

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5018

By Delegates Anderson, Zatezalo, Street, Barnhart,

Fehrenbacher, Kelly, Riley, Heckert, and Foggin

[Originating in the Committee on Energy and

Manufacturing; Reported on January 30, 2024]

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, relating to providing for regulatory oversight and
3 authority governing community air monitoring programs to ensure proper standards for
4 data collection and evaluation through use of accurate scientific methods are used;
5 providing definitions, including defining community air monitoring programs with
6 exceptions; providing for circumstances when the Department of Environmental Protection
7 may use the collected data and for what purposes; limiting the use of said data by the
8 department and other persons; providing that the data may not be used directly for
9 regulating pollutants under the clean air act; providing that the data may not be used to
10 issue a fine, penalty, or notice of violation against the operator of a stationary source;
11 providing that the data may not be used as evidence in an administrative, regulatory,
12 judicial enforcement action, or third-party lawsuit or proceeding against the operator of a
13 stationary source; and providing for rulemaking authority.

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 in accordance with minimum quality assurance criteria, to inform whether additional
12 investigation may be necessary to protect communities that may be significantly affected by
13 criteria or other air pollutants, if sufficient evidence is included with the data to support that the data
14 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 may not be used as evidence
29 by the Secretary or by any person for purposes of, or in support of:

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

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

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