

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

House Bill 3082

BY DELEGATES ANDERSON AND J. KELLY

[Introduced March 12, 2021; referred to the
Committee on Finance]

1 A BILL to amend and reenact §22-5-2 and §22-5-4 of the Code of West Virginia, 1931, as
2 amended, both relating to air pollution control; and granting to the West Virginia
3 Department of Environmental Protection Division of Air Quality the authority to invest the
4 money held in the Air Pollution Control Fund (Fund #3336) and the Air Pollution Education
5 and Environment Fund (Fund #3024) in order to receive interest on the funds held in those
6 accounts in order to offset decreasing permit fee collections and to preserve funding for
7 the West Virginia Department of Environmental Protection Division of Air Quality.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-2. Definitions.

1 The terms used in this article are defined as follows:

2 (1) "Air pollutants" means solids, liquids, or gases which, if discharged into the air, may
3 result in a statutory air pollution.

4 (2) "Board" means the air quality board continued pursuant to the provisions of ~~article two,~~
5 ~~chapter twenty two b of this code~~ §22B-2-1 et seq. of this code.

6 (3) "Director" means the ~~director~~ Secretary of the ~~Division~~ Department of Environmental
7 Protection or such other person to whom the director has delegated authority or duties pursuant
8 to ~~sections six or eight, article one, chapter twenty two of this code~~ §22-1-6 or §22-1-8 of this
9 code.

10 (4) "Discharge" means any release, escape, or emission of air pollutants into the air.

11 (5) "Person" means any and all persons, natural or artificial, including the state of West
12 Virginia or any other state, the United States of America, any municipal, statutory, public, or
13 private corporation organized or existing under the laws of this or any other state or country, and
14 any firm, partnership or association of whatever nature.

15 (6) "Statutory air pollution" means and is limited to the discharge into the air by the act of
16 man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount

17 as to be injurious to human health or welfare, animal or plant life, or property, or which would
18 interfere with the enjoyment of life or property.

§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 advisable and necessary;

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

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

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

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

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

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

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

40 (11) To cooperate with, receive and expend money from the federal government and other
41 sources. ~~and the director may~~

42 (12) To cooperate with any public or private agency or person and receive therefrom and
43 on behalf of the state gifts, donations, and contributions, which shall be deposited to the credit of
44 the "Air Pollution Education and Environment Fund" which is hereby continued in the state
45 Treasury.

46 (A) The moneys collected pursuant to this article which are directed to be deposited in the
47 "Air Pollution Education and Environment Fund" must be deposited in a separate account in the
48 state Treasury and expenditures for purposes set forth in this article are not authorized from
49 collection but are to be made only in accordance with appropriation and in accordance with the

50 provisions of ~~article three, chapter twelve of this code~~ §12-3-1 et seq. of this code and upon
51 fulfillment of the provisions set forth in ~~article two, chapter five-a of this code~~ §5A-2-1 et seq. of
52 this code. ~~Amounts collected which are found from time to time to exceed the funds needed for~~
53 ~~the purposes set forth in this article may be transferred to other accounts or funds and~~
54 ~~redesignated for other purposes by appropriation of the Legislature~~

55 (B) Moneys in the fund, if not needed for immediate use or disbursement, may be invested
56 or reinvested by the agency in obligations or securities which are considered lawful investments
57 for public funds under this code.

58 (C) At the end of each fiscal year, any unexpended balance, including accrued interest,
59 on deposit in the Air Pollution Education and Environment Fund shall not be transferred to the
60 General Revenue Fund, but shall remain in the Air Pollution Education and Environment Fund for
61 expenditure pursuant to this section.

62 ~~(12)~~ (13) To represent the state in any and all matters pertaining to plans, procedures, and
63 negotiations for interstate compacts in relation to the control of air pollution;

64 ~~(13)~~ (14) To appoint advisory councils from such areas of the state as he or she may
65 determine. The members shall possess some knowledge and interest in matters pertaining to the
66 regulation, control, and abatement of air pollution. The council may advise and consult with the
67 director about all matters pertaining to the regulation, control, and abatement of air pollution within
68 such area;

69 ~~(14)~~ (15) To require any and all persons who are directly or indirectly discharging air
70 pollutants into the air to file with the director such information as the director may require in a form
71 or manner prescribed by him or her for such purpose, including, but not limited to, location, size
72 and height of discharge outlets, processes employed, fuels used and the nature and time periods
73 of duration of discharges. Such information shall be filed with the director, when and in such
74 reasonable time, and in such manner as the director may prescribe;

