WEST VIRGINIA CODE CHAPTER 22C ARTICLE 4

WV Legislature

§22C-4-1. Legislative findings and purposes.

The Legislature finds that the improper and uncontrolled collection, transportation, processing and disposal of domestic and commercial garbage, refuse and other solid wastes in the State of West Virginia results in: (1) A public nuisance and a clear and present danger to the citizens of West Virginia; (2) the degradation of the state's environmental quality including both surface and ground waters which provide essential and irreplaceable sources of domestic and industrial water supplies; (3) provides harborages and breeding places for disease-carrying, injurious insects, rodents and other pests injurious to the public health, safety and welfare; (4) decreases public and private property values and results in the blight and deterioration of the natural beauty of the state; (5) has adverse social and economic effects on the state and its citizens; and (6) results in the waste and squandering of valuable nonrenewable resources contained in such solid wastes which can be recovered through proper recycling and resource-recovery techniques with great social and economic benefits for the state.

The Legislature further finds that the proper collection, transportation, processing, recycling and disposal of solid waste is for the general welfare of the citizens of the state and that the lack of proper and effective solid waste collection services and disposal facilities demands that the State of West Virginia and its political subdivisions act promptly to secure such services and facilities in both the public and private sectors.

The Legislature further finds that the process of developing rational and sound solid waste plans at the county or regional level is impeded by the proliferation of siting proposals for new solid waste facilities.

Therefore, it is the purpose of the Legislature to protect the public health and welfare by providing for a comprehensive program of solid waste collection, processing, recycling and disposal to be implemented by state and local government in cooperation with the private sector. The Legislature intends to accomplish this goal by establishing county and regional solid waste authorities throughout the state to develop and implement litter and solid waste control plans.

It is further the purpose of the Legislature to reduce our solid waste management problems and to meet the purposes of this article by requiring county and regional solid waste authorities to establish programs and plans based on an integrated waste management hierarchy. In order of preference, the hierarchy is as follows:

(1) Source reduction. -- This involves minimizing waste production and generation through product design, reduction of toxic constituents of solid waste and similar activities.

(2) Recycling, reuse and materials recovery. -- This involves separating and recovering valuable materials from the waste stream, composting food and yard waste and marketing of recyclables.

www.legislature.wv.gov

(3) Landfilling. -- To the maximum extent possible, this option should be reserved for nonrecyclables and other materials that cannot practically be managed in any other way. This is the lowest priority in the hierarchy and involves the waste management option of last resort.

The Legislature further finds that the potential impacts of proposed commercial solid waste facilities may have a deleterious and debilitating impact upon the transportation network, property values, economic growth, environmental quality, other land uses and the public health and welfare in affected communities. The Legislature also finds that the siting of such facilities is not being adequately addressed to protect these compelling interests of counties and local communities.

The Legislature further finds that affected citizens and local governments often look to state environmental regulatory agencies to resolve local land-use conflicts engendered by these proposed facilities. The Legislature also finds that such local land-use conflicts are most effectively resolved in a local governmental forum where citizens can most easily participate in the decisionmaking process and the land-use planning values of local communities most effectively identified and incorporated into a comprehensive policy which reflects the values and goals of those communities.

Therefore, it is the purpose of the Legislature to enable local citizens to resolve the land-use conflicts which may be created by proposed commercial solid waste facilities through the existing forum of county or regional solid waste authorities.

WV Legislature

§22C-4-2. Definitions.

Unless the context clearly requires a different meaning, as used in this article, the terms:

(a) "Approved solid waste facility" means a commercial solid waste facility or practice which has a valid permit or compliance order under article fifteen, chapter twenty-two of this code.

(b) "Commercial solid waste facility" means any solid waste facility which accepts solid waste generated by sources other than the owner or operator of the facility and does not include an approved solid waste facility owned and operated by a person for the sole purpose of disposing of solid wastes created by that person or that person and another person on a cost-sharing or nonprofit basis and does not include land upon which reused or recycled materials are legitimately applied for structural fill, road base, mine reclamation and similar applications.

(c) "Commercial recycler" means any person, corporation or business entity whose operation involves the mechanical separation of materials for the purpose of reselling or recycling at least seventy percent by weight of the materials coming into the commercial recycling facility.

(d) "Class A facility" means a commercial solid waste facility which handles an aggregate of between ten and thirty thousand tons of solid waste per month. Class A facility includes two or more Class B solid waste landfills owned or operated by the same person in the same county, if the aggregate tons of solid waste handled per month by such landfills exceeds nine thousand nine hundred ninety-nine tons of solid waste per month.

(e) "Class B facility" means a commercial solid waste facility which receives or is expected to receive an average daily quantity of mixed solid waste equal to or exceeding one hundred tons each working day, or serves or is expected to serve a population equal to or exceeding forty thousand persons, but which does not receive solid waste exceeding an aggregate of ten thousand tons per month. Class B facilities do not include construction/demolition facilities: Provided, That the definition of Class B facility may include such reasonable subdivisions or subclassifications as the director may establish by legislative rule proposed in accordance with the provisions of chapter twenty-nine-a of this code.

(f) "Compliance order" means an administrative order issued pursuant to section ten, article fifteen, chapter twenty-two of this code authorizing a solid waste facility to operate without a solid waste permit.

(g) "Open dump" means any solid waste disposal which does not have a permit under this article, or is in violation of state law, or where solid waste is disposed in a manner that does not protect the environment.

(h) "Person" means any industrial user, public or private corporation, institution, association, firm or company organized or existing under the laws of this or any other state or country;

WV Legislature

the State of West Virginia; governmental agency, including federal facilities; political subdivision; county commission; municipal corporation; industry; sanitary district; public service district; drainage district; soil conservation district; watershed improvement district; partnership; trust; estate; person or individual; group of persons or individuals acting individually or as a group; or any legal entity whatever.

(i) "Sludge" means any solid, semisolid, residue or precipitate, separated from or created by a municipal, commercial or industrial waste treatment plant, water supply treatment plant or air pollution control facility or any other such waste having similar origin.

(j) "Solid waste" means any garbage, paper, litter, refuse, cans, bottles, waste processed for the express purpose of incineration, sludge from a waste treatment plant, water supply treatment plant or air pollution control facility, other discarded material, including offensive or unsightly matter, solid, liquid, semisolid or contained liquid or gaseous material resulting from industrial, commercial, mining or community activities but does not include solid or dissolved material in sewage, or solid or dissolved materials in irrigation return flows or industrial discharges which are point sources and have permits under article eleven, chapter twenty-two of this code, or source, special nuclear or byproduct material as defined by the Atomic Energy Act of 1954, as amended, including any nuclear or byproduct material considered by federal standards to be below regulatory concern, or a hazardous waste either identified or listed under article eighteen, chapter twenty-two of this code, or refuse, slurry, overburden or other waste or material resulting from coal-fired electric power or steam generation, the exploration, development, production, storage and recovery of coal, oil and gas, and other mineral resources placed or disposed of at a facility which is regulated under article two, three, four, six, seven, eight, nine or ten, chapter twenty-two or chapter twenty-two-a of this code, so long as such placement or disposal is in conformance with a permit issued pursuant to said chapters. "Solid waste" does not include materials which are recycled by being used or reused in an industrial process to make a product, as effective substitutes for commercial products, or are returned to the original process as a substitute for raw material feedstock.

