

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **House Bill 2269**

**2015 Carryover**

(BY DELEGATES WALTERS, R. PHILLIPS, STORCH, IHLE

AND FOSTER)

[Introduced January 13, 2016; referred to the

Committee on the Judiciary.]

1 A BILL to amend and reenact §22-1-3a and §22-5-4 of the Code of West Virginia, 1931, as  
 2 amended; and to amend said code by adding thereto a new section, designated  
 3 §29A-3-19, all relating to requiring rules of the Department of Environmental Protection,  
 4 Department of Health and Human Resources, Division of Natural Resources and  
 5 Department of Commerce be no more stringent than corresponding federal laws or  
 6 regulations.

*Be it enacted by the Legislature of West Virginia:*

1 That §22-1-3a and §22-5-4 of the Code of West Virginia, 1931, as amended, be  
 2 amended and reenacted; and that said code be amended by adding thereto a new section,  
 3 designated §29A-3-19, all to read as follows:

**CHAPTER 22. ENVIRONMENTAL RESOURCES.**

**ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.**

**§22-1-3a. Rules -- New or amended environmental provisions.**

1 Except for legislative rules promulgated for the purpose of implementing the provisions of  
 2 section four, article twelve, section six, article seventeen, and section six, article eighteen, all of  
 3 this chapter, and notwithstanding the provisions of section four, article five of this chapter,  
 4 legislative rules promulgated by the director which become effective on or after July 1, 1994, may  
 5 include new or amended environmental provisions which are more stringent than the counterpart  
 6 federal rule or program to the extent that the director first provides specific written reasons which  
 7 demonstrate that such provisions are reasonably necessary to protect, preserve or enhance the  
 8 quality of West Virginia's environment or human health or safety, taking into consideration the  
 9 scientific evidence, specific environmental characteristics of West Virginia or an area thereof, or  
 10 stated legislative findings, policies or purposes relied upon by the director in making such

11 ~~determination. In the case of specific rules which have a technical basis, the director shall also~~  
12 ~~provide the specific technical basis upon which the director has relied.~~

13 In the event that legislative rules promulgated by the director which become effective on  
14 or after July 1, 1994, include new or amended environmental provisions which are less stringent  
15 than a counterpart federal rule which recommends, but does not require, a particular standard or  
16 any federally recommended environmental standard whether or not there be a counterpart federal  
17 rule, the division shall first provide specific written reasons which demonstrate that such  
18 provisions are not reasonably necessary to protect, preserve or enhance the quality of West  
19 Virginia's environment or human health or safety, taking into consideration the scientific evidence,  
20 specific environmental characteristic of West Virginia or an area thereof, or stated legislative  
21 findings, policies or purposes relied upon by the director in making such determination. In the  
22 case of specific rules which have a technical basis, the director shall also provide the specific  
23 technical basis upon which the director has relied.

24 In the absence of a federal rule, the adoption of a state rule ~~shall~~ may not be construed to  
25 be more stringent than a federal rule, unless the absence of a federal rule is the result of a specific  
26 federal exemption.

## **ARTICLE 5. AIR POLLUTION CONTROL.**

### **§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~~ considers advisable and necessary;

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

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

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

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

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

30 (9) To enter and inspect any property, premise or place on or at which a source of air

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

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

41 (11) To cooperate with, receive and expend money from the federal government and other  
42 sources; and the director may cooperate with any public or private agency or person and receive  
43 therefrom and on behalf of the state gifts, donations, and contributions, which shall be deposited  
44 to the credit of the "Air Pollution Education and Environment Fund." ~~which is hereby continued in~~  
45 ~~the state Treasury.~~ The moneys collected pursuant to this article which are directed to be  
46 deposited in the Air Pollution Education and Environment Fund must be deposited in a separate  
47 account in the State Treasury and expenditures for purposes set forth in this article are not  
48 authorized from collection but are to be made only in accordance with appropriation and in  
49 accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of  
50 the provisions set forth in article two, chapter five-a of this code. Amounts collected which are  
51 found from time to time to exceed the funds needed for the purposes set forth in this article may  
52 be transferred to other accounts or funds and redesignated for other purposes by appropriation  
53 of the Legislature;

