WEST VIRGINIA CODE CHAPTER 22C ARTICLE 4A

WV Legislature

§22C-4A-1. Local participation, legislative findings and purposes; referendum.

(a) The Legislature finds that the potential impacts of commercial solid waste disposal facilities have a deleterious and debilitating effect upon the transportation network, property values, economic growth, environmental quality, other land uses, and the public health and welfare. These impacts are borne predominantly by the local residents in the communities where the facilities are located. The Legislature also recognizes that economic benefits exist for having a solid waste facility, including new jobs in the local community and increased tax and fee revenues for the state. The largest of facilities authorized to operate in West Virginia, Class A facilities, receive up to thirty thousand tons of solid waste per month. Class A facilities inevitably cause the most severe impacts to the local area. The Legislature further finds that Class A facilities cause significant impact on the local community above and beyond those of smaller landfills, that this impact requires the local community be afforded the opportunity to participate in the decision of locating a landfill of this size in their community. Further, local citizens need governmental entities to assure and verify that the Class A facility will be developed and operated in a manner that complies with all laws, rules and regulations which regulate landfills, and that the local infrastructure and environment are appropriately suited for a Class A facility. As a result, the Legislature finds that a mechanism must be in place to allow for the local community to be a significant participant in the Class A facility siting and expansion decision-making process.

(b) Therefore, it is the purpose of the Legislature to allow the local decision for location of new Class A landfills by county referendum, and further that a petition process be established to allow demand for a county referendum for expansion of an existing Class A landfill or redesignation of a Class B landfill to Class A.

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§22C-4A-2. Approval of new Class A facility.

(a) The purpose of the mandatory referendum for approval of new Class A facilities is to verify for the local community that the local infrastructure and environment are appropriate for a new Class A facility and to assure that the local community accepts the associated benefits and detriments of having a new Class A facility located in their county.

(b) Following receipt of a certificate of need from the Public Service Commission as required by §24-2-1c of this code, and local solid waste approval as required in §22C-4-6 of this code for a new Class A facility, the county commission shall cause a referendum to be placed on the ballot not less than 56 days before the next primary or general election:

(1) Such referendum is to determine whether it is the will of the voters of the county that a new Class A facility be constructed. Any election at which such question of locating a solid waste facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"The West Virginia Legislature has found that the location of a Class A solid waste facility has impact upon the county in which it will be located, and further that local citizens should be given the opportunity to participate in the decision of locating a new Class A facility in their community. A Class A facility is authorized to receive between ten and thirty thousand tons of solid waste per month.

The _____ county commission finds the following:

I. The _____ (name of applicant) has obtained site approval for a Class A commercial facility from the _____ (name of the county or regional solid waste authority). The authority has determined that the proposed landfill meets all local siting plan requirements. The local siting plan evaluates local environmental conditions and other factors and authorizes commercial landfills in areas of a county where a commercial landfill can be appropriately located.

II. The West Virginia Public Service Commission has issued a certificate of need, and has approved the operation of the Class A landfill. The Public Service Commission has determined that the landfill complies with the state solid waste management plan and based on the anticipated volume of garbage expected to be received at the landfill, that the proposal is consistent with public convenience and necessity.

Please vote whether to approve construction of the facility by responding to the following question:

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Shall the _____ commercial solid waste facility located within _____ County, be permitted to handle between ten and thirty thousand tons of solid waste per month?

/ / For the facility

/ / Against the facility

(Place a cross mark in the square opposite your choice.)"

(3) If a majority of the legal votes cast upon the question is against the facility, the Division of Environmental Protection shall not proceed any further with the application. If a majority of the legal votes cast upon the question be for the facility, then the application process as set forth in this article and §22-15-1 *et seq*. of this code may proceed: *Provided*, That such vote is not binding on nor does it require the Division of Environmental Protection to issue the permit. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: *Provided, however*, That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

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§22C-4A-3. Referendum for approval of conversion of a Class B facility to a Class A facility.

(a) The purpose of the petition and referendum for approval of conversions of Class B facilities to Class A facilities is to allow the local community an opportunity to participate in the decision of whether the local infrastructure and environment are appropriate for expansion of a Class B facility to a Class A facility, and to assure that the local community accepts the associated benefits and detriments of having a Class A facility located in their county.