(k) "Solid waste disposal" means the practice of disposing of solid waste including placing, depositing, dumping or throwing or causing to be placed, deposited, dumped or thrown any solid waste.

(l) "Solid waste disposal shed" means the geographical area which the solid waste management board designates and files in the state register pursuant to section nine, article three of this chapter.

(m) "Solid waste facility" means any system, facility, land, contiguous land, improvements on the land, structures or other appurtenances or methods used for processing, recycling or disposing of solid waste, including landfills, transfer stations, resource-recovery facilities and other such facilities not herein specified. Such facility is situated, for purposes of this article, in the county where the majority of the spatial area of such facility is located.

www.legislature

(n) "Energy recovery incinerator" means any solid waste facility at which solid wastes are incinerated with the intention of using the resulting energy for the generation of steam, electricity or any other use not specified herein.

(o) "Incineration technologies" means any technology that uses controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials, regardless of whether the purpose is processing, disposal, electric or steam generation or any other method by which solid waste is incinerated.

(p) "Incinerator" means an enclosed device using controlled flame combustion to thermally break down solid waste, including refuse-derived fuel, to an ash residue that contains little or no combustible materials.

(q) "Materials recovery facility" means any solid waste facility at which solid wastes are manually or mechanically shredded or separated so that materials are recovered from the general waste stream for purposes of reuse and recycling.

WV Legislature

§22C-4-3. Creation of county solid waste authority; appointment to board of directors; vacancies.

(a) Each and every county solid waste authority authorized and created by the county commission of any county pursuant to former article sixteen, chapter seven of this code is hereby abolished on and after January 1, 1989. On and after January 1, 1989, a new county solid waste authority is hereby created and established as a public agency in every county of the state and is the successor to each county solid waste authority which may have been created by the county commission: Provided, That such county solid waste authorities shall not be established or shall cease to exist, as the case may be, in those counties which establish a regional solid waste authority pursuant to section four of this article. The solid waste management board may require a county solid waste authority to cooperate and participate in programs with other authorities if the need arises.

(b) The authority board of directors is comprised of five members who are appointed as follows: One by the director of the Division of Environmental Protection, two by the county commission, one by the board of supervisors for the soil conservation district in which the county is situated and one by the chairman of the Public Service Commission. The members of the board are appointed for terms of four years for which the initial shall start on July 1, 1988: Provided, That the first two members appointed by the county commission shall be appointed to initial terms of two and four years, respectively, and for terms of four years for each appointment thereafter: Provided, however, That on and after July 1, 2000, the member appointed by the director of the Division of Environmental Protection shall be appointed to an initial term of one year and for a term of four years for each appointment thereafter: Provided further, That the member appointed by the chairman of the Public Service Commission shall be appointed to an initial term of three years and for a term of four years for each appointment thereafter. The members of the board shall receive no compensation for their service thereon but shall be reimbursed for their actual expenses incurred in the discharge of their duties. Vacancies in the office of member of the board of directors shall be filled for the balance of the remaining term by the appropriate appointing authority within sixty days after such vacancy occurs. No member who has any financial interest in the collection, transportation, processing, recycling or the disposal of refuse, garbage, solid waste or hazardous waste shall vote or act on any matter which directly affects the member's personal interests.

www.legislature

§22C-4-4. Establishment of regional solid waste authorities authorized; successor to county solid waste authorities; appointments to board of directors; vacancies.

(a) On and after January 1, 1989, any two or more counties within the same solid waste shed and with the approval of the solid waste management board, may establish a regional solid waste authority. Such a regional solid waste authority is a public agency and is the successor to any county solid waste authority existing on the date of said approval by the solid waste management board. The solid waste management board may require a county authority to cooperate and participate in programs with other county and regional authorities if the need arises.

(b) The board of directors of the regional solid waste authority are appointed as follows: One by the director of the Division of Environmental Protection, two by the county commission of each county participating therein, one by the board of supervisors for each soil conservation district in which a county of the region is situated, one by the chairman of the Public Service Commission and two municipal representatives from each county having one or more participating municipality to be selected by the mayors of the participating municipality from each such county. The members of the board are appointed for terms of four years for which the initial terms start on July 1, 1988: Provided, That the members appointed by the county commission shall be appointed to initial terms of two and four years, respectively, and to terms of four years after the expiration of each such initial term: Provided, however,That on and after July 1, 2000, the member appointed by the director of the Division of Environmental Protection shall be appointed to an initial term of one year and for a term of four years for each appointment thereafter: Provided further, That the member appointed by the chairman of the Public Service Commission shall be appointed to an initial term of three years and for a term of four years for each appointment thereafter: And provided further, That of the two members appointed by the mayors from each county, one shall be appointed to an initial term of one year and for a term of four years for each appointment thereafter, and one shall be appointed to an initial term of three years and for a term of four years for each appointment thereafter. The members of the board shall receive no compensation for their service thereon but shall be reimbursed their actual expenses incurred in the discharge of their duties. Vacancies in the office of member of the board of directors shall be filled for the balance of the remaining term by the appropriate appointing authority within sixty days after such vacancy occurs. No member who has any financial interest in the collection, transportation, processing, recycling or the disposal of refuse, garbage, solid waste or hazardous waste shall vote or act on any matter which directly affects the member's personal interests.

WV Legislature

§22C-4-5. Authorities as successor to county commissions and former county solid waste authorities.

The county and regional solid waste authorities created herein, as the case may be, are the successors to the county commissions of each county, or the solid waste authority previously created by said commission and abolished as of January 1, 1989, by this article, in the ownership, operation and maintenance of such dumps, landfills and other solid waste facilities, solid waste collection services and litter and solid waste control programs. The county commission of each county, or the solid waste authority thereof, shall, on January 1, 1989, transfer all ownership, operation, control and other rights, title and interests in such solid waste facilities, services and programs, and the properties, funds, appropriations and contracts related thereto to the county or regional solid waste authority established pursuant to this article.

WV Legislature

§22C-4-6. Election by county commission to assume powers and duties of the county solid waste authority.

Notwithstanding any provision of this article, any county commission which, on July 1, 1988, held a valid permit or compliance order for a commercial solid waste transfer station issued pursuant to article fifteen, chapter twenty-two of this code, may elect to assume all the duties, powers, obligations, rights, title and interests vested in the county solid waste authority by this chapter. A county commission may, prior to October 1, 1989, exercise this right of election by entering an order declaring such election and serving a certified copy thereof upon the solid waste management board. Thirty days after entry of said order by the county commission the county solid waste authority ceases to exist and the county commission assumes all the duties, powers, obligations, rights, title and interest vested in the former authority pursuant to this chapter or chapter twenty-two of this code.

