

# 3146

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1988



# ENROLLED

*Com. Sub. for*  
HOUSE BILL No. *3146*

(By Mr. *Speake, Mr. Chambers, and*  
*Delegate Buchanan*)



Passed *March 12,* 1988

In Effect *Ninety Days from* Passage

**ENROLLED**

COMMITTEE SUBSTITUTE

FOR

**H. B. 3146**

(By MR. SPEAKER, MR. CHAMBERS, and DELEGATE BUCHANAN)

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[Passed March 12, 1988; in effect ninety days from passage.]

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AN ACT to amend and reenact sections three-e and three-f, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend article five of said chapter by adding thereto a new section, designated section twenty-two; to amend article sixteen of said chapter by adding thereto a new section, designated section nine; to amend and reenact sections four, six and eight, article twenty-six, chapter sixteen of said code; to amend article two-a, chapter seventeen of said code by adding thereto a new section, designated section twenty-one; to amend and reenact sections two, four and eight, article twenty-three of said chapter; to amend article ten, chapter seventeen-a of said code by adding thereto a new section, designated section fifteen; to amend and reenact section fifteen, article five, chapter twenty of said code; to amend and reenact sections one, two, four and five, article five-f of said chapter; to further amend said article five-f of said chapter by adding thereto five new sections, designated sections four-a, five-a, five-b, five-c and five-d; to amend and reenact sections twenty-five and twenty-six, article seven of said chapter; to further amend said article by adding thereto a new section, designated section twenty-seven; to further amend said chapter twenty by adding

thereto a new article, designated article nine; to amend and reenact section three, article one, chapter twenty-four of said code; to amend article two of said chapter by adding thereto two new sections, designated sections one-b and one-c; to amend and reenact sections thirteen and thirteen-b, article five, chapter forty-nine of said code; to amend and reenact section seventeen, article eleven, chapter sixty-one of said code; to amend and reenact section one, article eleven-a, chapter sixty-two of said code; and to amend and reenact sections three and thirteen, article twelve of said chapter, all relating generally to the collection of solid waste and litter; expiring authority of county commissions to acquire land for landfills; expiring county commissions authority to operate landfills; expiring authority of county commissions to establish and operate solid waste disposal services; authorizing solid waste assessment fees to be assessed by counties; expiration of the authority of county solid waste authorities; creation of the West Virginia resource recovery-solid waste disposal authority; board of directors; director of the department of natural resources to be a member of the board; a person with knowledge of environmental laws as a member of the board; powers, duties and responsibilities of the resource recovery solid waste disposal authority; designation of solid waste disposal sheds; standards for creating sheds; exemption of authority from legislative rulemaking in creating sheds; authorizing the commissioner of the department of highways to contract with the department of natural resources to implement litter control program; definitions; standards for salvage yards; prohibition against locating salvage yards in certain places; requirements for screening salvage yards from sight of roadways; authority of the commissioner of the department of highways to remove certain salvage yards; additional fee to be added to motor vehicle registration fee; dedication of fee to highway litter control fund; prohibition against littering along or in streams or other waterways; criminal penalties; transfer of the solid waste management from department of health to department of natural resources; legislative findings; definitions; definition of solid waste disposal

shed; powers and duties of the director of the department of natural resources as to the solid waste management act; director's powers and authorities in granting permits for solid waste disposal authorities; background and personal history of the applicant as grounds for denying a permit application; requirement that all persons dumping solid waste and all solid waste disposal facilities operators file records with the department of natural resources; use of litter control fund moneys to assist county and regional authorities in establishing comprehensive litter plans; approval permit required for certain landfills; procedure for obtaining approval permits; fee for approval permits; prohibition against open dumps; compliance schedules for illegal dumps; prohibition against adding to existing dumps; expiration of department of health permits to operate landfills; issuance of landfill permits by the director of the department of natural resources; renewal permits; imposition of solid waste assessment fee; collection of fees; exemption from fees; criminal penalties; dedication of proceeds of fees; creation of the solid waste enforcement fund; creation of the resource recovery-solid waste disposal authority reserve fund; creation of the solid waste reclamation and environmental response fund; legislative findings; severability of article; performance bonds for solid waste disposal facility applicants; bonding requirements; period of liability under performance bonding; alternative forms for performance bonds; forfeiture or release of performance bonds; pre-siting notice; pre-siting notice procedures; limitations on permits; provisions for optional recycling of solid waste materials; prohibition against transloading of solid waste within a municipality; West Virginia litter control program; grants for establishment and operation of solid waste disposal authorities to county and regional authorities; dedication of funds to the litter control fund; unlawful disposal of litter; rebuttable inference of improper disposal; civil and criminal penalties continued; establishment of inmate litter clean up programs by county commissions in the regional jail authority; voluntary recycling programs by county or regional solid waste authorities; restrictions on certain

beverage containers; penalties; director of the department of natural resources to report to the Legislature regarding the effectiveness of the litter control program; creation of county and regional solid waste authorities; legislative findings; definitions; management of solid waste authorities; submission of comprehensive litter in solid waste control plan by county and regional authorities; mandatory disposal of solid waste; civil penalties; general powers of authorities; study and report of the public service commission; use of inmates, parolees and persons on probation in the litter parole program.

