

## WV ACE Partial State Plan

### Appendix H

#### West Virginia State Code:

West Virginia Code § 22-5-1 et seq.

West Virginia Code § 29B-1-1 et seq.

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## Ch. 22, Art. 5, Refs & Annos

WV ST Ch. 22, Art. 5, Refs & Annos | West's Annotated Code of West Virginia | Chapter 22.  
Environmental Resources

### Search Details

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W. Va. Code, Ch. 22, Art. 5, Refs & Annos  
Currentness

W. Va. Code, Ch. 22, Art. 5, Refs & Annos, WV ST Ch. 22, Art. 5, Refs & Annos  
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## § 22-5-1. Declaration of policy and purpose

WV ST § 22-5-1 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources |  
Effective: June 7, 2008

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Chapter 22. Environmental Resources  
Article 5. Air Pollution Control (Refs & Annos)

W. Va. Code, § 22-5-1

§ 22-5-1. Declaration of policy and purpose

Effective: June 7, 2008

Currentness

It is hereby declared to be the public policy of this state and the purpose of this article to achieve and maintain such levels of air quality as will protect human health and safety, and to the greatest degree practicable, prevent injury to plant and animal life and property, foster the comfort and convenience of the people, promote the economic and social development of this state and facilitate the enjoyment of the natural attractions of this state.

To these ends it is the purpose of this article to provide for a coordinated statewide program of air pollution prevention, abatement and control; to facilitate cooperation across jurisdictional lines in dealing with problems of air pollution not confined within single jurisdictions; to assure the economic competitiveness of the state by providing for the timely processing of permit applications and other authorizations under this article; and to provide a framework within which all values may be balanced in the public interest.

Further, it is the public policy of this state to fulfill its primary responsibility for assuring air quality pursuant to the "Federal Clean Air Act,"<sup>1</sup> as amended.

**Credits**

Acts 1994, c. 61; Acts 2008, c. 6, eff. June 7, 2008.

Notes of Decisions (1)

**Footnotes**

1 42 U.S.C.A. § 7401 et seq.

W. Va. Code, § 22-5-1, WV ST § 22-5-1

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## § 22-5-2. Definitions

WV ST § 22-5-2 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources

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W. Va. Code, § 22-5-2

§ 22-5-2. Definitions

Currentness

The terms used in this article are defined as follows:

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

(2) “Board” means the air quality board continued pursuant to the provisions of article two, chapter twenty-two-b of this code.

(3) “Director” means the director of the division of environmental protection or such other person to whom the director has delegated authority or duties pursuant to sections six or eight, article one, chapter twenty-two of this code.

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

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

(6) “Statutory air pollution” means and is limited to the discharge into the air by the act of man of substances (liquid, solid, gaseous, organic or inorganic) in a locality, manner and amount as to be injurious to human health or welfare, animal or plant life, or property, or which would interfere with the enjoyment of life or property.

**Credits**

Acts 1994, c. 61.

W. Va. Code, § 22-5-2, WV ST § 22-5-2

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## § 22-5-3. Causing statutory pollution unlawful; article not to provide persons with additional legal remedies

WV ST § 22-5-3 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources

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W. Va. Code, § 22-5-3

§ 22-5-3. Causing statutory pollution unlawful; article  
not to provide persons with additional legal remedies

Currentness

It is unlawful for any person to cause a statutory air pollution, to violate the provisions of this article, to violate any rules promulgated pursuant to this article to operate any facility subject to the permit requirements of the director without a valid permit, or to knowingly misrepresent to any person in the state of West Virginia that the sale of air pollution control equipment will meet the standards of this article or any rules promulgated pursuant to this article. Nothing contained in this article provides any person with a legal remedy or basis for damages or other relief not otherwise available to such person immediately prior to enactment of this article.

**Credits**

Acts 1994, c. 61.

W. Va. Code, § 22-5-3, WV ST § 22-5-3

Current with legislation of the 2020 Regular Session.

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## § 22-5-4. Powers and duties of director; and legal services; rules

WV ST § 22-5-4 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources

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W. Va. Code, § 22-5-4

§ 22-5-4. Powers and duties of director; and legal services; rules

Currentness

(a) The director is authorized:

- (1) To develop ways and means for the regulation and control of pollution of the air of the state;
- (2) To advise, consult and cooperate with other agencies of the state, political subdivisions of the state, other states, agencies of the federal government, industries, and with affected groups in furtherance of the declared purposes of this article;
- (3) To encourage and conduct such studies and research relating to air pollution and its control and abatement as the director may deem advisable and necessary;
- (4) To promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code not inconsistent with the provisions of this article, relating to the control of air pollution: Provided, That no rule of the director shall specify a particular manufacturer of equipment nor a single specific type of construction nor a particular method of compliance except as specifically required by the "Federal Clean Air Act,"<sup>1</sup> as amended, nor shall any such rule apply to any aspect of an employer-employee relationship: Provided, however, That no legislative rule or program of the director hereafter adopted shall be any more stringent than any federal rule or program except to the limited extent that the director first makes a specific written finding for any such departure that there exists scientifically supportable evidence for such rule or program reflecting factors unique to West Virginia or some area thereof;
- (5) To enter orders requiring compliance with the provisions of this article and the rules lawfully promulgated hereunder;
- (6) To consider complaints, subpoena witnesses, administer oaths, make investigations and hold hearings relevant to the promulgation of rules and the entry of compliance orders hereunder;
- (7) To encourage voluntary cooperation by municipalities, counties, industries and others in preserving the purity of the air within the state;

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

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

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

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

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

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

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

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

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

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

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

(B) Imposition of permit application and transfer fees;

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

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

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

The fees, penalties and interest shall be deposited in a special account in the state treasury designated the “Air Pollution Control Fund”, formerly the “Air Pollution Control Commission Fund”, which is hereby continued to be appropriated for the sole purpose of paying salaries and expenses of the board, the office of air quality and their employees to carry out the provisions of this article: Provided, That the fees, penalties and interest collected for operating permits required by section twelve of this article shall be expended solely to cover all reasonable direct and indirect costs required to administer the operating permit program. The fees collected pursuant to this subdivision must be deposited in a separate account in the state treasury and expenditures for purposes set forth in this article are not authorized from collections but are to be made only in accordance with appropriation and in accordance with the provisions of article three, chapter twelve of this code and upon fulfillment of the provisions set forth in article two, chapter five-a of this code. Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and redesignated for other purposes by appropriation of the Legislature: Provided, however, That for fiscal year one thousand nine hundred ninety-three, expenditures are permitted from collections without appropriation by the Legislature; and

(18) Receipt of any money by the director as a result of the entry of any consent order shall be deposited in the state treasury to the credit of the air pollution education and environment fund.

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

**Credits**

Acts 1994, c. 61.

Notes of Decisions (3)

**Footnotes**

1 42 U.S.C.A. § 7401 et seq.

W. Va. Code, § 22-5-4, WV ST § 22-5-4

Current with legislation of the 2020 Regular Session.

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## **§ 22-5-5. Issuance of cease and desist orders by director; service; permit suspension, modification and revocation; appeals to board**

WV ST § 22-5-5 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources

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Chapter 22. Environmental Resources  
Article 5. Air Pollution Control (Refs & Annos)

W. Va. Code, § 22-5-5

§ 22-5-5. Issuance of cease and desist orders by director; service;  
permit suspension, modification and revocation; appeals to board

**Currentness**

If, from any investigation made by the director or from any complaint filed with him or her, the director is of the opinion that a person is violating the provisions of this article, or any rules promulgated pursuant thereto, he or she shall make and enter an order directing the person to cease and desist the activity, unless the director determines the violation is of a minor nature or the violation has been abated. The director shall fix a reasonable time in such order by which the activity must stop or be prevented. The order shall contain the findings of fact upon which the director determined to make and enter the order.

If, after any investigation made by the director, or from any complaint filed with him or her, the director is of the opinion that a permit holder is violating the provisions of this article, or any rules promulgated pursuant thereto, or any order of the director, or any provision of a permit, the director may issue notice of intent to suspend, modify or revoke and reissue such permit. Upon notice of the director's intent to suspend, modify or revoke a permit, the permit holder may request a conference with the director to show cause why the permit should not be suspended, modified or revoked. The request for conference must be received by the director within fifteen days following receipt of notice. After conference or fifteen days after issuance of notice of intent, if no conference is requested, the director may enter an order suspending, modifying or revoking the permit and send notice to the permit holder. Such order is a cease and desist order for purposes of administrative and judicial review and shall contain findings of fact upon which the director determined to make and enter the order. If an appeal of the director's order is filed, the order of the director shall be stayed from the date of issuance pending a final decision of the board.

The director shall cause a copy of any such order to be served upon the person by registered or certified mail or by any proper law-enforcement officer.