WV Legislature

§22C-4-7. Management of authority vested in board of directors; expenses paid by county commissions, procedure.

(a) The management and control of the authority, its property, operations and affairs of any nature is vested in and governed by the board of directors.

(b) The expenses of any county solid waste authority incurred for necessary secretarial and clerical assistance, office supplies and general administrative expenses, in the development of the litter and solid waste control plan under section eight of this article and to provide solid waste collection and disposal services under this article shall be paid by the county commission from the General Funds in the county treasury to the extent that such expenses are not paid by fees, grants and funds received by the authority from other sources. The county commission has the authority to determine the amount to be allocated annually to the authority.

(c) The expenses of any regional solid waste authority incurred for necessary secretarial and clerical assistance, office supplies and general administrative expenses, or for the development of the litter and solid waste control plan under section eight of this article, or to provide solid waste collection and disposal services under this article shall be paid by the county commissions of each participating county from general funds in the county treasury to the extent that such expenses are not paid by fees, grants and funds from other sources received by the authority. Each county participating in the regional solid waste authority shall pay a pro rata share of such expenses based upon the population of said county in the most recent decennial census conducted by the United States Census Bureau. Prior to any county becoming liable for any expenses of the authority under this subsection, the authority's annual budget must first be approved by the solid waste management board.

(d) An organizational meeting of each board of directors shall be held as soon as practicable at which time a chair and vice chair shall be elected from among the members of the board to serve a term of one year after which such officers shall be elected annually. The board of directors shall also appoint a secretary-treasurer, who need not be a member of the board of directors, and who shall give bond in a sum determined adequate to protect the interests of the authority by the director of the Division of Environmental Protection. The board shall meet at such times and places as it or the chair may determine. It is the duty of the chair to call a meeting of the board upon the written request of a majority of the members thereof. The board shall maintain an accurate record and minutes of all its proceedings and is subject to the provisions of article one, chapter twenty-nine-b of this code, the freedom of information act and article nine-a, chapter six of this code, open governmental proceedings. A majority of the board is a quorum for the transaction of business.

WV Legislature

§22C-4-8. Authority to develop litter and solid waste control plan; approval by solid waste management board; development of plan by director; advisory rules.

(a) Each county and regional solid waste authority is required to develop a comprehensive litter and solid waste control plan for its geographic area and to submit said plan to the solid waste management board on or before July 1, 1991. Each authority shall submit a draft litter and solid waste control plan to the solid waste management board by March 31, 1991. The comments received by the county or regional solid waste authority at public hearings, two of which are required, shall be considered in developing the final plan.

(b) Each litter and solid waste control plan shall include provisions for:

(1) An assessment of litter and solid waste problems in the county;

(2) The establishment of solid waste collection and disposal services for all county residents at their residences, where practicable, or the use of refuse collection stations at disposal access points in areas where residential collection is not practicable. In developing such collection services, primacy shall be given to private collection services currently operating with a certificate of convenience and necessity from the motor carrier division of the Public Service Commission;

(3) The evaluation of the feasibility of requiring or encouraging the separation of residential or commercial solid waste at its source prior to collection for the purpose of facilitating the efficient and effective recycling of such wastes and the reduction of those wastes which must be disposed of in landfills or by other nonrecycling means;

(4) The establishment of an appropriate mandatory garbage disposal program which shall include methods whereby residents must prove either: (i) Payment of garbage collection fee; or (ii) proper disposal at an approved solid waste facility or in an otherwise lawful manner;

(5) A recommendation for the siting of one or more properly permitted public or private solid waste facilities, whether existing or proposed, to serve the solid waste needs of the county or the region, as the case may be, consistent with the comprehensive county plan prepared by the county planning commission and the anticipated volumes of solid waste originating within or without the county or region which are likely to be disposed of within the county or region;

(6) A timetable for the implementation of said plan;

(7) A program for the cleanup, reclamation and stabilization of any open and unpermitted dumps;

(8) The coordination of the plan with the related solid waste collection and disposal services of municipalities and, if applicable, other counties;

(9) A program to enlist the voluntary assistance of private industry and civic groups in

WV Legislature

volunteer cleanup efforts to the maximum practicable extent;

(10) Innovative incentives to promote recycling efforts;

(11) A program to identify the anticipated quantities of solid wastes which are disposed of, but are not generated by sources situated, within the boundaries of the county or the region established pursuant to this section;

(12) Coordination with the Division of Highways and other local, state and federal agencies in the control and removal of litter and the cleanup of open and unpermitted dumps;

(13) Establishment of a program to encourage and utilize those individuals incarcerated in the regional jail and those adults and juveniles sentenced to probation for the purposes of litter pickup; and

(14) Provision for the safe and sanitary disposal of all refuse from commercial and industrial sources within the county or region, as the case may be, including refuse from commercial and industrial sources, but excluding refuse from sources owned or operated by the state or federal governments.

(c) The solid waste management board shall establish advisory rules to guide and assist the counties in the development of the plans required by this section.

(d) Each plan prepared under this section is subject to approval by the solid waste management board. Any plan rejected by the solid waste management board shall be returned to the regional or county solid waste authority with a statement of the insufficiencies in such plan. The authority shall revise the plan to eliminate the insufficiencies and submit it to the director within ninety days.

(e) The solid waste management board shall develop a litter and solid waste control plan for any county or regional solid waste authority which fails to submit such a plan on or before July 1, 1992: Provided, That in preparing such plans the director may determine whether to prepare a regional or county based plan for those counties which fail to complete such a plan.

WV Legislature

§22C-4-9. Assistance to county or regional solid waste authorities by the solid waste management board, Division of Natural Resources, Division of Environmental Protection, bureau of public health and the Attorney General.

(a) The Division of Natural Resources, the Division of Environmental Protection, the solid waste management board, and the bureau of public health shall provide technical assistance to each county and regional solid waste authority as reasonable and practicable for the purposes of this article within the existing resources and appropriations of each agency available for such purposes. The Attorney General shall provide legal counsel and representation to each county and regional solid waste authority for the purposes of this article within the existing resources and appropriations available for such purposes, or with the written approval of the Attorney General, said authority may employ counsel to represent it.

(b) The solid waste management board shall provide assistance to the county or regional solid waste authorities, municipalities and other interested parties in identifying and securing markets for recyclables.

WV Legislature

§22C-4-9a. Findings, Solid Waste Management Board performance reviews and measures, legislative rules, intervention of impaired authorities, establishment of uniform chart of accounts, financial examination requirements.

(a) The Legislature finds that performance review and performance measurement are valuable tools for identifying serious impairments of commercial solid waste facilities operated by county or regional solid waste authorities and fostering accountability and effective and efficient facility operations.

(b) The Solid Waste Management Board shall conduct a biennial performance review of each county and regional solid waste authority that operates a commercial solid waste facility: Provided, That the Solid Waste Management Board may conduct a performance review at any time it determines a performance review to be necessary.