75 ~~(15)~~ (16) To require the owner or operator of any stationary source discharging air
76 pollutants to install such monitoring equipment or devices as the director may prescribe and to
77 submit periodic reports on the nature and amount of such discharges to the director;

78 ~~(16)~~ (17) To do all things necessary and convenient to prepare and submit a plan or plans
79 for the implementation, maintenance and enforcement of the “Federal Clean Air Act,” as
80 amended: *Provided*, That in preparing and submitting each such plan the director shall establish
81 in such plan that such standard shall be first achieved, maintained and enforced by limiting and
82 controlling emissions of pollutants from commercial and industrial sources and locations and shall
83 only provide in such plans for limiting and controlling emissions of pollutants from private dwellings
84 and the curtilage thereof as a last resort: *Provided, however*, That nothing herein contained affects
85 plans for achievement, maintenance and enforcement of motor vehicle emission standards and
86 of standards for fuels used in dwellings;

87 ~~(17)~~ (18) To promulgate legislative rules, in accordance with the provisions of chapter
88 twenty-nine-a of this code, providing for the following:

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

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

92 (C) Establishment of criteria for construction, modification, relocation, and operating
93 permits;

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

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

98 (i) The fees, penalties, and interest shall be deposited in a special account in the State
99 Treasury designated the “Air Pollution Control Fund”, formerly the “Air Pollution Control
100 Commission Fund”, which is hereby continued to be appropriated for the sole purpose of paying

101 salaries and expenses of the board, the ~~office~~ division of air quality and their employees to carry
102 out the provisions of this article: *Provided*, That the fees, penalties and interest collected for
103 operating permits required by section twelve of this article shall be expended solely to cover all
104 reasonable direct and indirect costs required to administer the operating permit program.

105 (ii) The fees collected pursuant to this subdivision must be deposited in a separate account
106 in the State Treasury and expenditures for purposes set forth in this article are not authorized
107 from collections but are to be made only in accordance with appropriation and in accordance with
108 the provisions of ~~article three, chapter twelve of this code~~ §12-3-1 et seq. of this code and upon
109 fulfillment of the provisions set forth in ~~article two, chapter five-a of this code~~ §5A-2-1 et seq. of
110 this code.

111 (iii) Moneys in the fund, if not needed for immediate use or disbursement, may be invested
112 or reinvested by the agency in obligations or securities which are considered lawful investments
113 for public funds under this code.

114 (iv) At the end of each fiscal year, any unexpended balance, including accrued interest,
115 on deposit in the Air Pollution Control Fund shall not be transferred to the General Revenue Fund,
116 but shall remain in the Air Pollution Control Fund for expenditure pursuant to this
117 section. Amounts collected which are found from time to time to exceed the funds needed for the
118 purposes set forth in this article may be transferred to other accounts or funds and redesignated
119 for other purposes by appropriation of the Legislature: *Provided, however,* That for fiscal year one
120 thousand nine hundred ninety-three, expenditures are permitted from collections without
121 appropriation by the Legislature; and

122 ~~(18)~~ (19) Receipt of any money by the director as a result of the entry of any consent order
123 shall be deposited in the State Treasury to the credit of the Air Pollution Education and
124 Environment Fund.

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

NOTE: The purpose of this bill is to help stabilize funding sources for the WVDEP DAQ. Air quality in West Virginia has improved drastically over the years and is a reason to celebrate. The financial reality from decreased industrial air emissions however, results in a decrease in DAQ's revenues. Since the Clean Air Act was amended in 1990, industrial air emissions in WV have decreased approximately 80%. Fees for large industrial sources are based on their emissions rates; therefore, revenues have also been decreasing. Currently, the DAQ funds are not invested. This proposal would establish authority for WVDEP to invest DAQ funds.

The 2018 ending year cash balance in Fund 3336 was \$ 5.7 MM and in Fund 3024 was \$ 1MM. Based on a review of the interest rates paid for other DEP Funds during 2018 fiscal year, the Money Market Yield ranged from 2.14% to 2.8% and the monthly Short Term Bond Yield ranged from 0.1079% to 1.0568%. If these funds were invested, the interest could range from approximately \$7,000/month - \$13,400/month which equates to approximately \$84,000/yr - \$160,800/yr.

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