Any person upon whom a copy of the final order has been served may appeal such order to the air quality board pursuant to the provisions of article one, chapter twenty-two-b of this code.

**Credits**

Acts 1994, c. 61; Acts 1999, c. 121, eff. 90 days after March 13, 1999.

W. Va. Code, § 22-5-5, WV ST § 22-5-5  
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## § 22-5-6. Penalties; recovery and disposition; duties of prosecuting attorneys

WV ST § 22-5-6 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources

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Article 5. Air Pollution Control (Refs & Annos)

W. Va. Code, § 22-5-6

§ 22-5-6. Penalties; recovery and disposition; duties of prosecuting attorneys

Currentness

(a) Any person who violates any provision of this article, any permit or any rule or order issued pursuant to this article or article one, chapter twenty-two-b of this code is subject to a civil penalty not to exceed ten thousand dollars for each day of such violation, which penalty shall be recovered in a civil action brought by the director in the name of the state of West Virginia in the circuit court of any county wherein the person resides or is engaged in the activity complained of or in the circuit court of Kanawha County. The amount of the penalty shall be fixed by the court without a jury: Provided, That any person is not subject to civil penalties unless the person has been given written notice thereof by the director: Provided, however, That for the first such minor violation, if the person corrects the violation within the time as was specified in the notice of violation issued by the director, no civil penalty may be recovered: Provided further, That if the person fails to correct a minor violation or for any serious or subsequent serious or minor violation, the person is subject to civil penalties imposed pursuant to this section from the first day of the violation notwithstanding the date of the issuance or receipt of the notice of violation. The director shall, by rule subject to the provisions of chapter twenty-nine-a of this code, determine the definitions of serious and minor violations. The amount of any penalty collected by the director shall be deposited in the general revenue of the state treasury according to law.

(b)(1) Any person who knowingly misrepresents any material fact in an application, record, report, plan or other document filed or required to be maintained under the provisions of this article or any rules promulgated under this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars or imprisoned in the county jail not more than six months or both fined and imprisoned: Provided, That if the violation occurs on separate days or is continuing in nature, the fine shall be no more than twenty-five thousand dollars for each day of such violation.

(2) Any person who knowingly violates any provision of this article, any permit or any rule or order issued pursuant to this article or article one, chapter twenty-two-b of this code is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than twenty-five thousand dollars for each day of such violation or imprisoned in the county jail not more than one year or both fined and imprisoned.

(c) Upon a request in writing from the director it is the duty of the attorney general and the prosecuting attorney of the county in which any such action for penalties accruing under this section or section seven of this article may be brought to institute and prosecute all such actions on behalf of the director.

(d) For the purpose of this section, violations on separate days are separate offenses.

**Credits**

Acts 1994, c. 61; Acts 1999, c. 121, eff. 90 days after March 13, 1999.

W. Va. Code, § 22-5-6, WV ST § 22-5-6

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## § 22-5-7. Applications for injunctive relief

WV ST § 22-5-7 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources

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Article 5. Air Pollution Control (Refs & Annos)

W. Va. Code, § 22-5-7

§ 22-5-7. Applications for injunctive relief

Currentness

The director may seek an injunction against any person in violation of any provision of this article or any permit, rule or order issued pursuant to this article or article one, chapter twenty-two-b of this code. In seeking an injunction, it is not necessary for the director to post bond nor to allege or prove at any stage of the proceeding that irreparable damage will occur if the injunction is not issued or that the remedy at law is inadequate. An application for injunctive relief brought under this section or for civil penalty brought under section six of this article may be filed and relief granted notwithstanding the fact that all administrative remedies provided in this article have not been exhausted or invoked against the person or persons against whom such relief is sought.

In any action brought pursuant to the provisions of section six or of this section, the state, or any agency of the state which prevails, may be awarded costs and reasonable attorney's fees.

**Credits**

Acts 1994, c. 61.

W. Va. Code, § 22-5-7, WV ST § 22-5-7

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## § 22-5-8. Emergencies

WV ST § 22-5-8 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources

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W. Va. Code, § 22-5-8

§ 22-5-8. Emergencies

Currentness

Whenever air pollution conditions in any area of the state become such as, in the opinion of the director, to create an emergency and to require immediate action for the protection of the public health, the director may, with the written approval of the governor, so find and enter such order as it deems necessary to reduce or prevent the emission of air pollutants substantially contributing to such conditions. In any such order the director shall also fix a time, not later than twenty-four hours thereafter, and place for a hearing to be held before it for the purpose of investigating and determining the factors causing or contributing to such conditions. A true copy of any such order shall be served upon persons whose interests are directly prejudiced thereby in the same manner as a summons in a civil action may be served, and a true copy of such order shall also be posted on the front door of the courthouse of the county in which the alleged conditions originated. All persons whose interests are prejudiced or affected in any manner by any such order shall have the right to appear in person or by counsel at the hearing and to present evidence relevant to the subject of the hearing. Within twenty-four hours after completion of the hearing the director shall affirm, modify or set aside said order in accordance and consistent with the evidence adduced. Any person aggrieved by such action of the director may thereafter apply by petition to the circuit court of the county for a review of the director's action. The circuit court shall forthwith fix a time for hearing de novo upon the petition and shall, after such hearing, by order entered of record, affirm, modify or set aside, in whole or in part, the order and action of the director. Any person whose interests shall have been substantially affected by the final order of the circuit court may appeal the same to the supreme court of appeals in the manner prescribed by law.

**Credits**

Acts 1994, c. 61.

W. Va. Code, § 22-5-8, WV ST § 22-5-8

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# **§ 22-5-9. Powers reserved to secretary of the department of health and human resources, commissioner of bureau of public health, local health boards and political subdivisions; conflicting statutes repealed**

WV ST § 22-5-9 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources

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W. Va. Code, § 22-5-9

§ 22-5-9. Powers reserved to secretary of the department of health and human resources, commissioner of bureau of public health, local health boards and political subdivisions; conflicting statutes repealed

Currentness

Nothing in this article affects or limits the powers or duties heretofore conferred by the provisions of chapter sixteen of this code upon the secretary of the department of health and human resources, the commissioner of the bureau of public health, county health boards, county health officers, municipal health boards, municipal health officers, combined boards of health or any other health agency or political subdivision of this state except insofar as such powers and duties might otherwise apply to the control, reduction or abatement of air pollution. All existing statutes or parts of statutes are, to the extent of their inconsistencies with the provisions of this article and to the extent that they might otherwise apply to the control, reduction or abatement of air pollution, hereby repealed: Provided, That no ordinance previously adopted by any municipality relating to the control, reduction or abatement of air pollution is repealed by this article.

**Credits**

Acts 1994, c. 61.

W. Va. Code, § 22-5-9, WV ST § 22-5-9

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## § 22-5-10. Records, reports, data or information; confidentiality; proceedings upon request to inspect or copy

WV ST § 22-5-10 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources

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W. Va. Code, § 22-5-10

§ 22-5-10. Records, reports, data or information;  
confidentiality; proceedings upon request to inspect or copy

Currentness

(a) All air quality data, emission data, permits, compliance schedules, orders of the director, board orders and any other information required by a federal implementation program (all for convenience hereinafter referred to in this section as “records, reports, data or information”) obtained under this article shall be available to the public, except that upon a showing satisfactory to the director, by any person, that records, reports, data or information or any particular part thereof, to which the director has access under this article if made public, would divulge methods or processes entitled to protection as trade secrets of the person, the director shall consider these records, reports, data or information or a particular portion thereof confidential: *Provided*, That this confidentiality does not apply to the types and amounts of air pollutants discharged and that these records, reports, data or information may be disclosed to other officers, employees or authorized representatives of the state or of the federal environmental protection agency concerned with enforcing this article, the federal Clean Air Act,<sup>1</sup> as amended, or the federal Resource Conservation and Recovery Act,<sup>2</sup> as amended, when relevant to any official proceedings thereunder: *Provided, however*, That the officers, employees or authorized representatives of the state or federal environmental protection agency protect these records, reports, data or information to the same degree required of the director by this section. The director shall promulgate legislative rules regarding the protection of records, reports, data or information, or trade secrets, as required by this section.

(b) Upon receipt of a request for records, reports, data or information which constitute trade secrets and prior to making a final determination to grant or deny the request, the director shall notify the person claiming that any record, report, data or information is entitled to protection as a trade secret, and allow the person an opportunity to respond to the request in writing.