(c) The Solid Waste Management Board shall develop and maintain a system of annual and quarterly or more frequent performance measures useful in gauging the productivity and operational health of county and regional solid waste authorities operating commercial solid waste facilities. The authorities shall provide the performance measurement data in accordance with the legislative rule required under subsection (d) of this section.

(d) No later than August 1, 2006, the Solid Waste Management Board in consultation and collaboration with the Public Service Commission, shall propose legislative rules for promulgation in accordance with the provisions of article three, chapter twenty-nine-a of this code, to implement a performance review process and system of quarterly performance measures designed pursuant to subsections (b) and (c) of this section.

(e) For the purposes of this section, "performance review" means an accountability system which establishes benchmarks to evaluate and determine the effective and efficient performance of a county solid waste authority operating a commercial solid waste facility or regional solid waste authority operating a commercial solid waste facility.

(f) For the purposes of this section, "performance measures" means outcome and output measures. "Outcomes" represent effects or results of programs. "Outputs" represent the units of services or activities produced.

(g) In promulgating the rules required by subsection (d) of this section, the Solid Waste Management Board shall establish criteria to be considered in conducting performance reviews, establish benchmarks to identify serious impairments, establish a recommendation process for correcting impairments and establish penalties for failure to comply, including a process for temporary intervention by the Solid Waste Management Board to correct impairments.

(h) When the Solid Waste Management Board determines through a performance review or regular monitoring of performance measures that an authority's commercial solid waste facility is seriously impaired and the authority does not correct the impairments, the

WV Legislature

intervention process may include, but is not limited to, the following methods:

(1) Appointing a team of improvement consultants to conduct on-site reviews and make strategic recommendations toward remedy of the serious impairments;

(2) Directing the authority's board of directors to prioritize and target its funds strategically toward alleviating the serious impairments;

(3) Recommending to the agencies that appoint the members of the authority's board of directors, as provided by subsection (b), section three, and subsection (b), section four of this article, that one or more members of the authority's board of directors be replaced;

(4) The Director of the Solid Waste Management Board, or his or her designee, may temporarily during intervention, preside as chair of the county or regional solid waste authority board meetings; and

(5) Exercising powers of supersedure provided under section twenty-six, article three of this chapter.

(i) The State Auditor in consultation and collaboration with the Solid Waste Management Board and the Public Service Commission shall establish a uniform chart of accounts delineating common revenue and expense account naming conventions to be adopted by all county and regional solid waste authorities, beginning no later than July 1, 2006.

(j) The chief inspector and supervisor of local government offices shall conduct an annual examination on the financial report of county and regional solid waste authorities with an audit occurring every third year. Additionally, the chief inspector, upon request by the Solid Waste Management Board, shall conduct an audit of any county or regional solid waste authority that operates a commercial solid waste facility as a part of the performance review required by this section. The definitions of "examination", "audit" and "review" provided in section one-a, article nine, chapter six of this code apply to this subsection.

www.legislature

§22C-4-10. Mandatory disposal; proof required; penalty imposed; requiring solid waste management board and the Public Service Commission to file report.

(a) Each person occupying a residence or operating a business establishment in this state shall either:

(1) Subscribe to and use a solid waste collection service and pay the fees established therefor; or

(2) Provide proper proof that said person properly disposes of solid waste at least once within every thirty-day period at approved solid waste facilities or in any other lawful manner. The Secretary of the Department of Environmental Protection shall promulgate rules pursuant to chapter twenty-nine-a of this code regarding an approved method or methods of supplying such proper proof. A civil penalty of $150 may be assessed to the person not receiving solid waste collection services in addition to the unpaid fees for every year that a fee is not paid. Any person who violates the provisions of this section by not lawfully disposing of his or her solid waste or failing to provide proper proof that he or she lawfully disposes of his or her solid waste at least once a month is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than $50 nor more than $1,000 or sentenced to perform not less than ten nor more than forty hours of community service, such as picking up litter, or both fined and sentenced to community service.

(b) The Solid Waste Management Board, in consultation and collaboration with the Public Service Commission, shall prepare and submit, no later than October 1, 1992, a report concerning the feasibility of implementing a mandatory fee for the collection and disposal of solid waste in West Virginia: Provided, That such plan shall consider such factors as affordability, impact on open dumping and other relevant matters. The report shall be submitted to the Governor, the President of the Senate and the Speaker of the House of Delegates.

(c) The Public Service Commission, in consultation and collaboration with the Division of Human Services, shall prepare and submit, no later than October 1, 1992, a report concerning the feasibility of reducing solid waste collection fees to individuals who directly pay such fees and who receive public assistance from state or federal government agencies and are therefore limited in their ability to afford to pay for solid waste disposal. This report shall consider the individual's health and income maintenance and other relevant matters. This report shall also include recommended procedures for individuals or households to qualify for and avail themselves of a reduction in fees. This report shall be submitted to the Governor, the President of the Senate and the Speaker of the House of Delegates.

WV Legislature

§22C-4-11. Acquisition of land; operation of public solid waste landfills and other facilities; restrictions on solid wastes generated outside authority area; fees.

Upon approval of the litter and solid waste control plan by the solid waste management board, the county or regional solid waste authority may acquire, by purchase, lease, gift or otherwise, land for the establishment of solid waste facilities and is authorized to construct, operate, maintain and contract for the operation of such facilities. The authority may pay for lease or acquisition of such lands and the construction, operation and maintenance of such solid waste facilities from such fees, grants, financing by the solid waste program of the Division of Environmental Protection or funds from other sources as may be available to the authority. The authority may prohibit the deposit of any solid waste in such solid waste facilities owned, leased or operated by the authority which have originated from sources outside the geographic limits of the county or region. The authority board of directors shall establish and charge reasonable fees for the use of such facilities operated by the authority.

WV Legislature

§22C-4-12. Bonds and notes.

For constructing or acquiring any solid waste facilities for the authorized purposes of the authority, or necessary or incidental thereto, and for constructing improvements and extension thereto, and also for reimbursing or paying the costs and expenses of creating the authority, if any, the board of any such authority is hereby authorized to borrow money from time to time and in evidence thereof issue the bonds or notes of such authority, payable from the revenues derived from the operation of the solid waste facilities under control of the authority or from such other funds as are available to the authority for such purpose. Such bonds or notes may be issued in one or more series, may bear such date or dates, may mature at such time or times not to exceed forty years from their respective dates, may bear interest at such rate or rates, payable at such times, may be in such form, may carry such registration privileges, may be executed in such manner, may be payable at such place or places, may be subject to such terms of redemption with or without premium, may be declared or become due before maturity date thereof, may be authenticated in any manner, and upon compliance with such conditions, and may contain such terms and covenants as may be provided by resolution or resolutions of the board. Notwithstanding the form or tenor thereof, and in the absence of any express recital on the face thereof, that the bond or note is nonnegotiable, all such bonds or notes are, and shall be treated as, negotiable instruments for all purposes. The bonds or notes shall be executed by the chair of the board, who may use a facsimile signature. The official seal of the authority or a facsimile thereof shall be affixed to or printed on each bond or note and attested, manually or by facsimile signature, by the secretary-treasurer of the board, and any coupons attached to any bond or note shall bear the signature or facsimile signature of the chair of the board. Bonds or notes bearing the signatures of officers in office on the date of the signing thereof are valid and binding for all purposes notwithstanding that before the delivery thereof any or all of the persons whose signatures appear thereon have ceased to be such officers. Notwithstanding the requirements or provisions of any other law, any such bonds or notes may be negotiated or sold in such manner and at such time or times as is found by the board to be most advantageous. Any resolution or resolutions providing for the issuance of such bonds or notes may contain such covenants and restrictions upon the issuance of additional bonds or notes thereafter as may be deemed necessary or advisable for the assurance of the payment of the bonds or notes thereby authorized.

www.LegisPrime

§22C-4-13. Items included in cost of properties.