*Be it enacted by the Legislature of West Virginia:*

That sections three-e and three-f, article one, chapter seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; that article five of said chapter be amended by adding thereto a new section, designated section twenty-two; that article sixteen of said chapter be amended by adding thereto a new section, designated section nine; that sections four, six and eight, article twenty-six, chapter sixteen of said code be amended and reenacted; that article two-a, chapter seventeen of said code be amended by adding thereto a new section, designated section twenty-one; that sections two, four and eight, article twenty-three of said chapter be amended and reenacted; that article ten, chapter seventeen-a be amended by adding thereto a new section, designated section fifteen; that section fifteen, article five, chapter twenty of said code be amended and reenacted; that sections one, two, four and five, article five-f of said chapter be amended and reenacted; that said article five-f be further amended by adding thereto five new sections, designated sections four-a, five-a, five-b, five-c and five-d; that sections twenty-five and twenty-six, article seven of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section twenty-seven; that said chapter twenty be further amended by adding thereto a new article, designated article nine; that section three, article one, chapter twenty-four of said code be amended and reenacted; that article two of said chapter be amended by adding thereto two new sections, designated sections one-b and one-c; that sections thirteen and thirteen-b, article five, chapter forty-nine of said code be amended and

reenacted; that section seventeen, article eleven, chapter sixty-one of said code be amended and reenacted; that section one, article eleven-a, chapter sixty-two of said code be amended and reenacted; and that sections three and thirteen, article twelve of said chapter be amended and reenacted, all to read as follows:

**CHAPTER 7. COUNTY COMMISSIONS  
AND OFFICERS.**

**ARTICLE 1. COUNTY COMMISSIONS GENERALLY.**

**§7-1-3e. Acquisition of land for, and operation of, public refuse dumps and sanitary landfills.**

1 In addition to all other powers and duties now  
2 conferred by law upon county courts, such courts are  
3 hereby empowered to acquire, by purchase, right of  
4 eminent domain, lease, gift, or otherwise, land for the  
5 establishment of public refuse dumps and sanitary  
6 landfills, and to operate and maintain such dumps and  
7 fills, and to pay for such land, and the operation and  
8 maintenance of such dumps and fills, in whole or part,  
9 either out of general funds in the county treasury, or out  
10 of special funds to be derived from fees paid by users  
11 of such facilities: *Provided*, That the authority granted  
12 by this section expires on the first day of January, one  
13 thousand nine hundred eighty-nine.

**§7-1-3f. Establishment and operation of garbage and refuse collection and disposal services.**

1 In addition to all other powers and duties now  
2 conferred by law upon county courts, such courts are  
3 hereby empowered to establish, operate and maintain,  
4 either directly or by contract, garbage and refuse  
5 collection and disposal services, and to pay for the  
6 establishment, operation and maintenance of such  
7 collection and disposal services, in whole or in part,  
8 either out of general funds in the county treasury, or out  
9 of special funds to be derived from fees charged to and  
10 paid by the users of such services or a combination of  
11 both such general revenue or special fund: *Provided*,  
12 That the power and authority hereby conferred upon  
13 county courts shall not be exercised in territory included

14 within the boundaries of any municipal corporation,  
15 except as provided herein. Any county court for the  
16 purpose of implementing this section is hereby autho-  
17 rized to enter into such contract or contracts with any  
18 municipality or county within this state for the purposes  
19 of carrying out the powers vested in such county courts  
20 by this section, and all said county courts may, pursuant  
21 to such contract, exercise the authority herein granted  
22 within such contracting municipality: *Provided, how-*  
23 *ever,* That where an area is furnished garbage and  
24 refuse collection service by an existing carrier under  
25 authority issued by the public service commission of  
26 West Virginia, the county court may enter into contracts  
27 or agreements with such carrier to supplement such  
28 existing service, but shall not enter into any competing  
29 service without authority being granted by the public  
30 service commission.

31 The term "users" as used herein shall mean and  
32 include any person to whom such services are made  
33 available under the provisions of this section.

34 The authority granted by this section expires on the  
35 first day of January, one thousand nine hundred eighty-  
36 nine.

#### ARTICLE 5. FISCAL AFFAIRS.

##### §7-5-22. County solid waste assessment fees authorized.

1 Each county commission is hereby authorized to  
2 impose, on and after the first day of July, one thousand  
3 nine hundred eighty-eight, a similar solid waste  
4 assessment fee to that imposed by section five-a, article  
5 five-f, chapter twenty of this code at a rate not to exceed  
6 fifty cents per ton or part thereof upon the disposal of  
7 solid waste in that county. Net proceeds of the fee  
8 authorized by this section shall be expended solely for  
9 public capital improvements.

#### ARTICLE 16. COUNTY SOLID WASTE AUTHORITIES.

##### §7-16-9. Expiration of authority.

1 The authority granted by this article expires on the  
2 first day of January, one thousand nine hundred eighty-

3 nine.

