promulgate rules for the operation of community air monitoring
28 programs, to ensure that the parameters, equipment, and analytical methods used to obtain and
29 evaluate the community air monitoring data are scientifically validated and accurate.

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

32 (g) Community air monitoring data may not be used or considered by the secretary for
33 purposes of, or in support of:

34 (1) Issuing a fine, penalty, or notice of violation against the owner or operator of a source of
35 air emissions;

36 (2) Bringing an administrative, regulatory, or judicial enforcement action against the owner

- 37 or operator of a source of air emissions;
- 38 (3) Development of any rule; or
- 39 (4) Issuance or denial of a permit to any source of air emissions, or development of a
- 40 condition of such a permit.

NOTE: The purpose of this bill is to institute community air monitoring programs, define the data collected, and describe how that data is used.

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