(b) Within 21 following receipt of a certificate of need from the Public Service Commission as required by §24-2-1c of this code, and local solid waste authority approval as required in §22C-4-26 of this code, the county commission shall complete publication of a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq*. of this code, in the qualified newspaper of general circulation in the county wherein the solid waste facility is located. Registered voters residing in the county may petition the county commission to place the issue of whether a Class B facility be expanded to a Class A facility be placed on the ballot at the next primary or general election held not less than 100 days after the deadline for filing the petition. The petition shall be in writing, in the form prescribed by the Secretary of State, and shall include the printed name, residence address, and date of birth of each person whose signature appears on the petition. The petition shall be filed with the county commission not less than 60 days after the last date of publication of the notice provided in this section. Upon receipt of completed petition forms, the county commission shall immediately forward those forms to the clerk of the county commission for verification of the signatures and the voter registration of the persons named on the petition. If a primary or general election is scheduled not more than 120 days and not less than 100 days following the deadline for filing the petitions, the clerk of the county commission shall complete the verification of the signatures within 30 days and shall report the number of valid signatures to the county commission. In all other cases, the clerk of the county commission shall complete verification in a timely manner. Upon verification of the signatures of registered voters residing in the county equal to not less than 15 percent of the number of votes cast within the county for Governor at the preceding gubernatorial election, and not less than 70 days before the election, the county commission shall order a referendum be placed upon the ballot:

(1) Such referendum is to determine whether it is the will of the voters of the county that the Class B facility be converted to a Class A facility. Any election at which such question of locating a solid waste facility is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The Secretary of State shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition. Should the petition fail to meet the requirements set forth above, the application process as set forth in this article and §22-15-1 *et seq*. of this

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code, may proceed.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"The West Virginia Legislature finds that expansion of a Class B solid waste facility to a Class A solid waste facility has impact to the county in which it will be located, and further that local citizens should be afforded the opportunity to participate in the decision of locating a Class A facility in their community. A Class A facility is authorized to receive between 10 and 30 thousand tons of solid waste per month. Fifteen percent of the registered voters in _____ county have signed a petition to cause a referendum to determine the following question:

The _____ county commission finds the following:

I. The _____ (name of applicant) has obtained site approval for a Class A commercial facility from the _____ (name of the county or regional solid waste authority). The authority has determined that the proposed landfill meets all local siting plan requirements. The local siting plan evaluates local environmental conditions and other factors and authorizes commercial landfills where a commercial landfill can be appropriately located.

II. The West Virginia Public Service Commission has issued a certificate of need, and has approved the operation of the Class A landfill. The Public Service Commission has determined that the landfill complies with the state solid waste management plan and that based on the anticipated volume of garbage expected to be received at the landfill, that the proposal is consistent with public convenience and necessity.

Please vote whether to approve construction of the facility by responding to the following question:

Shall the _____ solid waste facility, located within _____ County, West Virginia, be permitted to handle between 10 and 30 thousand tons of solid waste per month?

/ / For conversion of the facility

/ / Against conversion of the facility

(Place a cross mark in the square opposite your choice.)"

(3) If a majority of the legal votes cast upon the question is against the facility, then the Division of Environmental Protection shall not proceed any further with the application. If a majority of the legal votes cast upon the question be for the facility, then the application process as set forth in this article and §22-15-1 *et seq*. of this code may proceed: *Provided*, That such vote is not binding on nor does it require the Division of Environmental Protection

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to modify the permit. If the majority of the legal votes cast is against the question, the question may be submitted to a vote at any subsequent election in the manner herein specified: *Provided, however,* That the question may not be resubmitted to a vote until two years after the date of the previous referendum.

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

(a) The purpose of the petition and referendum for approval of modification of Class A facilities is to allow the local community an opportunity to participate in the decision of whether the local infrastructure and environment are appropriately suited for expansion of the Class A facility, and to assure that the local community accepts the associated benefits and determents of having a Class A facility located in their county.

(b) The referendum provisions contained herein must be met 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.