**CHAPTER 16. PUBLIC HEALTH.**

**ARTICLE 26. WEST VIRGINIA RESOURCE RECOVERY — SOLID WASTE DISPOSAL AUTHORITY.**

**§16-26-4. West Virginia resource recovery — solid waste disposal authority and board created; organization of authority and board; appointment and qualification of board members; their term of office, compensation and expenses; director of authority.**

1 The West Virginia resource recovery — solid waste  
2 disposal authority is hereby created. The authority is a  
3 governmental instrumentality of the state and a body  
4 corporate. The exercise by the authority of the powers  
5 conferred on it by this article and the carrying out of  
6 its purposes and duties are essential governmental  
7 functions and are for a public purpose.

8 The authority shall be controlled, managed and  
9 operated by a six-member board known as the West  
10 Virginia resource recovery — solid waste disposal  
11 authority board which is hereby created. The director  
12 of the department of health and the director of the  
13 department of natural resources shall be members ex  
14 officio of the board. The other five members of the board  
15 shall be appointed by the governor, by and with the  
16 advice and consent of the Senate, for terms of one, two,  
17 three, four and five years, respectively. One appointee  
18 shall be a member of the West Virginia association of  
19 county officials, one a member of the West Virginia  
20 municipal league and a resident of a municipality as  
21 defined in section two, article one, chapter eight of this  
22 code, one a member of a regional council as defined in  
23 section two, article twenty-five, chapter eight of this  
24 code, one a contract solid waste hauler who holds a valid  
25 certificate of convenience and necessity issued by the  
26 public service commission and one person knowledge-  
27 able in environmental law. The successor of each such  
28 appointed member shall be appointed for a term of four  
29 years in the same manner the original appointments  
30 were made and so that the representation on the board



31 as set forth in this section is preserved, except that any  
32 person appointed to fill a vacancy occurring prior to the  
33 expiration of the term for which his predecessor was  
34 appointed shall be appointed only for the remainder of  
35 such term. Each board member shall serve until the  
36 appointment and qualification of his successor.

37 No more than three of the appointed board members  
38 may at any one time be from the same congressional  
39 district or belong to the same political party. No  
40 appointed board member may be an officer or employee  
41 of the United States or this state. Appointed board  
42 members may be reappointed to serve additional terms.  
43 All members of the board shall be citizens of the state.  
44 Each appointed member of the board, before entering  
45 upon his duties, shall comply with the requirements of  
46 article one, chapter six of this code and give bond in the  
47 sum of twenty-five thousand dollars. Appointed  
48 members may be removed from the board only for the  
49 same causes as elective state officers may be removed.

50 Annually the board shall elect one of its appointed  
51 members as chairman, another as vice chairman and  
52 appoint a secretary-treasurer, who need not be a  
53 member of the board. Four members of the board shall  
54 constitute a quorum and the affirmative vote of four  
55 members shall be necessary for any action taken by vote  
56 of the board. No vacancy in the membership of the  
57 board shall impair the rights of a quorum by such vote  
58 to exercise all the rights and perform all the duties of  
59 the board and the authority. The person appointed as  
60 secretary-treasurer shall give bond in the sum of fifty  
61 thousand dollars. If a board member is appointed as  
62 secretary-treasurer, he shall give bond in the sum of  
63 twenty-five thousand dollars in addition to the bond  
64 required in the preceding paragraph.

65 The ex officio members of the board shall not receive  
66 any compensation for serving as a board member. Each  
67 of the five appointed members of the board shall receive  
68 compensation of fifty dollars for each day actually spent  
69 in attending meetings of the board or in the discharge  
70 of his duties as a member of the board, but not to exceed  
71 two thousand five hundred dollars in any fiscal year.

72 Each of the seven board members shall be reimbursed  
73 for all reasonable and necessary expenses actually  
74 incurred in the performance of his duties as a member  
75 of the board. All such compensation and expenses  
76 incurred by board members shall be payable solely from  
77 funds of the authority or from funds appropriated for  
78 such purpose by the Legislature and no liability or  
79 obligation shall be incurred by the authority beyond the  
80 extent to which moneys are available from funds of the  
81 authority or from such appropriation.

82 The board shall meet at least four times annually and  
83 at any time upon the call of its chairman or upon the  
84 request in writing to the chairman of four board  
85 members.

86 The board shall appoint a director of the authority.  
87 The director shall have successfully completed one full  
88 year of graduate school and, in addition, shall have two  
89 years of work experience in solid waste management.

**§16-26-6. Powers, duties and responsibilities of authority generally.**

1 The West Virginia resource recovery — solid waste  
2 disposal authority may exercise all powers necessary or  
3 appropriate to carry out and effectuate its corporate  
4 purpose. The authority may:

5 (1) Adopt, and from time to time, amend and repeal  
6 bylaws necessary and proper for the regulation of its  
7 affairs and the conduct of its business, and rules and  
8 regulations, promulgated pursuant to the provisions of  
9 chapter twenty-nine-a of this code, to implement and  
10 make effective its powers and duties.