The cost of any solid waste facilities acquired under the provisions of this article includes the cost of the acquisition or construction thereof, costs of closure of solid waste facilities, the cost of all property rights, easements and franchises deemed necessary or convenient therefor and for the improvements and extensions thereto; interest upon bonds or notes prior to and during construction or acquisition and for twelve months after completion of construction or of acquisition of the improvements and extensions; engineering, fiscal agents and legal expenses; expenses for estimates of cost and of revenues, expenses for plans, specifications and surveys; other expenses necessary or incident to determining the feasibility or practicability of the enterprise, administrative expense, and such other expenses as may be necessary or incident to the financing herein authorized, and the construction or acquisition of the properties and the placing of same in operation, and the performance of the things herein required or permitted, in connection with any thereof.

WV Legislature

§22C-4-14. Bonds or notes may be secured by trust indenture.

In the discretion and at the option of the board such bonds or notes may be secured by a trust indenture by and between the authority and a corporate trustee, which may be a trust company or bank having powers of a trust company within or without the State of West Virginia. The resolution authorizing the bonds or notes and fixing the details thereof may provide that such trust indenture may contain such provisions for protecting and enforcing the rights and remedies of bondholders as may be reasonable and proper, not in violation of law, including covenants setting forth the duties of the authority and the members of its board and officers in relation to the construction or acquisition of solid waste facilities and the improvement, extension, operation, repair, maintenance and insurance thereof, and the custody, safeguarding and application of all moneys, and may provide that all or any part of the construction work shall be contracted for, constructed and paid for, under the supervision and approval of consulting engineers employed or designated by the board and satisfactory to the original bond purchasers, their successors, assignees or nominees, who may be given the right to require the security given by contractors and by any depository of the proceeds of bonds or notes or revenues of the solid waste facilities or other money pertaining thereto be satisfactory to such purchasers, their successors, assignees or nominees. Such indenture may set forth the rights and remedies of the bondholders or noteholders and such trustee.

WV Legislature

§22C-4-15. Sinking fund for bonds or notes.

At or before the time of the issuance of any bonds or notes under this article, the board may by resolution or in the trust indenture provide for the creation of a sinking fund and for payments into such fund from the revenues of the solid waste facilities operated by the authority or from other funds available thereto such sums in excess of the cost of maintenance and operation of such properties as will be sufficient to pay the accruing interest and retire the bonds or notes at or before the time each will respectively become due and to establish and maintain reserves therefor. All sums which are or should be, in accordance with such provisions, paid into such sinking fund shall be used solely for payment of interest and principal and for the retirement of such bonds or notes or at prior to maturity as may be provided or required by such resolution.

WV Legislature

§22C-4-16. Collection, etc., of revenues and funds and enforcement of covenants; default; suit, etc., by bondholder or noteholder or trustee to compel performance of duties; appointment and powers of receiver.

The board for any such authority has power to insert enforceable provisions in any resolution authorizing the issuance of bonds or notes relating to the collection, custody and application of revenues or of the authority from the operation of the solid waste facilities under its control or other funds available to the authority and to the enforcement of the covenants and undertakings of the authority. In the event there is default in the sinking fund provisions aforesaid or in the payment of the principal or interest on any of such bonds or notes or, in the event the authority or its board or any of its officers, agents or employees, fails or refuses to comply with the provisions of this article, or defaults in any covenant or agreement made with respect to the issuance of such bonds or notes or offered as security therefor, then any holder or holders of such bonds or notes and any such trustee under the trust indenture, if there be one, have the right by suit, action, mandamus or other proceeding instituted in the circuit court for the county or any of the counties wherein the authority extends, or in any other court of competent jurisdiction, to enforce and compel performance of all duties required by this article or undertaken by the authority in connection with the issuance of such bonds or notes, and upon application of any such holder or holders, or such trustee, such court shall, upon proof of such defaults, appoint a receiver for the affairs of the authority and its properties, which receiver so appointed shall forthwith directly, or by her or his agents and attorneys, enter into and upon and take possession of the affairs of the authority and each and every part thereof, and hold, use, operate, manage and control the same, and in the name of the authority exercise all of the rights and powers of such authority as found expedient, and such receiver has power and authority to collect and receive all revenues and apply same in such manner as the court directs. Whenever the default causing the appointment of such receiver has been cleared and fully discharged and all other defaults have been cured, the court may in its discretion and after such notice and hearing as it deems reasonable and proper direct the receiver to surrender possession of the affairs of the authority to its board. Such receiver so appointed has no power to sell, assign, mortgage, or otherwise dispose of any assets of the authority except as hereinbefore provided.

WV Legislature

§22C-4-17. Operating contracts.

The board may enter into contracts or agreements with any persons, firms or corporations for the operation and management of the solid waste facilities for such period of time and under such terms and conditions as are agreed upon between the board and such persons, firms or corporations. The board has power to provide in the resolution authorizing the issuance of bonds or notes, or in any trust indenture securing such bonds or notes, that such contracts or agreements are valid and binding upon the authority as long as any of said bonds or notes, or interest thereon, are outstanding and unpaid.

WV Legislature

§22C-4-18. Statutory mortgage lien created unless otherwise provided; foreclosure thereof.

Unless otherwise provided by resolution of the board, there is a statutory mortgage lien upon such solid waste facilities of the authority, which exists in favor of the holders of bonds or notes hereby authorized to be issued, and each of them, and the coupons attached to said bonds or notes, and such solid waste facilities remain subject to such statutory mortgage lien until payment in full of all principal of and interest on such bonds or notes. Any holder of such bonds or notes, of any coupons attached thereto, may, either at law or in equity, enforce said statutory mortgage lien conferred hereby and upon default in the payment of the principal of or interest on said bonds or notes, and may foreclose such statutory mortgage lien in the manner now provided by the laws of the State of West Virginia for the foreclosure of mortgages on real property.

WV Legislature

§22C-4-19. Refunding bonds or notes.

The board of any authority having issued bonds or notes under the provisions of this article is hereby empowered thereafter by resolution to issue refunding bonds or notes of such authority for the purpose of retiring or refinancing any or all outstanding bonds or notes, together with any unpaid interest thereon and redemption premium thereunto appertaining and all of the provisions of this article relating to the issuance, security and payment of bonds or notes are applicable to such refunding bonds or notes, subject, however, to the provisions of the proceedings which authorized the issuance of the bonds or notes to be so refunded.

