

Introduced Version

H. B. 2325

(By Delegate Walters)

[Introduced February 14, 2005; referred to the
Committee on the Judiciary.]

A BILL to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §22-5A-1, §22-5A-2 and §22-5A-3, all relating to establishing the West Virginia Protection of Air Quality Related Values Act.

Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §22-5A-1, §22-5A-2 and §22-5A-3, all to read as follows:

ARTICLE 5A. WEST VIRGINIA PROTECTION OF AIR QUALITY RELATED VALUES ACT.

§22-5A-1. Title.

This article is known and referred to as the West Virginia Protection of Air Quality Related Values.

§22-5A-2. Definitions.

- (a) "Air quality-related value" means a feature or property of a Class I federal area that was fundamental to the purpose for which the area was established or designed and which may be affected by air pollution, including, but not limited to, flora, fauna, geologic features and cultural resources.
- (b) "Class I" means an area of land that has been designed as Class I under section 162 of the Federal Clean Air Act.
- (c) "Scientifically reliable evidence" means evidence shown by a methodology that is generally accepted within the relevant scientific community, that has been subjected to peer review and publication; is capable of and has been tested; is subject to established control standards of performance and has a known or potential rate of error that is within a range acceptable to the relevant scientific community.

§22-5A-3. Demonstrations of adverse impact on air quality related values.

The Director of the Division of Environmental Protection is authorized to represent the state as provided in this section when assessing demonstrations submitted by a federal land manager under section 165(d)(2)(C)(ii) of the Federal Clean Air Act.

(1) When a federal land manager sends a written demonstration to the Division of Environmental Protection under the authority of section 165(d)(2)(C)(ii) of the Federal Clean Air Act alleging that emissions of a criteria pollutant from a proposed major new source or a major modification of a source will have an adverse impact on any specifically defined air quality-related value of a Class I area, the Division of Environmental Protection shall concur in the demonstration only if the demonstration establishes the following by a preponderance of the evidence:

(A) For an area that was designated as Class I under section 162 of the Federal Clean Air Act, that emissions of a specific criteria pollutant from the proposed new source or modification will result in a significant, actual adverse impact on an air quality-related value that was fundamental to the purpose for which the area was established and preserved by Congress;

(B) For an area that was redesignated as Class I under section 164 of the Federal Clean Air Act, that emissions of a criteria pollutant from the proposed new source or modification will result in a significant, actual adverse impact on an air quality-related value that was considered an important attribute in the decision to redesignate the area as Class I; or

(C) That an adverse effect of any specific pollutant on any specific air quality-related value is established by evidence that is scientifically reliable and which demonstrates the alleged adverse effect will result from concentrations that are likely to occur as a result of emissions into the ambient air.

(2) To be considered by the Division of Environmental Protection, a demonstration under subsection (i) of this section must

be received by the Division of Environmental Protection, no later than thirty days after the mailing of written notice to the federal land manager of any permit application for a proposed major source or major modification.

(3) The Division of Environmental Protection shall determine within thirty days of receipt of a demonstration made under subsection (i) of this section whether the demonstration meets the requirements of that subsection. The Division of Environmental Protection shall notify the Federal Land Manager and the owner/operator of the proposed new major stationary source or modification within ten days, in writing, of that determination. If the Division of Environmental Protection determines that the proposed new major source or major modification will have a significant adverse impact on an air quality-related value, a permit may not be issued unless that owner/operator of the proposed new major source or modification demonstrates to the Division of Environmental Protection that it has mitigated that adverse impact by obtaining enforceable and permanent emissions reductions to offset the adverse impact. The owner/operator has the burden of establishing the sufficiency of the mitigation by reliable scientific evidence. The Division of Environmental Protection's determination is an appealable agency action subject to appeal by the owner/operator of the proposed new major source or major modification under the provisions of the Division of Environmental Protection.

NOTE: The purpose of this bill is to establish the West Virginia Protection of Air Quality Related Values Act . This Act establishes the procedures to evaluate claims by the Federal Land Managers on air quality related values.

This article is new; therefore, strike-throughs and underscoring have been omitted.