(c) All requests to inspect or copy documents must state with reasonable specificity the documents or type of documents sought to be inspected or copied. Within five business days of the receipt of a request, the director or his or her designate shall by order: (1) Advise the person making the request of the time and place at which the person may inspect and copy the documents, which, if the request addresses information claimed as confidential, may not be sooner than thirty days following the date of the determination to disclose, unless an earlier disclosure date is agreed to by the person claiming the confidentiality; or (2) deny the request, stating in writing the reasons for denial. If the request addresses information claimed as confidential, notice of the action taken pursuant to this subsection shall also be provided to the person asserting the claim of confidentiality.

Any person adversely affected by a determination, by order or otherwise, regarding information confidentiality under this article may appeal the determination to the air quality board pursuant to the provisions of article one, chapter twenty-two-b of this code. The filing of a timely notice of appeal shall stay any determination, by order or otherwise, to disclose confidential information pending a final decision on the appeal. The scope of review is

limited to the question of whether the records, reports, data or other information, or any particular part thereof sought to be inspected or copied, are entitled to be treated as confidential under subsection (a) of this section. The air quality board shall afford evidentiary protection in appeals as is necessary to protect the confidentiality of the information at issue, including the use of in camera proceedings and the sealing of records where appropriate.

(d) In lieu of the provision of chapter twenty-nine-b of this code, the provision of this section shall apply to determinations of confidentiality.

#### **Credits**

Acts 1994, c. 61; Acts 2003, c. 107, eff. 90 days after March 8, 2003.

#### **Footnotes**

1 42 U.S.C.A. § 7401 et seq.

2 P.L. 94-580.

W. Va. Code, § 22-5-10, WV ST § 22-5-10

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## § 22-5-11. Construction, modification or relocation permits required for stationary sources of air pollutants

WV ST § 22-5-11 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources |  
Effective: June 7, 2008

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Jurisdiction: West Virginia

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Chapter 22. Environmental Resources  
Article 5. Air Pollution Control (Refs & Annos)

W. Va. Code, § 22-5-11

§ 22-5-11. Construction, modification or relocation  
permits required for stationary sources of air pollutants

Effective: June 7, 2008

Currentness

- (a) Unless otherwise specifically provided in this article, no person shall construct, modify or relocate any stationary source of air pollutants without first obtaining a construction, modification or relocation permit as provided in this article.
- (b) The secretary shall by rule specify the class or categories of stationary sources to which this section applies. Application for permits shall be made upon such form, in such manner, and within such time as the rule prescribes and shall include such information, as in the judgment of the secretary, will enable him or her to determine whether such source will be so designed as to operate in conformance with the provisions of this article or any rules of the secretary.
- (c) Unless otherwise specifically provided in this article, the secretary shall issue a permit for a major stationary source within a reasonable time not to exceed three hundred sixty-five calendar days, after the secretary determines that the application is complete.
- (d) Unless otherwise specifically provided in this article, the secretary shall issue a permit for all other sources including modifications of existing major stationary sources which are not major modifications within a reasonable time not to exceed ninety calendar days, after the date the secretary determines the application is complete. The Secretary may extend this time by thirty calendar days to allow for public comment.
- (e) A permit application will be denied if the secretary determines that the proposed construction, modification or relocation will not be in accordance with this article or rules promulgated thereunder.
- (f) For purposes of this section, a modification is any physical change in, or change in the method of operation of, a stationary source which increases the amount of any air pollutant discharged by a source above the de minimis level set by the secretary.
- (g) With respect to the construction of new nonmajor stationary sources, or modifications of nonmajor stationary sources, or modifications which are not major modifications to existing major stationary sources, or relocations of nonmajor stationary sources, the following requirements apply:

(1) The secretary shall issue an administrative update to a permit issued under this section with respect to any of these sources, unless he or she determines that the proposed administrative update will not be in accordance with this article or rules promulgated hereunder, in which case the secretary shall issue an order denying the administrative update. Any administrative update shall be issued by the secretary within a reasonable time not to exceed sixty calendar days after receipt of a complete application. Administrative updates are minor revisions of existing permits as further described and authorized by rule.

(2) The secretary shall, within a reasonable time not to exceed forty-five calendar days after the date the secretary determines that an application is complete, issue a registration under a general permit applicable to any of these sources, unless he or she determines that the proposed construction, modification or relocation will not be in accordance with this article or rules promulgated hereunder. General permits are permits authorizing the construction, modification or relocation of a category of sources by the same owner or operator or involving the same or similar processes or pollutants upon the terms and conditions specified in the general permit for those types of sources.

(3) The secretary shall, within a reasonable time not to exceed forty-five calendar days after receipt of a complete application, issue a temporary permit or a relocation permit, unless he or she determines that the proposed construction, modification or relocation will not be in accordance with this article or rules promulgated hereunder. Temporary permits are permits authorizing the owner or operator to make limited changes for limited periods of time as further described and authorized by rule.

(h) The secretary shall determine whether an application filed under this section is complete within thirty calendar days after receipt of that application at which time the secretary shall notify the applicant in writing as to whether the application is complete or specify any additional information required for the application to be complete.

(i) The secretary, shall propose rules for legislative approval in accordance with the provisions of article three, chapter twenty nine-a of this code, to implement the provisions of this section by the first day of August, two thousand eight.

#### **Credits**

Acts 1994, c. 61; Acts 2008, c. 6, eff. June 7, 2008.

#### **Notes of Decisions (3)**

W. Va. Code, § 22-5-11, WV ST § 22-5-11  
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## § 22-5-11a. Activities authorized in advance of permit issuance

WV ST § 22-5-11a | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources |  
Effective: June 7, 2008

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W. Va. Code, § 22-5-11a

§ 22-5-11a. Activities authorized in advance of permit issuance

Effective: June 7, 2008

Currentness

(a) With respect to the modifications of nonmajor stationary sources, or modifications which are not major modifications to existing major stationary sources, the following activities are authorized in advance of permit issuance. Any authorized activities undertaken by or on behalf of the permit applicant prior to the issuance of a final permitting action by the secretary are undertaken at the permit applicant's own risk and with the knowledge that the application for a permit or permit modification may be denied:

(1) Receiving or storing on-site or off-site any equipment or supplies which make up in part or in whole an emission unit or any support equipment, facilities, building or structure.

(2) A person who holds an active West Virginia air quality permit issued under this article at an existing source, and who has applied to the secretary for permission to alter, expand or modify that source or to allow a new emissions unit at that source, may begin the construction of any such alteration, expansion, modification or new emission unit in advance of permit issuance in accordance with this section. The person may not operate any altered, expanded, modified or new emission unit without first obtaining an air quality permit as required by rules promulgated by the secretary.

(3) The following sources are ineligible for submission of an application for permission to commence construction in advance of permit issuance:

(A) Sources subject to the "Federal Clean Air Act" subsections 112(g) or 112(j).

(B) Sources seeking federally enforceable permit conditions in order to avoid otherwise applicable standards;

(C) Sources requiring a specific case-by-case emission limitation or standard under 45CSR21 or 45CSR27.

(4)(A) To qualify for the authorization to construct in advance of permit issuance as provided in this section, the permittee shall submit to the secretary an application for permission to commence construction in advance of permit issuance.

(B) Such application for permission to commence construction shall include all of the following:

- (1) The name and location of the source and the name and address of the permittee;
- (2) The permit number of each active permit issued under this article for such source;
- (3) The nature of the sources and equipment associated with such alteration, expansion, modification or new emission unit;
- (4) An estimate of the maximum hourly and annual emissions of regulated air pollutants increased as a result of such alteration, expansion, modification or new emission unit;
- (5) The air pollution control devices or methods that are to be employed in connection with the alteration, expansion, modification or new emission unit;
- (6) A listing of the applicable state and federal air quality regulatory requirements for alteration, expansion, modification or new emission unit, and sufficient information which, in the judgement of the secretary, will demonstrate compliance with any applicable state and federal air quality regulatory requirements;
- (7) The anticipated construction or building schedule for alteration, expansion, modification or new emission unit;
- (8) A certification signed by the responsible official that the source, equipment and devices that are subject to a request for construction authorization will not be operated until the permittee has obtained a permit under rules promulgated by the secretary;
- (9) A certification by the responsible official that any construction undertaken prior to the issuance of a final permit under rules of the secretary is undertaken at the permittee's own risk and with the knowledge that the permittee may be denied a permit or permit modification without regard to the permittee's financial investment or addition to or modification of the source;
- (10) A certification signed by the responsible official that all of the information contained in the application is complete and accurate to the best of the responsible official's knowledge and ability; and
- (11) Upon submission of the application for permission to construct, the applicant shall give notice by publishing a Class I legal advertisement of the applicant's intent to alter or expand the physical arrangement or operation of an existing stationary source and the opportunity to provide written comment to the secretary within thirty calendar days of the publication. The applicant shall post a visible and accessible sign, at a minimum 2 feet square, at the entrance to the source or proposed site. The sign must be clearly marked indicating that an air quality permit has been applied for and include the West Virginia Division of Air Quality permitting section telephone number and web site for additional information. The applicant must post the sign for the duration of the public notice period. Public notice shall be in a newspaper having general circulation in the county or counties where the facility is located. The notice shall contain the information required by rules promulgated by the secretary. Within fifteen

days of completion of the public comment period, the secretary shall consider and respond to all written comments. If the secretary finds that concerns raised by the public comment period give rise to issues or concerns that would cause a construction or operational permit not to be issued, the secretary may issue a revocation or stay of the authorization to construct until those issues or concerns are resolved.