WV Legislature

§22C-4-20. Indebtedness of authority.

No Constitutional or statutory limitation with respect to the nature or amount of or rate of interest on indebtedness which may be incurred by municipalities, counties or other public or governmental bodies applies to the indebtedness of an authority. No indebtedness of any nature of authority is an indebtedness of the State of West Virginia or any municipality or county therein or a charge against any property of said state of West Virginia or any municipalities or counties. No indebtedness or obligation incurred by any authority gives any right against any member of the governing body of any municipality or any member of the authority of any county or any member of the board of any authority. The rights of creditors of any authority are solely against the authority as a corporate body and shall be satisfied only out of property held by it in its corporate capacity.

WV Legislature

§22C-4-21. Property, bonds or notes and obligations of authority exempt from taxation.

The authority is exempt from the payment of any taxes or fees to the state or any subdivisions thereof or any municipalities or to any officer or employee of the state or of any subdivision thereof or of any municipalities. The property of the authority is exempt from all local and municipal taxes. Bonds, notes, debentures and other evidence of indebtedness of the authority are declared to be issued for a public purpose and to be public instrumentalities, and, together with interest thereon, are exempt from taxes.

WV Legislature

§22C-4-22. Use of prisoners for litter pickup; funds provided from litter control fund; county commission, Regional Jail and Correctional Facility Authority and sheriff to cooperate with solid waste authority.

Upon the approval of the litter and solid waste control plan as provided in section eight hereof, each county and regional solid waste authority is hereby authorized and directed to implement a program to utilize those individuals incarcerated in the county or regional jails for litter pickup within the limits of available funds. Such program shall be funded from those moneys allocated to the authority by the director of the Division of Natural Resources from the litter control fund pursuant to section twenty-six, article four, chapter twenty of this code. The authority may expend such additional funds for this program as may be available from other sources. The county commission and the sheriff of each county and the Regional Jail and Correctional Facility Authority shall cooperate with the county or regional solid waste authority in implementing this program pursuant to section one, article eleven-a, and sections three and thirteen, article twelve, chapter sixty-two of this code.

WV Legislature

§22C-4-23. Powers, duties and responsibilities of authority generally.

The authority may exercise all powers necessary or appropriate to carry out the purposes and duties provided in this article, including the following:

(1) Sue and be sued, plead and be impleaded and have and use a common seal.

(2) To conduct its business in the name of the county solid waste authority or the regional solid waste authority, as the case may be, in the names of the appropriate counties.

(3) The authority board of directors shall promulgate rules to implement the provisions of sections nine and ten of this article and is authorized to promulgate rules for purposes of this article and the general operation and administration of authority affairs.

(4) Adopt, and from time to time, amend and repeal bylaws necessary and proper for the conduct of its affairs consistent with this article.

(5) To promulgate such rules as may be proper and necessary to implement the purposes and duties of this article.

(6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent or contract for the operation by any person, partnership, corporation or governmental agency, any solid waste facility or collection, transportation and processing facilities related thereto.

(7) Issue negotiable bonds, notes, debentures or other evidences of indebtedness and provide for the rights of the holders thereof, incur any proper indebtedness and issue any obligations and give any security therefor which it may deem necessary or advisable in connection with exercising powers as provided herein.

(8) Make available the use or services of any solid waste facility collection, transportation and processing facilities related thereto, to any person, partnership, corporation or governmental agency consistent with this article.

(9) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and duties.

(10) Make and enter all contracts, leases and agreements and to execute all instruments necessary or incidental to the performance of its duties and powers.

(11) Employ managers, engineers, accountants, attorneys, planners and such other professional and support personnel as are necessary in its judgment to carry out the provisions of this article.

(12) Receive and accept from any source such grants, fees, real and personal property, contributions, funds transferred from a solid waste facility and funds of any nature as may

WV Legislature

become available to the authority, in order to carry out the purposes of this article including but not limited to the development, operation or management of litter control programs and recycling programs: Provided, That nothing contained in this subsection shall be construed to extend the authority or jurisdiction of the Public Service Commission to activities under this subsection solely because the activities are funded by moneys transferred from a solid waste facility, nor may the use of transferred funds by a solid waste authority be considered by the Public Service Commission in carrying out its duties under section one-f, article two, chapter twenty-four of this code.

(13) Cooperate with and make such recommendations to local, state and federal government and the private sector in the technical, planning and public policy aspects of litter control and solid waste management as the authority may find appropriate and effective to carry out the purposes of this article.

(14) Charge, alter and collect rentals, fees, service charges and other charges for the use or services of any solid waste facilities or any solid waste collection, transportation and processing services provided by the authority.

(15) Prohibit the dumping of solid waste outside the hours of operation of a solid waste facility.

(16) Enforce the hours of operation of a solid waste facility and the mandatory disposal provision in section ten of this article by referring violations to the Division of Environmental Protection or the appropriate law-enforcement authorities.

(17) Do all acts necessary and proper to carry out the powers expressly granted to the authority by this article and powers conferred upon the authority by this article.

All rules promulgated by the authority pursuant to this article are exempt from the provisions of article three, chapter twenty-nine-a of this code.

WV Legislature

§22C-4-24. Commercial solid waste facility siting plan; facilities subject to plan; criteria; approval by Solid Waste Management Board; effect on facility siting; public hearings; rules.

(a) On or before July 1, 1991, each county or regional solid waste authority shall prepare and complete a commercial solid waste facilities siting plan for the county or counties within its jurisdiction: Provided, That the Solid Waste Management Board may authorize any reasonable extension of up to one year for the completion of the said siting plan by any county or regional solid waste authority. The siting plan shall identify zones within each county where siting of the following facilities is authorized or prohibited:

(1) Commercial solid waste facilities which may accept an aggregate of more than ten thousand tons of solid waste per month.

(2) Commercial solid waste facilities which shall accept only less than an aggregate of ten thousand tons of solid waste per month.

(3) Commercial solid waste transfer stations or commercial facilities for the processing or recycling of solid waste.

The siting plan shall include an explanation of the rationale for the zones established therein based on the criteria established in subsection (b) of this section.

(b) The county or regional solid waste authority shall develop the siting plan authorized by this section based upon the consideration of one or more of the following criteria: The efficient disposal of solid waste, including, but not limited to, all solid waste which is disposed of within the county or region regardless of its origin, economic development, transportation infrastructure, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic and cultural resources, the present or potential land uses for residential, commercial, recreational, environmental conservation or industrial purposes and the public health, welfare and convenience. The initial plan shall be developed based upon information readily available. Due to the limited funds and time available, the initial plan need not be an exhaustive and technically detailed analysis of the criteria set forth above. Unless the information readily available clearly establishes that an area is suitable for the location of a commercial solid waste facility or not suitable for such a facility, the area shall be designated as an area in which the location of a commercial solid waste facility is tentatively prohibited. Any person making an application for the redesignation of a tentatively prohibited area shall make whatever examination is necessary and submit specific detailed information in order to meet the provision established in subsection (g) of this section.