11 (2) Adopt an official seal.

12 (3) Maintain a principal office which shall be in  
13 Kanawha County, and, if necessary, regional suboffices  
14 at locations properly designated or provided.

15 (4) Sue and be sued in its own name and plead and  
16 be impleaded in its own name, and particularly to  
17 enforce the obligations and covenants made under  
18 sections ten, eleven and sixteen of this article. Any

19 actions against the authority shall be brought in the  
20 circuit court of Kanawha County.

21 (5) Make loans and grants to persons and to govern-  
22 mental agencies for the acquisition or construction of  
23 solid waste disposal projects and adopt rules and  
24 procedures for making such loans and grants.

25 (6) Acquire, construct, reconstruct, enlarge, improve,  
26 furnish, equip, maintain, repair, operate, lease or rent  
27 to, or contract for operation by a governmental agency  
28 or person, solid waste disposal projects, and, in accor-  
29 dance with chapter twenty-nine-a of this code, adopt  
30 rules and regulations for the use of such projects.

31 (7) Make available the use or services of any solid  
32 waste disposal project to one or more persons, one or  
33 more governmental agencies, or any combination  
34 thereof.

35 (8) Issue solid waste disposal revenue bonds and notes  
36 and solid waste disposal revenue refunding bonds of the  
37 state, payable solely from revenues as provided in  
38 section nine of this article unless the bonds are refunded  
39 by refunding bond, for the purpose of paying all or any  
40 part of the cost of or financing by loans to governmental  
41 agencies one or more solid waste disposal projects or  
42 parts thereof.

43 (9) Acquire by gift or purchase, hold and dispose of  
44 real and personal property in the exercise of its powers  
45 and the performance of its duties as set forth in this  
46 article.

47 (10) Acquire in the name of the state, by purchase or  
48 otherwise, on such terms and in such manner as it  
49 deems proper, or by the exercise of the right of eminent  
50 domain in the manner provided in chapter fifty-four of  
51 this code, such public or private lands, or parts thereof  
52 or rights therein, rights-of-way, property, rights,  
53 easements and interests it deems necessary for carrying  
54 out the provisions of this article, but excluding the  
55 acquisition by the exercise of the right of eminent  
56 domain of any solid waste disposal facility operated  
57 under permits issued pursuant to the provisions of

58 article five-f, chapter twenty of this code and owned by  
59 any person or governmental agency. This article does  
60 not authorize the authority to take or disturb property  
61 or facilities belonging to any public utility or to a  
62 common carrier, which property or facilities are  
63 required for the proper and convenient operation of such  
64 public utility or common carrier, unless provision is  
65 made for the restoration, relocation or duplication of  
66 such property or facilities elsewhere at the sole cost of  
67 the authority.

68 (11) Make and enter into all contracts and agreements  
69 and execute all instruments necessary or incidental to  
70 the performance of its duties and the execution of its  
71 powers. When the cost under any such contract or  
72 agreement, other than compensation for personal  
73 services, involves an expenditure of more than two  
74 thousand dollars, the authority shall make a written  
75 contract with the lowest responsible bidder after public  
76 notice published as a Class II legal advertisement in  
77 compliance with the provisions of article three, chapter  
78 fifty-nine of this code, the publication area for such  
79 publication to be the county wherein the work is to be  
80 performed or which is affected by the contract, which  
81 notice shall state the general character of the work and  
82 the general character of the materials to be furnished,  
83 the place where plans and specifications therefor may  
84 be examined and the time and place of receiving bids.  
85 A contract or lease for the operation of a solid waste  
86 disposal project constructed and owned by the authority  
87 or an agreement for cooperation in the acquisition or  
88 construction of a solid waste disposal project pursuant  
89 to section sixteen of this article is not subject to the  
90 foregoing requirements and the authority may enter  
91 into such contract or lease or such agreement pursuant  
92 to negotiation and upon such terms and conditions and  
93 for such period as it finds to be reasonable and proper  
94 under the circumstances and in the best interests of  
95 proper operation or of efficient acquisition or construc-  
96 tion of such project. The authority may reject any and  
97 all bids. A bond with good and sufficient surety,  
98 approved by the authority, shall be required of all  
99 contractors in an amount equal to at least fifty percent

100 of the contract price, conditioned upon the faithful  
101 performance of the contract.

102 (12) Employ managers, superintendents, engineers,  
103 accountants, auditors and other employees, and retain or  
104 contract with consulting engineers, financial consul-  
105 tants, accounting experts, architects, attorneys and such  
106 other consultants and independent contractors as are  
107 necessary in its judgment to carry out the provisions of  
108 this article, and fix the compensation or fees thereof. All  
109 expenses thereof shall be payable solely from the  
110 proceeds of solid waste disposal revenue bonds or notes  
111 issued by the authority, from revenues and from funds  
112 appropriated for such purpose by the Legislature.