(c) The secretary shall determine whether an application for permission to commence construction in advance of permit issuance is complete within fifteen calendar days after receipt of the application at which time the secretary shall notify the applicant in writing as to whether the application is complete or specify any additional information required for the application to be complete.

(d) Within fifteen calendar days after the secretary has made a determination that an application for permission to commence construction in advance of permit issuance is complete, unless the secretary for good cause shown, extends the fifteen day time period for up to an additional fifteen calendar days, the secretary shall notify the applicant in writing of his or her determination as to whether each of the following conditions has or has not been satisfied:

(1) The applicant is and has been for a period of at least three years in substantial compliance with all other active permits and applicable state and federal air quality regulatory requirements under this article;

(2) The applicant has demonstrated that the alteration, expansion, modification or new emission unit will be in compliance with all applicable state and federal air quality regulatory requirements;

(3) The alteration, expansion, modification or new emission unit will not interfere with attainment or maintenance of an applicable ambient air quality standard, cause or contribute to a violation of an applicable air quality increment or be inconsistent with the intent and purpose of this article;

(4) The facility will be altered or expanded so that it will be used for either the same or a similar use as the use already permitted;

(5) The alteration or expansion will not result in a disproportionate increase in size of the facility already permitted; and

(6) The alteration or expansion will result in the same or substantially similar emissions as the facility already permitted.

If the secretary finds that all of the conditions have been satisfied, the notice issued by the secretary shall state that construction of the alteration, expansion, modification or new emission unit in advance of permit issuance may begin immediately. If the secretary finds that one or more of the conditions has not been met, the notice shall state that the requested construction, alteration, expansion, modification or new emission unit may not begin prior to issuance of a new or modified permit.

(e) If at any time during the construction of such alteration, expansion, modification or new emission unit, the secretary determines that the source is not likely to qualify for a permit or permit modification under applicable

rules, the secretary may order that construction cease until the secretary makes a decision on the application for a permit or permit modification. If the secretary orders that construction cease, then construction of the alteration, expansion, modification or new emission unit may resume only if the secretary either makes a subsequent written determination that the circumstances that resulted in such order have been adequately addressed or if the secretary issues a permit or permit modification under the rules that authorize construction to resume.

(f) The secretary shall evaluate an application for a permit or permit modification under the rules and make a decision on the same basis as if the construction of the alteration, expansion, modification or new emission unit in advance of permit issuance had not been authorized pursuant to this section. No evidence regarding any contract entered into, financial investment made, construction undertaken, or economic loss incurred by any person or permittee who proceeds under this section without first obtaining a permit under this article is admissible in any contested case or judicial proceeding involving any permit required under the rules. No evidence as to any determination or order by the secretary pursuant to this section shall be admissible in any contested case or judicial proceeding related to any permit required under this article.

(g) Any permittee who proceeds under this section shall be precluded from bringing any action, suit or proceeding against the state, the officials, agents, and employees of the state or the secretary for any loss resulting from any contract entered into, financial investment made, construction undertaken, or economic loss incurred by the permittee in reliance upon the provisions of this section.

(h) This section does not relieve any person of the obligation to comply with any other requirement of state law, including any requirement to obtain any other permit or approval prior to undertaking any activity associated with preparation of the site or the alteration or expansion of the physical arrangement or method of operation of a source at a facility for which a permit is required under the rules.

(i) This section does not relieve any person from any preconstruction or construction prohibition imposed by any federal requirement, federal delegation, federally approved requirement in any state implementation plan, or federally approved requirement under the Title V permitting program, as determined solely by the secretary. This section does not apply to any construction, alteration, or expansion that is subject to requirements for prevention of significant deterioration or federal nonattainment new source review, as determined solely by the secretary. This section does not apply if it is inconsistent with any federal requirement, federal delegation, federally approved requirement in any state implementation plan, or federally approved requirement under the Title V permitting program, as determined solely by the secretary.

(j) A permittee who submits an application to commence construction in advance of permit issuance under this section shall pay to the department a fee of two hundred dollars for each application submitted to cover a portion of the administrative costs of implementing this section.

(k) The secretary, in accordance with chapter twenty-nine-a of this code, shall propose legislative rule that may be necessary to implement the provisions of this section by the first day of August, two thousand eight.

(l) The secretary is directed to report back to the Joint Committee on Government and Finance by the first day of January, two thousand ten on the impact of the implementation of the expedited permits authorized pursuant to this section. The report shall include, but not be limited to, assessments regarding the number and types of

facilities utilizing this section, whether the agency has found this expedited process has assisted these facilities to implement construction and make revisions to their operations efficiently, without adverse impacts on the agency, the permitting process, or state-wide air quality.

**Credits**

Acts 2008, c. 6, eff. June 7, 2008.

W. Va. Code, § 22-5-11a, WV ST § 22-5-11a  
Current with legislation of the 2020 Regular Session.

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## § 22-5-12. Operating permits required for stationary sources of air pollution

WV ST § 22-5-12 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources

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Chapter 22. Environmental Resources  
Article 5. Air Pollution Control (Refs & Annos)

W. Va. Code, § 22-5-12

§ 22-5-12. Operating permits required for stationary sources of air pollution

Currentness

No person may operate a stationary source of air pollutants without first obtaining an operating permit as provided in this section. The director shall promulgate legislative rules, in accordance with chapter twenty-nine-a of this code, which specify classes or categories of stationary sources which are required to obtain an operating permit. The legislative rule shall provide for the form and content of the application procedure including time limitations for obtaining the required permits. Any person who has filed a timely and complete application for a permit or renewal thereof required by this section, and who is abiding by the requirements of this article and the rules promulgated pursuant thereto is in compliance with the requirements of this article and any rule promulgated thereunder until a permit is issued or denied. Any legislative rule promulgated pursuant to the authority granted by this section shall be equivalent to and consistent with rules and regulations adopted by the administrator of United States environmental protection agency pursuant to Title IV and Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. § 7651 et seq. and 42 U.S.C. § 7661 et seq., respectively: Provided, That such legislative rule may deviate from the federal rules and regulations where a deviation is appropriate to implement the policy and purpose of this article taking into account such factors unique to West Virginia.

**Credits**

Acts 1994, c. 61.

Notes of Decisions (1)

W. Va. Code, § 22-5-12, WV ST § 22-5-12

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## § 22-5-13. Consolidation of permits

WV ST § 22-5-13 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources

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Article 5. Air Pollution Control (Refs & Annos)

W. Va. Code, § 22-5-13

§ 22-5-13. Consolidation of permits

Currentness

For permits required by sections eleven and twelve of this article, the director may incorporate the required permits with an existing permit or consolidate the required permits into a single permit.

**Credits**

Acts 1994, c. 61.

W. Va. Code, § 22-5-13, WV ST § 22-5-13

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## § 22-5-14. Administrative review of permit actions

WV ST § 22-5-14 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources |  
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Article 5. Air Pollution Control (Refs & Annos)

W. Va. Code, § 22-5-14

§ 22-5-14. Administrative review of permit actions

Effective: June 7, 2008

Currentness

Any person whose interest may be affected, including, but not necessarily limited to, the applicant and any person who participated in the public comment process, by a permit issued, modified or denied by the secretary, or construction authorization pursuant to section eleven-a of this article, may appeal such action of the secretary to the air quality board pursuant to article one, chapter twenty-two-b of this code.

**Credits**

Acts 1994, c. 61; Acts 2008, c. 6, eff. June 7, 2008.

W. Va. Code, § 22-5-14, WV ST § 22-5-14

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## § 22-5-15. Motor vehicle pollution, inspection and maintenance

WV ST § 22-5-15 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources

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Chapter 22. Environmental Resources  
Article 5. Air Pollution Control (Refs & Annos)

W. Va. Code, § 22-5-15

§ 22-5-15. Motor vehicle pollution, inspection and maintenance

Currentness

(a) As the state of knowledge and technology relating to the control of emissions from motor vehicles may permit or make appropriate and in furtherance of the purposes of this article, the director may provide by legislative rule for the control of emissions from motor vehicles. The legislative rule may prescribe requirements for the installation and use of equipment designed to reduce or eliminate emissions and for the proper maintenance of such equipment and of vehicles. Any legislative rule pursuant to this section shall be consistent with provisions of federal law, if any, relating to control of emissions from the vehicles concerned. The director shall not require, as a condition precedent to the initial sale of a vehicle or vehicular equipment, the inspection, certification or other approval of any feature or equipment designed for the control of emissions from motor vehicles, if such feature or equipment has been certified, approved or otherwise authorized pursuant to federal law.