(c) Prior to completion of the siting plan, the county or regional solid waste authority shall complete a draft siting plan and hold at least one public hearing in each county encompassed in said draft siting plan for the purpose of receiving public comment thereon. The authority shall provide notice of such public hearings and encourage and solicit other

WV Legislature

public participation in the preparation of the siting plan as required by the rules promulgated by the Solid Waste Management Board for this purpose. Upon completion of the siting plan, the county or regional solid waste authority shall file said plan with the Solid Waste Management Board.

(d) The siting plan takes effect upon approval by the Solid Waste Management Board pursuant to the rules promulgated for this purpose. Upon approval of the plan, the Solid Waste Management Board shall transmit a copy thereof to the Secretary of the Department of Environmental Protection and to the clerk of the county commission of the county encompassed by said plan which county clerk shall file the plan in an appropriate manner and shall make the plan available for inspection by the public.

(e) Effective upon approval of the siting plan by the Solid Waste Management Board, it is unlawful for any person to establish, construct, install or operate a commercial solid waste facility at a site not authorized by the siting plan: Provided, That an existing commercial solid waste facility which, on April 8, one thousand nine hundred eighty-nine, held a valid solid waste permit or compliance order issued by the Division of Natural Resources pursuant to the former provisions of article five-f, chapter twenty of this code may continue to operate, but may not expand the spatial land area of the said facility beyond that authorized by said solid waste permit or compliance order and may not increase the aggregate monthly solid waste capacity in excess of ten thousand tons monthly unless such a facility is authorized by the siting plan.

(f) The county or regional solid waste authority may, from time to time, amend the siting plan in a manner consistent with the requirements of this section for completing the initial siting plan and the rules promulgated by the Solid Waste Management Board for the purpose of such amendments.

(g) Notwithstanding any provision of this code to the contrary, upon application from a person who has filed a presiting notice pursuant to section thirteen, article fifteen, chapter twenty-two of this code, the county or regional solid waste authority or county commission, as appropriate, may amend the siting plan by redesignating a zone that has been designated as an area where a commercial solid waste facility is tentatively prohibited to an area where one is authorized. In such case, the person seeking the change has the burden to affirmatively and clearly demonstrate, based on the criteria set forth in subsection (b) of this section, that a solid waste facility could be appropriately operated in the public interest at such location. The Solid Waste Management Board shall provide, within available resources, technical support to a county or regional solid waste authority, or county commission as appropriate, when requested by such authority or commission to assist it in reviewing an application for any such amendment.

(h) The Solid Waste Management Board shall prepare and adopt a siting plan for any county or regional solid waste authority which does not complete and file with the said state authority a siting plan in compliance with the provisions of this section and the rules promulgated thereunder. Any siting plan adopted by the Solid Waste Management Board

WV Legislature

pursuant to this subsection shall comply with the provisions of this section, and the rules promulgated thereunder, and has the same effect as a siting plan prepared by a county or regional solid waste authority and approved by the Solid Waste Management Board.

(i) The siting plan adopted pursuant to this section shall incorporate the provisions of the litter and solid waste control plan, as approved by the Solid Waste Management Board pursuant to section eight of this article, regarding collection and disposal of solid waste and the requirements, if any, for additional commercial solid waste facility capacity.

(j) The Solid Waste Management Board is authorized and directed to promulgate rules specifying the public participation process, content, format, amendment, review and approval of siting plans for the purposes of this section.

(k) To the extent that current solid waste plans approved by the board are approved as provided for in this section, and in place on the effective date of this article, provisions which limit approval for new or expanded solid waste facilities based solely on local solid waste disposal needs without consideration for national waste disposal needs are disallowed as being in conflict with the public policy of this article: Provided, That all other portions of the solid waste management plans as established in the litter and solid waste control plan as provided for in this section and the comprehensive recycling plan as provided for in section seventeen, article fifteen-a, chapter twenty-two of this code are continued in full force and effect to the extent that those provisions do not conflict with the provisions of this article.

WV Legislature

§22C-4-25. Siting approval for solid waste facilities; effect on facilities with prior approval.

(a) It is the intent of the Legislature that all commercial solid waste facilities operating in this state must receive site approval at the local level, except for recycling facilities, as defined in section twenty-three, article fifteen-a, chapter twenty-two of this code, that are specifically exempted by section twelve, article eleven, chapter twenty of this code. Notwithstanding said intent, facilities which obtained such approval from either a county or regional solid waste authority, or from a county commission, under any prior enactment of this code, and facilities which were otherwise exempted from local site approval under any prior enactment of this code, shall be deemed to have satisfied such requirement. All other facilities, including facilities which received such local approval but which seek to expand spatial area or to convert from a Class B facility to a Class A facility, shall obtain such approval only in the manner specified in sections twenty-six, twenty-seven and twenty-eight of this article.

(b) In considering whether to issue or deny the certificate of site approval as specified in sections twenty-six, twenty-seven and twenty-eight of this article, the county or regional solid waste authority shall base its determination upon the following criteria: The efficient disposal of solid waste anticipated to be received or processed at the facility, including solid waste generated within the county or region, economic development, transportation infrastructure, property values, groundwater and surface waters, geological and hydrological conditions, aesthetic and environmental quality, historic or cultural resources, the present or potential land uses for residential, commercial, recreational, industrial or environmental conservation purposes and the public health, welfare and convenience.

(c) The county or regional solid waste authority shall complete findings of fact and conclusions relating to the criteria authorized in subsection (b) of this section which support its decision to issue or deny a certificate of site approval.

(d) The siting approval requirements for composting facilities, materials recovery facilities and mixed waste processing facilities shall be the same as those for other solid waste facilities.

WV Legislature

§22C-4-26. Approval of new Class A facilities by solid waste authorities.

Except as provided below with respect to Class B facilities, from and after March 10, 1990, in order to obtain approval to operate a new Class A facility, an applicant shall:

(1) File an application for a certificate of need with, and obtain approval from, the Public Service Commission in the manner specified in section one-c, article two, chapter twenty-four of this code and in section thirteen, article fifteen, chapter twenty-two of this code;

(2) File an application for a certificate of site approval with, and obtain approval from, the county or regional solid waste authority for the county or counties in which the facility is proposed. Such application shall be submitted on forms prescribed by the solid waste management board. The county or regional solid waste authority shall act on such application and either grant or deny it within thirty days after the application is determined by the county or regional solid waste authority to be filed in a completed manner.

WV Legislature

§22C-4-27. Approval of conversion from Class B facility to Class A facility.