113 (13) Receive and accept from any federal agency,  
114 subject to the approval of the governor, grants for or in  
115 aid of the construction of any solid waste disposal project  
116 or for research and development with respect to solid  
117 waste disposal projects and solid waste disposal sheds  
118 and receive and accept from any source aid or contri-  
119 butions of money, property, labor or other things of  
120 value, to be held, used and applied only for the purposes  
121 for which such grants and contributions are made.

122 (14) Engage in research and development with  
123 respect to solid waste disposal projects and solid waste  
124 disposal sheds.

125 (15) Purchase fire and extended coverage and liability  
126 insurance for any solid waste disposal project and for  
127 the principal office and suboffices of the authority,  
128 insurance protecting the authority and its officers and  
129 employees against liability, if any, for damage to  
130 property or injury to or death of persons arising from  
131 its operations and any other insurance the authority may  
132 agree to provide under any resolution authorizing the  
133 issuance of solid waste disposal revenue bonds or in any  
134 trust agreement securing the same.

135 (16) Charge, alter and collect rentals and other  
136 charges for the use or services of any solid waste  
137 disposal project as provided in this article, and charge  
138 and collect reasonable interest, fees and other charges  
139 in connection with the making and servicing of loans to

140 governmental agencies in furtherance of the purposes of  
141 this article.

142 (17) Establish or increase reserves from moneys  
143 received or to be received by the authority to secure or  
144 to pay the principal of and interest on the bonds and  
145 notes issued by the authority pursuant to this article.

146 (18) Do all acts necessary and proper to carry out the  
147 powers expressly granted to the authority in this article.

**§16-26-8. Development and designation of solid waste  
disposal sheds by authority.**

1 Prior to beginning or raising the cost of the first solid  
2 waste disposal project and within one year of the  
3 effective date of this article, the authority shall divide  
4 the state into geographical areas for solid waste  
5 management which shall be known as solid waste  
6 disposal sheds. Before it designates the sheds, the  
7 authority shall consult with the governing bodies of the  
8 counties and municipalities in the state and obtain and  
9 evaluate their opinions as to how many sheds there  
10 should be and where their boundaries should be located.  
11 The authority shall then cause informational gathering  
12 studies and feasibility and cost studies to be made in  
13 order for it to designate the solid waste disposal sheds  
14 within each of which the most dependable, effective,  
15 efficient and economical solid waste disposal projects  
16 may be established. The sheds shall not overlap and  
17 shall cover the entire state.

18 The authority shall designate the sheds so that:

19 (1) The goal of providing solid waste collection and  
20 disposal service to each household, business and industry  
21 in the state can reasonably be achieved.

22 (2) The total cost of solid waste collection and disposal  
23 and the cost of solid waste collection and disposal within  
24 each shed and per person can be kept as low as possible.

25 (3) Solid waste collection and disposal service, facil-  
26 ities and projects can be integrated in the most feasible,  
27 dependable, effective, efficient and economical manner.

28 (4) No county is located in more than one shed.

29 The authority, in developing and designating solid  
30 waste disposal sheds, is exempt from the provisions of  
31 chapter twenty-nine-a. On or before the first day of July,  
32 one thousand nine hundred eighty-eight, the authority  
33 shall file a report designating the composition and  
34 boundaries of all of the sheds in the state register.

## CHAPTER 17. ROAD AND HIGHWAYS.

### ARTICLE 2A. WEST VIRGINIA COMMISSIONER OF HIGHWAYS.

#### §17-2A-21. Commissioner authorized to contract for implementation of litter control programs.

1 In addition to all other powers granted and duties  
2 imposed upon the commissioner, he or she shall contract  
3 with the director of the department of natural resources  
4 and expend moneys from the highway litter control fund  
5 to implement the litter control program and litter  
6 control maintenance of the highways pursuant to article  
7 seven, chapter twenty of this code.

### ARTICLE 23. SALVAGE YARDS.

#### §17-23-2. Definitions.

1 As used in this article:

2 (a) "Salvage" means old or scrap copper, brass, rope,  
3 rags, batteries, paper, rubber, trash, waste, junked,  
4 dismantled or wrecked machinery, machine or motor  
5 vehicles or any parts of any junked, dismantled or  
6 wrecked machinery, machines or motor vehicles, iron,  
7 steel and other old or scrap ferrous or nonferrous  
8 materials.

9 (b) "Salvage yard" means any place which is main-  
10 tained, operated or used for the storing, keeping,  
11 buying, selling or processing of salvage, or for the  
12 operation and maintenance of a motor vehicle  
13 graveyard.

14 (c) "Abandoned salvage yards" means any unlicensed  
15 salvage yard or any salvage yard that was previously  
16 licensed but upon which the license has not been  
17 renewed for more than one year.

18 (d) "Fence" means an enclosure, barrier or screen

19 constructed of materials or consisting of plantings,  
20 natural objects or other appropriate means approved by  
21 the commissioner and located, placed or maintained so  
22 as effectively to screen at all times salvage yards and  
23 the salvage therein contained from the view of persons  
24 passing upon the public roads of this state.

25 (e) "Owner or operator" includes an individual, firm,  
26 partnership, association or corporation or the plural  
27 thereof.

28 (f) "Commissioner" means the commissioner of the  
29 West Virginia department of highways.