(b) Except as permitted or authorized by law or legislative rule, no person shall fail to maintain in good working order or remove, dismantle or otherwise cause to be inoperative any equipment or feature constituting an operational element of the air pollution control system or mechanism of a motor vehicle required by rules of the director to be maintained in or on the vehicle. Any such failure to maintain in good working order or removal, dismantling or causing of inoperability subjects the owner or operator to suspension or cancellation of the registration for the vehicle by the department of transportation, division of motor vehicles. The vehicle is not thereafter eligible for registration until all parts and equipment constituting operational elements of the motor vehicle have been restored, replaced or repaired and are in good working order.

(c) The department of transportation, division of motor vehicles, department of administration, information and communication services division and the state police shall make available technical information and records to the director to implement the legislative rule regarding motor vehicle pollution, inspection and maintenance. The director may promulgate a legislative rule establishing motor vehicle pollution, inspection and maintenance standards and imposing an inspection fee at a rate sufficient to implement the motor vehicle inspection program and shall do so when required pursuant to federal law regarding attainment of ambient air quality standards.

(d) The director may promulgate a legislative rule requiring maintenance of features of equipment in or on motor vehicles for the purpose of controlling emissions therefrom and shall do so when required pursuant to federal law regarding attainment of ambient air quality standards, and no motor vehicle may be issued a division of motor vehicles registration certificate, or the existing registration certificate shall be revoked, unless the motor vehicle has been found to be in compliance with the director's legislative rule.

(e) The remedies and penalties provided in this section and section one, article three, chapter seventeen-a of this code, apply to violations hereof and the provisions of sections six or seven of this article do not apply thereto.

(f) As used in this section “motor vehicle” has the same meaning as in chapter seventeen-c of this code.

**Credits**

Acts 1994, c. 61; Acts 1999, c. 121, eff. 90 days after March 13, 1999.

W. Va. Code, § 22-5-15, WV ST § 22-5-15

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## § 22-5-16. Small business environmental compliance assistance program, compliance advisory panel

WV ST § 22-5-16 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources

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West's Annotated Code of West Virginia  
Chapter 22. Environmental Resources  
Article 5. Air Pollution Control (Refs & Annos)

W. Va. Code, § 22-5-16

§ 22-5-16. Small business environmental compliance  
assistance program, compliance advisory panel

**Currentness**

The secretary of the department of commerce, labor, and environmental resources shall establish a small business stationary source technical and environmental compliance assistance program which meets the requirements of Title V of the Clean Air Act Amendments of 1990, 42 U.S.C. § 7661 et seq. A compliance advisory panel composed of seven members appointed as follows shall be created to periodically review the effectiveness and results of this assistance program:

- (a) Two members who are not owners, nor representatives of owners, of small business stationary sources, selected by the governor to represent the general public;
- (b) One member selected by the speaker of the House of Delegates who is an owner or who represents owners of small business stationary sources;
- (c) One member selected by the minority leader of the House of Delegates who is an owner or who represents owners of small business stationary sources;
- (d) One member selected by the president of the Senate who is an owner or who represents owners of small business stationary sources;
- (e) One member selected by the minority leader of the Senate who is an owner or who represents owners of small business stationary sources; and
- (f) One member selected by the director to represent the director.

**Credits**

Acts 1994, c. 61.

<Acts 1997, c. 166, abolished the department of commerce, labor and environmental resources, and transferred powers and duties to the bureau of commerce. See § 5F-2-1.>

W. Va. Code, § 22-5-16, WV ST § 22-5-16

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## § 22-5-17. Interstate ozone transport

WV ST § 22-5-17 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources

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Article 5. Air Pollution Control (Refs & Annos)

W. Va. Code, § 22-5-17

§ 22-5-17. Interstate ozone transport

Currentness

(a) This section of the Air Pollution Control Act may be referred to as the Interstate Ozone Transport Oversight Act.

(b) The Legislature hereby finds that:

(1) The federal Clean Air Act,<sup>1</sup> as amended, contains a comprehensive regulatory scheme for the control of emissions from mobile and stationary sources, which will improve ambient air quality and health and welfare in all parts of the nation.

(2) The number of areas unable to meet national ambient air quality standards for ozone has been declining steadily and will continue to decline with air quality improvements resulting from implementation of the federal Clean Air Act amendments of 1990,<sup>2</sup> and the mobile and stationary source emission controls specified therein.

(3) Scientific research on the transport of atmospheric ozone across state boundaries is proceeding under the auspices of the United States environmental protection agency (U.S. EPA), state agencies, and private entities, which research will lead to improved scientific understanding of the causes and nature of ozone transport, and emission control strategies potentially applicable thereto.

(4) The northeast ozone transport commission established by the federal Clean Air Act amendments of 1990 has proposed emission control requirements for stationary and mobile sources in certain northeastern states and the District of Columbia in addition to those specified by the federal Clean Air Act amendments of 1990.

(5) Membership of the northeast ozone transport commission includes, by statute, representatives of state environmental agencies and governors' offices; similar representation is required in the case of other ozone transport commissions established by the Administrator of the United States environmental protection agency pursuant to Section 176A of the federal Clean Air Act,<sup>3</sup> as amended.

(6) The northeast ozone transport commission neither sought nor obtained state legislative oversight or approval prior to reaching its decisions on mobile and stationary source requirements for states included within the northeast ozone transport region.

(7) The Commonwealth of Virginia and other parties have challenged the constitutionality of the northeast ozone transport commission and its regulatory proposals under the guarantee, compact, and joinder clauses of the United States Constitution.

(8) The United States environmental protection agency, acting outside of the aforementioned statutory requirements for the establishment of new interstate transport commissions, is encouraging the state of West Virginia and twenty-four other states outside of the northeast to participate in multistate negotiations through the ozone transport assessment group; such negotiations are intended to provide the basis for an interstate memorandum of understanding or other agreement on ozone transport requiring reductions of emissions of nitrogen oxides or volatile organic compounds in addition to those specified by the federal Clean Air Act amendments of 1990, membership of the ozone transport assessment group consists of state and federal air quality officials, without state legislative representation or participation by the governor.

(9) Emission control requirements exceeding those specified by federal law can adversely affect state economic development, competitiveness, employment, and income without corresponding environmental benefits; in the case of electric utility emissions of nitrogen oxides, it is estimated that control costs in addition to those specified by the federal Clean Air Act could exceed five billion dollars annually in a thirty-seven state region of the eastern United States, including the state of West Virginia.

(10) Requiring certain eastern states to meet emission control requirements more stringent than those otherwise applicable to other states and unnecessary for environmental protection would unfairly affect interstate competition for new industrial development and employment opportunities.

(c) It is therefore directed that:

(1) Not later than ten days subsequent to the receipt by the director of the division of environmental protection of any proposed memorandum of understanding or other agreement by the ozone transport assessment group, or similar group, potentially requiring the state of West Virginia to undertake emission reductions in addition to those specified by the federal Clean Air Act, the director of the division of environmental protection shall submit such proposed memorandum or other agreement to the president of the Senate and the speaker of the House of Delegates for consideration.

(2) Upon receipt of the aforesaid memorandum of understanding or agreement, the President and the Speaker shall refer the understanding or agreement to one or more appropriate legislative committees with a request that such committees convene one or more public hearings to receive comments from agencies of government and other interested parties on its prospective economic and environmental impacts on the state of West Virginia and its citizens, including impacts on energy use, taxes, economic development, utility costs and rates, competitiveness and employment.

(3) Upon completion of the public hearings required by the preceding subdivision, the committees(s) shall forward to the president and the speaker a report containing its findings and recommendations concerning any proposed memorandum of understanding or other agreement related to the interstate transport of ozone. The report shall make findings with respect to the economic, health, safety and welfare and environmental impacts on the state of

West Virginia and its citizens, including impacts on energy use, taxes, economic development, utility costs and rates, competitiveness and employment.

(4) Upon receipt of the report required by the preceding subdivision, the president and speaker shall thereafter transmit the report to the governor for such further consideration or action as may be warranted.

(5) Nothing in this section shall be construed to preclude the Legislature from taking such other action with respect to any proposed memorandum of understanding or other agreement related to the interstate transport of ozone as it deems appropriate.

(6) No person is authorized to commit the state of West Virginia to the terms of any such memorandum or agreement unless specifically approved by an act of the Legislature.

#### **Credits**

Acts 1996, c. 202, eff. 90 days after March 9, 1996.