54 (12) To represent the state in any and all matters pertaining to plans, procedures and

55 negotiations for interstate compacts in relation to the control of air pollution;

56 (13) To appoint advisory councils from ~~such~~ areas of the state as he or she may determine.  
57 The members shall possess some knowledge and interest in matters pertaining to the regulation,  
58 control and abatement of air pollution. The council may advise and consult with the director  
59 about all matters pertaining to the regulation, control and abatement of air pollution within such  
60 area;

61 (14) To require any and all persons who are directly or indirectly discharging air pollutants  
62 into the air to file with the director ~~such~~ information ~~as~~ the director may require in a form or manner  
63 prescribed by him or her for such purpose, including, but not limited to, location, size and height  
64 of discharge outlets, processes employed, fuels used and the nature and time periods of duration  
65 of discharges. ~~Such~~ The information shall be filed with the director, when and in ~~such a~~  
66 reasonable time, and in ~~such the~~ manner ~~as~~ the director may prescribe;

67 (15) To require the owner or operator of any stationary source discharging air pollutants  
68 to install ~~such~~ monitoring equipment or devices ~~as~~ the director may prescribe and to submit  
69 periodic reports on the nature and amount of ~~such the~~ discharges to the director;

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

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

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

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

84           (C) Establishment of criteria for construction, modification, relocation and operating  
85 permits;

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

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

90           The fees, penalties and interest shall be deposited in a special account in the State  
91 Treasury designated the "Air Pollution Control Fund", formerly the "Air Pollution Control  
92 Commission Fund", which is hereby continued to be appropriated for the sole purpose of paying  
93 salaries and expenses of the board, the office of air quality and their employees to carry out the  
94 provisions of this article: *Provided*, That the fees, penalties and interest collected for operating  
95 permits required by section twelve of this article shall be expended solely to cover all reasonable  
96 direct and indirect costs required to administer the operating permit program. The fees collected  
97 pursuant to this subdivision must be deposited in a separate account in the State Treasury and  
98 expenditures for purposes set forth in this article are not authorized from collections but are to be  
99 made only in accordance with appropriation and in accordance with the provisions of article three,  
100 chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter  
101 five-a of this code. Amounts collected which are found from time to time to exceed the funds  
102 needed for the purposes set forth in this article may be transferred to other accounts or funds and

103 redesignated for other purposes by appropriation of the Legislature; ~~Provided, however, That~~  
104 ~~for fiscal year one thousand nine hundred ninety three, expenditures are permitted from~~  
105 ~~collections without appropriation by the Legislature and~~

106 (18) Receipt of any money by the director as a result of the entry of any consent order  
107 shall be deposited in the State Treasury to the credit of the Air Pollution Education and  
108 Environment Fund.

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

**CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.**

**ARTICLE 3. RULE MAKING.**

**§29A-3-19. Certain rules more stringent than federal law or regulations prohibited.**

1 (a) This section applies only to the Department of Environmental Protection, Department  
2 of Health and Human Resources, Division of Natural Resources and Department of Commerce.

3 (b) Notwithstanding any other provision of this code, an agency identified in subsection  
4 (a) of this section may not promulgate emergency legislative rules or propose legislative rules  
5 that are more stringent than corresponding federal laws or regulations, if any.

6 (c) Before December 1, 2015 each agency identified in subsection (a) of this section shall  
7 review all of its rules to determine if the rules contain provisions that are more stringent than  
8 corresponding federal law or regulations. If more stringent provisions are determined to be  
9 included, the agency shall propose amendments to the rules to make them no more stringent than  
10 corresponding federal law or regulations, no later than March 1, 2016.

NOTE: The purpose of this bill is to require rules of the Department of Environmental Protection, Department of Health and Human Resources, Division of Natural Resources and Department of Commerce be no more stringent than corresponding federal law or regulations.

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

§29A-3-19 is new; therefore, it has been completely underscored.