30 (g) "Residential community" means an area wherein  
31 five or more occupied private residences are located  
32 within any one thousand feet radius.

33 (i) "Occupied private residence" means a private  
34 residence which is occupied for at least six months each  
35 year.

**§17-23-4. Areas where establishment prohibited; screen-  
ing requirements; existing licensed yards;  
approval permit required; issuance; county  
planning commission criteria satisfied; fee.**

1 On and after the effective date of this article, (1) no  
2 license shall be issued to establish a salvage yard or any  
3 part thereof within one thousand feet of the nearest edge  
4 of the right-of-way of any road within the state road  
5 system designated and classified or redesignated and  
6 reclassified as expressway, trunkline or feeder, or any  
7 road within the state road system designated and  
8 classified or redesignated and reclassified for purposes  
9 of allocation of federal highway funds as part of the  
10 federal-aid interstate or primary systems: *Provided,*  
11 That this limitation shall not apply to landfills estab-  
12 lished and maintained by the state or any county or  
13 municipality if such landfill is effectively screened and  
14 obscured by natural objects, plantings, fences or other  
15 appropriate means so as not to be visible from the main  
16 traveled way of the system, and (2) no license shall be  
17 issued to establish a salvage yard or any part thereof  
18 within five hundred feet of the nearest edge of the right-



19 of-way of any state local service road, unless the view  
20 thereof from such state local service road shall be  
21 effectively screened and obscured by fences: *Provided,*  
22 *however,* That this limitation shall not apply to landfills  
23 established and maintained by the state or any county  
24 or municipality if such landfill is effectively screened  
25 and obscured by natural objects, plantings, fences or  
26 other appropriate means so as not to be visible from the  
27 main traveled way of the system, and (3) no license may  
28 be issued allowing a salvage yard within one thousand  
29 feet of the nearest occupied private residence, unless  
30 waived by the owner of such residence, or within five  
31 thousand feet of the nearest occupied private residence  
32 which is part of a residential community. The provisions  
33 of this paragraph, as amended, shall apply only to  
34 salvage yards licensed after the first day of April, one  
35 thousand nine hundred eighty-eight.

36 The license of any salvage yard duly issued under the  
37 former provisions of this article, which salvage yard or  
38 any part thereof on the effective date of this article, is  
39 (1) within one thousand feet of the nearest edge of the  
40 right-of-way of any road within the state road system  
41 designated and classified or redesignated and reclassi-  
42 fied as expressway, trunkline or feeder, or any road  
43 within the state road system designated and classified  
44 or redesignated and reclassified for purposes of alloca-  
45 tion of federal highway funds as part of the federal-aid  
46 interstate or primary systems or is (2) within five  
47 hundred feet of the nearest edge of the right-of-way of  
48 any state local service road, or is (3) within one  
49 thousand feet of the nearest occupied private residence  
50 or within five thousand feet of the nearest occupied  
51 private residence which is part of a residential commu-  
52 nity, may be renewed only if the view of the said salvage  
53 yard and all parts thereof are effectively screened from  
54 the adjacent road by natural objects, plantings, fences  
55 or other appropriate means or a waiver is obtained from  
56 the owner of an occupied private residence. The  
57 provisions of this paragraph, as amended, shall apply  
58 only to salvage yards licensed after the first day of  
59 April, one thousand nine hundred eighty-eight.

60 Any salvage yard which, on the effective date of this  
61 article, is duly licensed under the former provisions of  
62 this article may be established or continue to be  
63 operated and maintained without screening by natural  
64 objects, plantings, fences or other appropriate means so  
65 long as any part of such salvage yard is (1) not located  
66 within one thousand feet of any road within the state  
67 road system designated and classified or redesignated  
68 and reclassified as expressway, trunkline or feeder, or  
69 any road within the state road system designated and  
70 classified or redesignated and reclassified for the  
71 purposes of allocation of federal highway funds as part  
72 of the federal-aid interstate or primary systems or is  
73 (2) not located within five hundred feet of the nearest  
74 edge of the right-of-way of any state local service road,  
75 or is (3) not located within one thousand feet of the  
76 nearest residence or within five thousand feet of the  
77 nearest occupied private residence which is part of a  
78 residential community.

79 On or after the first day of July, one thousand nine  
80 hundred eighty-four, any owner or operator establish-  
81 ing, operating or maintaining a salvage yard for which  
82 a license is required under the provisions of this article  
83 is hereby required to first obtain an approval permit  
84 from the county planning commission, or if the county  
85 does not have a county planning commission, from an  
86 appropriate office or agency designated by the county  
87 commission, in which the salvage yard is located. The  
88 county planning commission or designated agency or  
89 office shall promulgate such reasonable rules including,  
90 but not limited to, determining the effect of the proposed  
91 salvage yard on residential, business or commercial  
92 property investment and values, establishing a quota for  
93 the number of salvage yards in the county, and the  
94 social, economic and environmental impact on commu-  
95 nity growth and development in utilities, health, educa-  
96 tion, recreation, safety, welfare and convenience, if any,  
97 before issuing such approval permit. These rules shall  
98 conform to guidelines established in rules promulgated  
99 by the commissioner. The fee for the approval permit  
100 shall be twenty-five dollars, payable upon the filing of  
101 the application on forms to be designated and approved

102 by the county planning commission or designated office  
103 or agency.