#### **Footnotes**

1 42 U.S.C.A. § 7401 et seq.

2 42 U.S.C.A. § 7505a et seq.

3 42 U.S.C.A. § 7506a.

W. Va. Code, § 22-5-17, WV ST § 22-5-17

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## § 22-5-18. Market-based banking and trading programs, emissions credits; director to promulgate rules

WV ST § 22-5-18 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources

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W. Va. Code, § 22-5-18

§ 22-5-18. Market-based banking and trading programs,  
emissions credits; director to promulgate rules

Currentness

(a) The director shall propose legislative rules for promulgation in accordance with article three, chapter twenty-nine-a of this code, to the full extent allowed by federal and state law, one or more rules establishing a voluntary emissions trading and banking program that provides incentives to make progress toward the attainment or maintenance of the national ambient air quality standards, the reduction or prevention of hazardous air contaminants or the protection of human health and welfare and the environment from air pollution.

(b) The director shall establish a system by legislative rule for quantifying, verifying, determining eligibility, registering, trading and using all emissions reduction credits, for banking and trading if achieved after the first day of January, one thousand nine hundred ninety-one, to the extent permitted by federal law. Credits also shall be available for permanent shutdowns. Ten percent of any emission reduction credits registered with the director shall be retired from future use: Provided, That fifty percent of any emission reduction credits generated from permanent shutdowns prior to the effective date of the legislative rule or rules promulgated pursuant to this section shall be retired from future use. All other emissions reduction credits registered shall remain in effect until used and debited or retired. Credits not used within ten years shall be retired from future use. The director may charge a reasonable transaction fee at the time any credits are registered and shall deposit the fees in the air pollution control fund.

The division may establish the emissions trading program as a state, multistate or regional program as long as the program contributes to the goal of improving the air quality in West Virginia and in the air quality region where the source is located.

**Credits**

Acts 1998, c. 145, eff. 90 days after March 13, 1998; Acts 2000, c. 37, eff. 90 days after March 11, 2000.

W. Va. Code, § 22-5-18, WV ST § 22-5-18  
Current with legislation of the 2020 Regular Session.

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## § 22-5-19. Inventory of greenhouse gases

WV ST § 22-5-19 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources |  
Effective: June 8, 2012

### Search Details

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Search Query: West Virginia Statutes & Court Rules | Article 5. Air Pollution Control  
Jurisdiction: West Virginia

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West's Annotated Code of West Virginia  
Chapter 22. Environmental Resources  
Article 5. Air Pollution Control (Refs & Annos)

W. Va. Code, § 22-5-19

§ 22-5-19. Inventory of greenhouse gases

Effective: June 8, 2012

Currentness

(a) The secretary shall establish a program to inventory greenhouse gas emissions from major sources that are subject to mandatory federal greenhouse gases reporting requirements. The secretary shall obtain available emissions data directly from the appropriate federal entity, including the United States Environmental Protection Agency.

(b) As used in this section, “greenhouse gas” means carbon dioxide, methane, nitrous oxide, hydrofluorocarbons, perfluorocarbons and sulfur hexafluoride.

**Credits**

Acts 2007, c. 6, eff. June 8, 2007; Acts 2012, c. 74, eff. June 8, 2012.

W. Va. Code, § 22-5-19, WV ST § 22-5-19

Current with legislation of the 2020 Regular Session.

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## § 22-5-20. Development of a state plan relating to carbon dioxide emissions from existing fossil fuel-fired electric generating units

WV ST § 22-5-20 | West's Annotated Code of West Virginia | Chapter 22. Environmental Resources |  
Effective: June 2, 2020

### Search Details

Search Query: West Virginia Statutes & Court Rules | Article 5. Air Pollution Control  
Jurisdiction: West Virginia

### Delivery Details

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West's Annotated Code of West Virginia  
Chapter 22. Environmental Resources  
Article 5. Air Pollution Control (Refs & Annos)

W. Va. Code, § 22-5-20

§ 22-5-20. Development of a state plan relating to carbon dioxide emissions from existing fossil fuel-fired electric generating units

Effective: June 2, 2020

Currentness

The West Virginia Department of Environmental Protection shall propose a legislative rule for promulgation in accordance with § 29A-3-1 of this code to implement the Affordable Clean Energy rule, consisting of Emission Guidelines for Greenhouse Gas, Emissions from Existing Electric Utility Generating Units (EGUs) pursuant to the federal Clean Air Act, section 111(d). The proposed rule shall be filed with the Secretary of State in time for consideration during the 2021 legislative session. Notwithstanding any provision to the contrary, the agency shall submit a complete or partial state compliance plan to the federal Environmental Protection Agency no later than September 1, 2020, which may be comprised of one or more EGU facilities that are voluntarily prepared to move forward with a compliance plan for one or more of their EGUs.

**Credits**

Acts 2014, c. 63, eff. June 6, 2014; Acts 2015, c. 109, eff. Feb. 19, 2015; Acts 2016, c. 107, eff. March 11, 2016; Acts 2020, c. 132, eff. June 2, 2020.

W. Va. Code, § 22-5-20, WV ST § 22-5-20  
Current with legislation of the 2020 Regular Session.

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## Ch. 29B, Art. 1, Refs & Annos

WV ST Ch. 29B, Art. 1, Refs & Annos | West's Annotated Code of West Virginia | Chapter 29B.  
Freedom of Information

### Search Details

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Search Query: West Virginia Statutes & Court Rules | Chapter 29B. Freedom of  
Information  
Jurisdiction: West Virginia

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West's Annotated Code of West Virginia  
Chapter 29B. Freedom of Information  
Article 1. Public Records

W. Va. Code, Ch. 29B, Art. 1, Refs & Annos  
Currentness

W. Va. Code, Ch. 29B, Art. 1, Refs & Annos, WV ST Ch. 29B, Art. 1, Refs & Annos  
Current with legislation of the 2020 Regular Session.

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## § 29B-1-1. Declaration of policy

WV ST § 29B-1-1 | West's Annotated Code of West Virginia | Chapter 29B. Freedom of Information


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West's Annotated Code of West Virginia  
Chapter 29B. Freedom of Information  
Article 1. Public Records (Refs & Annos)

W. Va. Code, § 29B-1-1

§ 29B-1-1. Declaration of policy

Currentness

Pursuant to the fundamental philosophy of the American constitutional form of representative government which holds to the principle that government is the servant of the people, and not the master of them, it is hereby declared to be the public policy of the state of West Virginia that all persons are, unless otherwise expressly provided by law, entitled to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and employees. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments of government they have created. To that end, the provisions of this article shall be liberally construed with the view of carrying out the above declaration of public policy.

**Credits**

Acts 1977, c. 147.

Notes of Decisions (33)

W. Va. Code, § 29B-1-1, WV ST § 29B-1-1

Current with legislation of the 2020 Regular Session.

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## § 29B-1-2. Definitions

WV ST § 29B-1-2 | West's Annotated Code of West Virginia | Chapter 29B. Freedom of Information |  
Effective: June 1, 2016

### Search Details

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Search Query: West Virginia Statutes & Court Rules | Chapter 29B. Freedom of  
Information  
Jurisdiction: West Virginia

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West's Annotated Code of West Virginia  
Chapter 29B. Freedom of Information  
Article 1. Public Records (Refs & Annos)

W. Va. Code, § 29B-1-2

§ 29B-1-2. Definitions

Effective: June 1, 2016

Currentness

As used in this article:

- (1) "Custodian" means the elected or appointed official charged with administering a public body.
- (2) "Law-enforcement officer" shall have the same definition as this term is defined in W.Va. Code § 30-29-1: *Provided*, That for purposes of this article, "law-enforcement officer" shall additionally include those individuals defined as "chief executive" in W.Va. Code § 30-29-1.
- (3) "Person" includes any natural person, corporation, partnership, firm or association.
- (4) "Public body" means every state officer, agency, department, including the executive, legislative and judicial departments, division, bureau, board and commission; every county and city governing body, school district, special district, municipal corporation, and any board, department, commission council or agency thereof; and any other body which is created by state or local authority or which is primarily funded by the state or local authority.
- (5) "Public record" includes any writing containing information prepared or received by a public body, the content or context of which, judged either by content or context, relates to the conduct of the public's business.
- (6) "Writing" includes any books, papers, maps, photographs, cards, tapes, recordings or other documentary materials regardless of physical form or characteristics.

**Credits**

Acts 1977, c. 147; Acts 2015, c. 115, eff. June 12, 2015; Acts 2016, c. 122, eff. June 1, 2016.