(c) Within twenty-one days following receipt of a certificate of need from the Public Service Commission as required by section one-c, article two, chapter twenty-four of this code, and local solid waste approval as required in section twenty-six, article four of this chapter, the county commission shall complete publication of a Class II legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, in the qualified newspaper of general circulation in the county wherein the solid waste facility is located. Registered voters residing in the county may petition the county commission to place the issue of whether a Class A facility be permitted to increase the maximum tonnage allowed to be received at the facility be placed on the ballot at the next primary, general or other countywide election held not less than one hundred days after the deadline for filing the petition. The petition shall be in writing, in the form prescribed by the Secretary of State, and shall include the printed name, residence address and date of birth of each person whose signature appears on the petition. The petition shall be filed with the county commission not less than sixty days after the last date of publication of the notice provided in this section. Upon receipt of completed petition forms, the county commission shall immediately forward those forms to the clerk of the county commission for verification of the signatures and the voter registration of the persons named on the petition. If a primary, general or other countywide election is scheduled not more than one hundred twenty days and not less than one hundred days following the deadline for filing the petitions, the clerk of the county commission shall complete the verification of the signatures within thirty days and shall report the number of valid signatures to the county commission. In all other cases, the clerk of the county commission shall complete verification in a timely manner. Upon verification of the signatures of registered voters residing in the county equal to not less than fifteen percent of the number of votes cast within the county for Governor at the preceding gubernatorial election, and not less than seventy days before the election, the county commission shall order a referendum be placed upon the ballot:

(1) Such referendum is to determine whether it is the will of the voters of the county that the Class A facility applicant be permitted to increase the maximum tonnage allowed to be received at the facility not to exceed thirty thousand tons per month. Any election at which such question is voted upon shall be held at the voting precincts established for holding primary or general elections. All of the provisions of the general election laws, when not in

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conflict with the provisions of this article, apply to voting and elections hereunder, insofar as practicable. The Secretary of State shall prescribe the form of the petition which shall include the printed name, address and date of birth of each person whose signature appears on the petition. Should the petition fail to meet the requirements set forth above, the application process as set forth in this article and article fifteen, chapter twenty-two of this code, may proceed.

(2) The ballot, or the ballot labels where voting machines are used, shall have printed thereon substantially the following:

"The West Virginia Legislature finds that expansion of a Class A solid waste facility has significant impact to the community in which it will be located, and further that local citizens should be afforded the opportunity to participate in the decision of locating a Class A facility in their community. The _____ facility is currently authorized to receive _____ thousand tons of solid waste per month. The _____ facility is proposing to be authorized to receive _____ thousand tons of solid waste per month. Fifteen percent of the registered voters in _____ county have signed a petition to cause a referendum to determine the following question:

The _____ county commission finds the following:

I. The _____ (name of applicant) has obtained site approval to expand a Class A commercial facility from the _____ (name of the county or regional solid waste authority). The authority has determined that the proposed landfill meets all local siting plan requirements. The local siting plan evaluates local environmental conditions and other factors and authorizes commercial landfills where a commercial landfill can be appropriately located.

II. The West Virginia Public Service Commission has issued a certificate of need, and has approved the expansion of the Class A landfill. The Public Service Commission has determined that the landfill complies with the state solid waste management plan and that based on the anticipated volume of garbage expected to be received at the landfill, that the proposal is consistent with public convenience and necessity.

Please vote whether to approve construction of the facility by responding to the following question:

Shall the _____ solid waste facility located within _____ County, West Virginia, be allowed to handle a maximum of _____ solid waste per month?

/ For the increase in maximum allowable tonnage

/ Against the increase in maximum allowable tonnage

(Place a cross mark in the square opposite your choice.)"

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(3) If a majority of the legal votes cast upon the question is against allowing the Class A facility to increase the maximum tonnage of solid waste allowed to be received per month at the facility, then the Division of Environmental Protection shall not proceed to modify the Class A facility permit to increase the maximum allowable tonnage. If a majority of the legal votes cast upon the question is for allowing the Class A facility to increase the maximum tonnage of solid waste allowed to be received per month at such facility, then the application process as set forth in this article and article fifteen, chapter twenty-two of this code may proceed: Provided, That such vote is not binding on nor does it require the county or regional solid waste authority or the Division of Environmental Protection to approve an application to modify the permit. If the majority of the legal votes cast is against the question, that does not prevent the question from again being submitted to a vote at any subsequent election in the manner provided for in this section: Provided, however, That an applicant may not resubmit the question for a vote prior to a period of two years from the date of the previous referendum herein described.

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