104 Upon the granting of an approval permit by the  
105 county planning commission, the owner or operator shall  
106 then apply to the commissioner for a license to operate.  
107 The commissioner may issue a license to the applicant,  
108 but only after an approval permit has issued in the first  
109 instance and the location of the salvage yard is in  
110 compliance with the location requirements of section  
111 four of this article. The approval permit requirement of  
112 this section does not apply to any owner or operator who  
113 has established, or is operating or maintaining, a  
114 salvage yard prior to the first day of July, one thousand  
115 nine hundred eighty-four.

**§17-23-8. Authority of commissioner to remove or purchase certain yards; restrictions on relicensing at location where yard terminated.**

1 Whenever a salvage yard is so situated that it or any  
2 part thereof is or shall be required to be effectively  
3 screened by fences as provided in section four of this  
4 article, and the said salvage yard or any part thereof  
5 cannot, in the opinion of the commissioner, be effectively  
6 screened by fences to comply with the provisions of this  
7 article, so that the owner or operator of the salvage yard  
8 cannot lawfully continue to operate and do business in  
9 compliance with the terms hereof, or if a salvage yard  
10 has been abandoned, then and only in such events, the  
11 commissioner, in addition to all other powers herein  
12 conferred, may (1) with the consent of said owner or  
13 operator pay the cost of removal of all salvage and  
14 equipment from such salvage yard to such other location  
15 as the said owner or operator may direct whereon a  
16 salvage yard business may be conducted in compliance  
17 with the provisions of this article, or (2) purchase at  
18 private sale or acquire by proceeding in eminent  
19 domain, in accordance with the provisions of chapter  
20 fifty-four of this code, all such property rights and  
21 interests, other than title to real property, as are  
22 necessary and required to effect a lawful termination of  
23 the salvage business conducted on any such salvage  
24 yard, or on any part thereof.

25 If any salvage yard at any location is terminated  
26 under the provisions of this section or by court order as  
27 provided in section nine of this article, the commissioner  
28 shall not thereafter license any salvage yard at any such  
29 location if such location or any part thereof is (1) within  
30 one thousand feet of the nearest edge of the right-of-way  
31 of any road within the state road system designated and  
32 classified or redesignated and reclassified as express-  
33 way, trunk line or feeder, or any road within the state  
34 road system designated and classified or redesignated  
35 and reclassified for purposes of allocation of federal  
36 highway funds as part of the federal-aid interstate or  
37 primary systems or (2) within five hundred feet of the  
38 nearest edge of the right-of-way of any state local service  
39 road unless and until the view of such salvage yard or  
40 any part thereof from such state local service road is  
41 screened by fences as provided in this article.

**CHAPTER 17A. MOTOR VEHICLE  
ADMINISTRATION, REGISTRATION,  
CERTIFICATE OF TITLE, AND  
ANTITHEFT PROVISIONS.**

**ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.**

**§17A-10-15. Additional fee for contribution to the high-  
way litter control fund.**

1 In addition to each fee provided for in this article, an  
2 additional one dollar fee shall be imposed on the  
3 issuance of each certificate of registration and renewal  
4 thereof issued pursuant to article three of this chapter.  
5 All money collected under this section shall be deposited  
6 in the state treasury and credited to a fund to be  
7 established within the department of highways, named  
8 the "Highway Litter Control Fund" for litter control  
9 maintenance of the highways. The additional fee  
10 provided herein shall be imposed for each application  
11 for such certificate and renewal thereof made on or after  
12 the first day of July, one thousand nine hundred eighty-  
13 eight.

**CHAPTER 20. NATURAL RESOURCES.**

**ARTICLE 5. WATER RESOURCES.**

**§20-5-15. Litter along streams, criminal penalties, enforcement.**

1 It shall be unlawful to place, deposit, dump or throw,  
2 or cause to be placed, deposited, dumped or thrown, any  
3 litter as defined in section twenty-four, article seven of  
4 this chapter and also any garbage, refuse, trash, can,  
5 bottle, paper, ashes, carcass of any dead animal or any  
6 part thereof, offal or any other offensive or unsightly  
7 matter into any river, stream, creek, branch, brook, lake  
8 or pond, or upon the surface of any land within one  
9 hundred yards thereof, or in such location that high  
10 water or normal drainage conditions will cause any such  
11 materials or substances to be washed into any river,  
12 stream, creek, branch, brook, lake or pond.

13 No portion of this section shall be construed to restrict  
14 an owner, renter or lessee in the use of his own private  
15 property or rented or leased property or to prohibit the  
16 disposal of any industrial and other wastes into waters  
17 of this state in a manner consistent with the provisions  
18 of article five-a of this chapter. But if any owner, renter  
19 or lessee, private or otherwise, knowingly permits any  
20 such materials or substances to be placed, deposited,  
21 dumped or thrown in such location that high water or  
22 normal drainage conditions will cause any such mate-  
23 rials or substances to wash into any river, stream, creek,  
24 branch, brook, lake or pond, it shall be deemed prima  
25 facie evidence that such owner, renter or lessee intended  
26 to violate the provisions of this section.