Notes of Decisions (30)

W. Va. Code, § 29B-1-2, WV ST § 29B-1-2  
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## § 29B-1-3. Inspection and copying of public record; requests of Freedom of Information Act requests registry

WV ST § 29B-1-3 | West's Annotated Code of West Virginia | Chapter 29B. Freedom of Information |  
Effective: June 12, 2015

### Search Details

Search Query: West Virginia Statutes & Court Rules | Chapter 29B. Freedom of  
Information  
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West's Annotated Code of West Virginia  
Chapter 29B. Freedom of Information  
Article 1. Public Records (Refs & Annos)

W. Va. Code, § 29B-1-3

§ 29B-1-3. Inspection and copying of public record;  
requests of Freedom of Information Act requests registry

Effective: June 12, 2015

Currentness

(a) Every person has a right to inspect or copy any public record of a public body in this state, except as otherwise expressly provided by section four of this article.

(b) A request to inspect or copy any public record of a public body shall be made directly to the custodian of such public record.

(c) The custodian of any public records, unless otherwise expressly provided by statute, shall furnish proper and reasonable opportunities for inspection and examination of the records in his or her office and reasonable facilities for making memoranda or abstracts therefrom, during the usual business hours, to all persons having occasion to make examination of them. The custodian of the records may make reasonable rules and regulations necessary for the protection of the records and to prevent interference with the regular discharge of his or her duties. If the records requested exist in magnetic, electronic or computer form, the custodian of the records shall make copies available on magnetic or electronic media, if so requested.

(d) All requests for information must state with reasonable specificity the information sought. The custodian, upon demand for records made under this statute, shall as soon as is practicable but within a maximum of five days not including Saturdays, Sundays or legal holidays:

(1) Furnish copies of the requested information;

(2) Advise the person making the request of the time and place at which he or she may inspect and copy the materials; or

(3) Deny the request stating in writing the reasons for such denial. A denial shall indicate that the responsibility of the custodian of any public records or public body to produce the requested records or documents is at an end, and shall afford the person requesting them the opportunity to institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(e) The public body may establish fees reasonably calculated to reimburse it for its actual cost in making reproductions of records. A public body may not charge a search or retrieval fee or otherwise seek reimbursement based on a man-hour basis as part of costs associated with making reproduction of records.

(f) The Secretary of State shall maintain an electronic data base of notices of requests as required by section three-a of this article. The database shall be made available to the public via the Internet and shall list each freedom of information request received and the outcome of the request. The Secretary of State shall provide on the website a form for use by a public body to report the results of the freedom of information request, providing the nature of the request and the public body's response thereto, whether the request was granted, and if not, the exemption asserted under section four of this article to deny the request.

**Credits**

Acts 1977, c. 147; Acts 1992, c. 85; Acts 2015, c. 115, eff. June 12, 2015.

Notes of Decisions (3)

W. Va. Code, § 29B-1-3, WV ST § 29B-1-3

Current with legislation of the 2020 Regular Session.

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## § 29B-1-3a. Reports to Secretary of State by public bodies

WV ST § 29B-1-3a | West's Annotated Code of West Virginia | Chapter 29B. Freedom of Information |  
Effective: June 12, 2015

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West's Annotated Code of West Virginia  
Chapter 29B. Freedom of Information  
Article 1. Public Records (Refs & Annos)

W. Va. Code, § 29B-1-3a

§ 29B-1-3a. Reports to Secretary of State by public bodies

Effective: June 12, 2015

Currentness

(a) Beginning January 1, 2016, each public body that is in receipt of a freedom of information request shall provide information to the Secretary of State relating to, at a minimum, the nature of the request, the nature of the public body's response, the time-frame that was necessary to comply in full with the request; and the amount of reimbursement charged to the requester for the freedom of information request: *Provided*, That the public body shall not provide to the Secretary of State the public records that were the subject of the FOIA request.

(b) Pursuant to article three, chapter twenty-nine-a of this code, the Secretary of State shall propose rules and emergency rules for legislative approval relating to the creation and maintenance of a publically accessible database available on the Secretary of State's website; the establishment of forms and procedures for submission of information to the Secretary of State by the public body; and for other procedures and policies consistent with this section.

**Credits**

Acts 2015, c. 115, eff. June 12, 2015.

W. Va. Code, § 29B-1-3a, WV ST § 29B-1-3a

Current with legislation of the 2020 Regular Session.

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## § 29B-1-4. Exemptions

WV ST § 29B-1-4 | West's Annotated Code of West Virginia | Chapter 29B. Freedom of Information |  
Effective: June 5, 2018

### Search Details

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Search Query: West Virginia Statutes & Court Rules | Chapter 29B. Freedom of  
Information  
Jurisdiction: West Virginia

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West's Annotated Code of West Virginia  
Chapter 29B. Freedom of Information  
Article 1. Public Records (Refs & Annos)

W. Va. Code, § 29B-1-4

§ 29B-1-4. Exemptions

Effective: June 5, 2018

Currentness

<Section § 29B-1-4 as amended by Acts 2018, c. 106.

See, also, § 29B-1-4 as amended by Acts 2018, c. 104.>

(a) There is a presumption of public accessibility to all public records, subject only to the following categories of information which are specifically exempt from disclosure under this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical, or similar file, if the public disclosure of the information would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in this particular instance: *Provided*, That this article does not preclude an individual from inspecting or copying his or her own personal, medical, or similar file;

(3) Test questions, scoring keys and other examination data used to administer a licensing examination, examination for employment, or academic examination;

(4)(A) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(B) Records identifying motor vehicles used, and the agencies using them, for undercover investigation activities conducted by state law-enforcement agencies or other agencies that are authorized by this code to use undercover or unmarked vehicles;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents, or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological, and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage the record, archive, document, or manuscript;

(7) Information contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

(8) Internal memoranda or letters received or prepared by any public body;

(9) Records assembled, prepared, or maintained to prevent, mitigate, or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

(10) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases, and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law-enforcement or emergency response personnel;

(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law-enforcement, and other agencies within the Department of Military Affairs and Public Safety;

(12) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

(13) Computing, telecommunications, and network security records, passwords, security codes, or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;

(14) Security or disaster recovery plans, risk assessments, tests, or the results of those tests;

(15) Architectural or infrastructure designs, maps, or other records that show the location or layout of the facilities where computing, telecommunications or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

(16) Codes for facility security systems; or codes for secure applications for facilities referred to in subdivision (15) of this subsection;

(17) Specific engineering plans and descriptions of existing public utility plants and equipment;

(18) Customer proprietary network information of other telecommunications carriers, equipment manufacturers, and individual customers, consistent with 47 U.S.C. § 222;

(19) Records of the Division of Corrections, Regional Jail and Correctional Facility Authority, and the Division of Juvenile Services relating to design of corrections, jail and detention facilities owned or operated by the agency, and the policy directives and operational procedures of personnel relating to the safe and secure management of inmates or residents, that if released, could be used by an inmate or resident to escape a facility, or to cause injury to another inmate, resident, or to facility personnel;

(20) Information related to applications under § 61-7-4 of this code, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon permit: *Provided*, That information in the aggregate that does not identify any permit holder other than by county or municipality is not exempted: *Provided, however*, That information or other records exempted under this subdivision may be disclosed to a law-enforcement agency or officer: (i) To determine the validity of a permit, (ii) to assist in a criminal investigation or prosecution, or (iii) for other lawful law-enforcement purposes; and

(21) Personal information of law-enforcement officers maintained by the public body in the ordinary course of the employer-employee relationship. As used in this paragraph, “personal information” means a law-enforcement officer’s social security number, health information, home address, personal address, personal telephone numbers, and personal email addresses, and those of his or her spouse, parents, and children, as well as the names of the law-enforcement officer’s spouse, parents, and children.

(b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term “terrorist act” means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

(1) Intimidate or coerce the civilian population;

(2) Influence the policy of a branch or level of government by intimidation or coercion;

(3) Affect the conduct of a branch or level of government by intimidation or coercion; or

(4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section do not make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat of a terrorist act which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.

**Credits**

Acts 1977, c. 147; Acts 2003, c. 108, eff. 90 days after March 8, 2003; Acts 2007, c. 117, eff. June 8, 2007; Acts 2009, c. 105, eff. July 9, 2009; Acts 2011, c. 71, eff. May 17, 2011; Acts 2015, c. 115, eff. June 12, 2015; Acts 2016, c. 122, eff. June 1, 2016; Acts 2018, c. 106, eff. June 5, 2018.

Notes of Decisions (107)

W. Va. Code, § 29B-1-4, WV ST § 29B-1-4

Current with legislation of the 2020 Regular Session.