From and after October 18, 1991, in order to obtain approval to operate as a Class A facility at a site previously permitted to operate as a Class B facility, an applicant shall:

(1) File an application for a certificate of need with, and obtain approval from, the Public Service Commission in the manner specified in section one-c, article two, chapter twenty-four of this code, and in section thirteen, article fifteen, chapter twenty-two of this code; and

(2) File an application for a certificate of site approval with, and obtain approval from, the county or regional solid waste authority for the county or counties in which the facility is located or proposed. Such application shall be submitted on forms prescribed by the solid waste management board. The county or regional solid waste authority shall act on such application and either grant or deny it within thirty days after the application is determined by the county or regional solid waste authority to be filed in a completed manner.

WV Legislature

§22C-4-28. Approval of increase in maximum allowable monthly tonnage of Class A facilities.

From and after October 18, 1991, in order to increase the maximum allowable monthly tonnage handled at a Class A facility by an aggregate amount of more than ten percent of the facility's permit tonnage limitation within a two-year period, the permittee shall:

(1) File an application for approval with, and obtain approval from, the county or regional solid waste authority for the county or counties in which the facility is located. Such application shall be a modification of the Class A facility's certificate of site approval. The county or regional solid waste authority shall act upon such application and either grant or deny it within thirty days after the application is determined by the county or regional solid waste authority to be filed in a completed manner; and

(2) File an application for approval with, and obtain approval from, the Public Service Commission to modify the certificate of need in the manner set forth in section one-c, article two, chapter twenty-four of this code.

WV Legislature

§22C-4-29. Judicial review of certificate of site approval.

(a) Any party aggrieved by a decision of the county or regional solid waste authority or county commission granting or denying a certificate of site approval may obtain judicial review thereof in the same manner provided in section four, article five, chapter twenty-nine-a of this code, which provisions shall govern such review with like effect as if the provisions of said section were set forth in extenso in this section, except that the petition shall be filed, within the time specified in said section, in the circuit court of Kanawha County.

(b) The judgment of the circuit court is final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals, in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code, except that notwithstanding the provisions of said section, the petition seeking such review must be filed with the Supreme Court of Appeals within ninety days from the date of entry of the judgment of the circuit court.

WV Legislature

§22C-4-30. Solid waste assessment interim fee; regulated motor carriers; dedication of proceeds; criminal penalties.

(a) *Imposition*. — Effective July 1, 1989, a solid waste assessment fee is hereby levied and imposed upon the disposal of solid waste at any solid waste disposal facility in this state to be collected at the rate of $1 per ton or part thereof of solid waste. The fee imposed by this section is in addition to all other fees levied by law.

(b) *Collection, return, payment, and record*. — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not such person owns the solid waste, and the fee shall be collected by the operator of the solid waste facility who shall remit it to the Tax Commissioner.

(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility.

(2) The operator shall remit the fee imposed by this section to the Tax Commissioner on or before the 15th day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator is required to file returns on forms and in the manner as prescribed by the Tax Commissioner.

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until they are remitted to the Tax Commissioner.

(4) If any operator fails to collect the fee imposed by this section, he or she is personally liable for such amount as he or she failed to collect, plus applicable additions to tax, penalties and interest imposed by §11-10-1 *et seq*. of this code.

(5) Whenever any operator fails to collect, truthfully account for, remit the fee, or file returns with the fee as required in this section, the Tax Commissioner may serve written notice requiring such operator to collect the fees which become collectible after service of such notice, to deposit such fees in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner, and to keep the amount of such fees in such account until remitted to the Tax Commissioner. Such notice remains in effect until a notice of cancellation is served on the operator or owner by the Tax Commissioner.

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator is primarily liable for collection and remittance of the fee imposed by this section and the owner is secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and severally responsible and liable for compliance with the provisions of this section.

(7) If the operator or owner responsible for collecting the fee imposed by this section is an association or corporation, the officers thereof are liable, jointly and severally, for any

WV Legislature

default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties and interest imposed by §11-10-1 *et seq*. of this code may be enforced against them as against the association or corporation which they represent.

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fee imposed by this section shall keep complete and accurate records in such form as the Tax Commissioner may require in accordance with the rules of the Tax Commissioner.

(c) *Regulated motor carriers*. — The fee imposed by this section and §7-5-22 of this code is a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the Public Service Commission under §24A-1-1 *et seq*. of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the Public Service Commission shall, within 14 days, reflect the cost of said fee in said motor carrier's rates for solid waste removal service. In calculating the amount of said fee to said motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States Environmental Protection Agency.

(d) *Definition of solid waste disposal facility*. — For purposes of this section, the term "solid waste disposal facility" means any approved solid waste facility or open dump in this state and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste facility within this state that collects the fee imposed by this section. Nothing herein authorizes in any way the creation or operation of or contribution to an open dump.

(e) *Exemptions*. — The following transactions are exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste facility: (A) By the person who owns, operates, or leases the solid waste disposal facility if it is used exclusively to dispose of waste originally produced by that person in his or her regular business or personal activities; (B) by persons utilizing the facility on a cost-sharing or nonprofit basis; or (C) by a mixed waste processing and resource recovery facility as those facilities are defined in code or rule and which processes a minimum of 70 percent of the material brought to the facility on any given day on a 30-day aggregate basis;

(2) Reuse or recycling of any solid waste;

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on such days and times as designated by the director of the Division of Environmental Protection as exempt from the fee imposed pursuant to §22-15-11 of this code; and

(4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which disposes of 30 percent or less of the total waste it processes for recycling. In order to qualify

WV Legislature

for this exemption each commercial recycler must keep accurate records of incoming and outgoing waste by weight. Such records must be made available to the appropriate inspectors from the Division of Environmental Protection of solid waste authority, upon request.

(f) *Procedure and administration*. — Notwithstanding §11-10-3 of this code, each and every provision of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1 *et seq*. of this code applies to the fee imposed by this section with like effect as if said act were applicable only to the fee imposed by this section and were set forth in extenso herein.

(g) *Criminal penalties*. — Notwithstanding §11-9-2 and §11-9-3 through §11-9-17, inclusive, of this code apply to the fee imposed by this section with like effect as if said sections were the only fee imposed by this section and were set forth in extenso herein.

(h) *Dedication of proceeds*. — The net proceeds of the fee collected by the Tax Commissioner pursuant to this section shall be deposited, at least monthly, in a special revenue account known as the Solid Waste Planning Fund which is hereby continued. The solid waste management board shall allocate the proceeds of the said fund as follows:

(1) Fifty percent of the total proceeds shall be divided equally among, and paid over, to, each county solid waste authority to be expended for the purposes of this article: *Provided*, That where a regional solid waste authority exists, such funds shall be paid over to the regional solid waste authority to be expended for the purposes of this article in an amount equal to the total share of all counties within the jurisdiction of said regional solid waste authority; and

(2) Fifty percent of the total proceeds shall be expended by the solid waste management board for:

(A) Grants to the county or regional solid waste authorities for the purposes of this article; and

(B) Administration, technical assistance, or other costs of the solid waste management board necessary to implement the purposes of this article and §22C-3-1 *et seq*. of this code.

(i) *Effective date*. — This section is effective on July 1, 1990. The amendment and reenactment of this section in 2021 is effective on July 1, 2021.

WV Legislature