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## § 29B-1-4. Exemptions

WV ST § 29B-1-4 | West's Annotated Code of West Virginia | Chapter 29B. Freedom of Information |  
Effective: June 8, 2018

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Chapter 29B. Freedom of Information  
Article 1. Public Records (Refs & Annos)

W. Va. Code, § 29B-1-4

§ 29B-1-4. Exemptions

Effective: June 8, 2018

Currentness

<Section § 29B-1-4 as amended by Acts 2018, c. 104.  
See, also, § 29B-1-4 as amended by Acts 2018, c. 106.>

(a) There is a presumption of public accessibility to all public records, subject only to the following categories of information which are specifically exempt from disclosure under this article:

(1) Trade secrets, as used in this section, which may include, but are not limited to, any formula, plan pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article or trade or a service or to locate minerals or other substances, having commercial value, and which gives its users an opportunity to obtain business advantage over competitors;

(2) Information of a personal nature such as that kept in a personal, medical, or similar file, if the public disclosure of the information would constitute an unreasonable invasion of privacy, unless the public interest by clear and convincing evidence requires disclosure in this particular instance: *Provided*, That this article does not preclude an individual from inspecting or copying his or her own personal, medical, or similar file;

(3) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination;

(4)(A) Records of law-enforcement agencies that deal with the detection and investigation of crime and the internal records and notations of such law-enforcement agencies which are maintained for internal use in matters relating to law enforcement;

(B) Records identifying motor vehicles used, and the agencies using them, for undercover investigation activities conducted by state law-enforcement agencies or other agencies that are authorized by this code to use undercover or unmarked vehicles;

(5) Information specifically exempted from disclosure by statute;

(6) Records, archives, documents, or manuscripts describing the location of undeveloped historic, prehistoric, archaeological, paleontological, and battlefield sites or constituting gifts to any public body upon which the donor has attached restrictions on usage or the handling of which could irreparably damage the record, archive, document, or manuscript;

(7) Information contained in or related to examination, operating or condition reports prepared by, or on behalf of, or for the use of any agency responsible for the regulation or supervision of financial institutions, except those reports which are by law required to be published in newspapers;

(8) Internal memoranda or letters received or prepared by any public body;

(9) Records assembled, prepared, or maintained to prevent, mitigate, or respond to terrorist acts or the threat of terrorist acts, the public disclosure of which threaten the public safety or the public health;

(10) Those portions of records containing specific or unique vulnerability assessments or specific or unique response plans, data, databases and inventories of goods or materials collected or assembled to respond to terrorist acts; and communication codes or deployment plans of law-enforcement or emergency response personnel;

(11) Specific intelligence information and specific investigative records dealing with terrorist acts or the threat of a terrorist act shared by and between federal and international law-enforcement agencies, state and local law-enforcement, and other agencies within the Department of Military Affairs and Public Safety;

(12) National security records classified under federal executive order and not subject to public disclosure under federal law that are shared by federal agencies and other records related to national security briefings to assist state and local government with domestic preparedness for acts of terrorism;

(13) Computing, telecommunications, and network security records, passwords, security codes, or programs used to respond to or plan against acts of terrorism which may be the subject of a terrorist act;

(14) Security or disaster recovery plans, risk assessments, tests, or the results of those tests;

(15) Architectural or infrastructure designs, maps, or other records that show the location or layout of the facilities where computing, telecommunications, or network infrastructure used to plan against or respond to terrorism are located or planned to be located;

(16) Codes for facility security systems; or codes for secure applications for facilities referred to in subdivision (15) of this subsection;

(17) Specific engineering plans and descriptions of existing public utility plants and equipment;

(18) Customer proprietary network information of other telecommunications carriers, equipment manufacturers and individual customers, consistent with 47 U.S.C. § 222;

(19) Records of the Division of Corrections, Regional Jail and Correctional Facility Authority and the Division of Juvenile Services relating to design of corrections, jail and detention facilities owned or operated by the agency, and the policy directives and operational procedures of personnel relating to the safe and secure management of inmates or residents, that if released, could be used by an inmate or resident to escape a facility, or to cause injury to another inmate, resident, or to facility personnel;

(20) Information related to applications under § 61-7-4 of this code, including applications, supporting documents, permits, renewals, or any other information that would identify an applicant for or holder of a concealed weapon permit: *Provided*, That information in the aggregate that does not identify any permit holder other than by county or municipality is not exempted: *Provided, however*, That information or other records exempted under this subdivision may be disclosed to a law-enforcement agency or officer: (i) To determine the validity of a permit, (ii) to assist in a criminal investigation or prosecution, or (iii) for other lawful law-enforcement purposes;

(21) Personal information of law-enforcement officers maintained by the public body in the ordinary course of the employer-employee relationship. As used in this paragraph, “personal information” means a law-enforcement officer’s social security number, health information, home address, personal address, personal telephone numbers, and personal email addresses and those of his or her spouse, parents, and children as well as the names of the law-enforcement officer’s spouse, parents, and children; and

(22) Information provided by a person when he or she elects to remain anonymous after winning a draw game prize, pursuant to § 29-22-15a of this code.

(b) As used in subdivisions (9) through (16), inclusive, subsection (a) of this section, the term “terrorist act” means an act that is likely to result in serious bodily injury or damage to property or the environment and is intended to:

- (1) Intimidate or coerce the civilian population;
- (2) Influence the policy of a branch or level of government by intimidation or coercion;
- (3) Affect the conduct of a branch or level of government by intimidation or coercion; or
- (4) Retaliate against a branch or level of government for a policy or conduct of the government.

(c) The provisions of subdivisions (9) through (16), inclusive, subsection (a) of this section do not make subject to the provisions of this chapter any evidence of an immediate threat to public health or safety unrelated to a terrorist act or the threat of a terrorist act which comes to the attention of a public entity in the course of conducting a vulnerability assessment response or similar activity.



**Credits**

Acts 1977, c. 147; Acts 2003, c. 108, eff. 90 days after March 8, 2003; Acts 2007, c. 117, eff. June 8, 2007; Acts 2009, c. 105, eff. July 9, 2009; Acts 2011, c. 71, eff. May 17, 2011; Acts 2015, c. 115, eff. June 12, 2015; Acts 2016, c. 122, eff. June 1, 2016; Acts 2018, c. 104, eff. June 8, 2018.

Notes of Decisions (107)

W. Va. Code, § 29B-1-4, WV ST § 29B-1-4

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## § 29B-1-5. Enforcement

WV ST § 29B-1-5 | West's Annotated Code of West Virginia | Chapter 29B. Freedom of Information

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Chapter 29B. Freedom of Information  
Article 1. Public Records (Refs & Annos)

W. Va. Code, § 29B-1-5

§ 29B-1-5. Enforcement

Currentness

(1) Any person denied the right to inspect the public record of a public body may institute proceedings for injunctive or declaratory relief in the circuit court in the county where the public record is kept.

(2) In any suit filed under subsection one of this section, the court has jurisdiction to enjoin the custodian or public body from withholding records and to order the production of any records improperly withheld from the person seeking disclosure. The court shall determine the matter de novo and the burden is on the public body to sustain its action. The court, on its own motion, may view the documents in controversy in camera before reaching a decision. Any custodian of any public records of the public body found to be in noncompliance with the order of the court to produce the documents or disclose the information sought, may be punished as being in contempt of court.

(3) Except as to causes the court considers of greater importance, proceedings arising under subsection one of this section shall be assigned for hearing and trial at the earliest practicable date.

**Credits**

Acts 1977, c. 147.

Notes of Decisions (11)

W. Va. Code, § 29B-1-5, WV ST § 29B-1-5

Current with legislation of the 2020 Regular Session.

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## § 29B-1-6. Violation of article; penalties

WV ST § 29B-1-6 | West's Annotated Code of West Virginia | Chapter 29B. Freedom of Information

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Chapter 29B. Freedom of Information  
Article 1. Public Records (Refs & Annos)

W. Va. Code, § 29B-1-6

§ 29B-1-6. Violation of article; penalties

Currentness

Any custodian of any public records who willfully violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than two hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail for not more than twenty days, or, in the discretion of the court, by both fine and imprisonment.

**Credits**

Acts 1977, c. 147; Acts 2001, c. 134, eff. 90 days after April 13, 2001.

W. Va. Code, § 29B-1-6, WV ST § 29B-1-6

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## § 29B-1-7. Attorney fees and costs

WV ST § 29B-1-7 | West's Annotated Code of West Virginia | Chapter 29B. Freedom of Information

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Chapter 29B. Freedom of Information  
Article 1. Public Records (Refs & Annos)

W. Va. Code, § 29B-1-7

§ 29B-1-7. Attorney fees and costs

Currentness

Any person who is denied access to public records requested pursuant to this article and who successfully brings a suit filed pursuant to section five of this article shall be entitled to recover his or her attorney fees and court costs from the public body that denied him or her access to the records.

**Credits**

Acts 1992, c. 85.

Notes of Decisions (18)

W. Va. Code, § 29B-1-7, WV ST § 29B-1-7

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