27 In addition to enforcement by the director, the chief  
28 of the division of water resources, and the department's  
29 chief law-enforcement officer, the provisions of this  
30 section may be enforced by all other proper law-  
31 enforcement agencies.

32 Any person violating any provision of this section shall  
33 be guilty of a misdemeanor, and, upon his or her first  
34 conviction, shall be fined not less than fifty nor more  
35 than five hundred dollars and may be required, in the  
36 discretion of the court, to pick up and remove from any  
37 area of a bank of any river, stream, creek, branch,  
38 brook, lake or pond, or other property with prior

39 permission of the owner, the area to be specified by the  
 40 court, any and all litter, garbage, refuse, trash, cans,  
 41 bottles, papers, ashes, carcass of any dead animal or any  
 42 part thereof, offal or any other offensive or unsightly  
 43 matter placed, deposited, dumped or thrown contrary to  
 44 the provisions of this section by anyone prior to the date  
 45 of such conviction. Upon his or her second conviction,  
 46 such person shall be fined not less than two hundred  
 47 fifty dollars nor more than one thousand dollars and  
 48 imprisoned in the county jail not less than twenty-four  
 49 hours nor more than six months. Upon such person's  
 50 third and successive conviction, he or she shall be fined  
 51 not less than five hundred dollars nor more than two  
 52 thousand dollars and imprisoned in the county jail not  
 53 less than forty-eight hours nor more than one year.

#### ARTICLE 5F. SOLID WASTE MANAGEMENT ACT.

##### §20-5F-1. Purpose and legislative findings.

1 (a) The purpose of this article is to transfer jurisdic-  
 2 tion over the management of solid waste under section  
 3 nine, article one, chapter sixteen of the code from the  
 4 department of health to the department of natural  
 5 resources and to establish a comprehensive program of  
 6 controlling solid waste disposal.

7 (b) The Legislature finds that uncontrolled, inade-  
 8 quately controlled and improper collection, transporta-  
 9 tion, processing and disposal of solid waste (1) is a  
 10 public nuisance and a clear and present danger to  
 11 people; (2) provides harborages and breeding places for  
 12 disease-carrying, injurious insects, rodents and other  
 13 pests harmful to the public health, safety and welfare;  
 14 (3) constitutes a danger to livestock and domestic  
 15 animals; (4) decreases the value of private and public  
 16 property, causes pollution, blight and deterioration of  
 17 the natural beauty and resources of the state and has  
 18 adverse economic and social effects on the state and its  
 19 citizens; (5) results in the squandering of valuable  
 20 nonrenewable and nonreplenishable resources contained  
 21 in solid waste; (6) that resource recovery and recycling  
 22 reduces the need for landfills and extends their life; and  
 23 that (7) proper disposal, resource recovery or recycling

24 of solid waste is for the general welfare of the citizens  
25 of this state.

26 (c) The Legislature further finds that disposal of solid  
27 waste from unknown origins in West Virginia threatens  
28 the environment and the public health, safety and  
29 welfare, and therefore, it is in the interest of the public  
30 to identify the type, amount and origin of solid waste  
31 accepted for disposal at West Virginia solid waste  
32 facilities.

33 (d) The Legislature further finds that other states of  
34 these United States of America have imposed stringent  
35 standards for the proper collection and disposal of solid  
36 waste and that the relative lack of such standards and  
37 enforcement for such activities in West Virginia has  
38 resulted in the importation and disposal in the state of  
39 increasingly large amounts of infectious, dangerous and  
40 undesirable solid wastes and hazardous waste from  
41 other states by persons and firms who wish to avoid the  
42 costs and requirements for proper, effective and safe  
43 disposal of such wastes in the states of origin.

**§20-5F-2. Definitions.**

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

3 (a) "Approved solid waste facility" means a solid  
4 waste facility or practice which has a valid permit  
5 under this article;

6 (b) "Director", "board", "chief", "person", "persons",  
7 "applicant", "water", "waters", "water resources",  
8 "sewage", "point source", "code" and "department" shall  
9 have the same meaning as defined in section two article  
10 five-a, chapter twenty of the code;

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

15 (d) "Sludge" means any solid, semisolid, residue or  
16 precipitate, separated from or created by a municipal,  
17 commercial or industrial waste treatment plant, water

18 supply treatment plant or air pollution control facility  
19 or any other such waste having similar origin;

20 (e) "Solid waste" means any garbage, paper, litter,  
21 refuse, cans, bottles, sludge from a waste treatment  
22 plant, water supply treatment plant or air pollution  
23 control facility, other discarded material, including  
24 carcasses of any dead animal or any other offensive or  
25 unsightly matter, solid, liquid, semisolid or contained  
26 liquid or gaseous material resulting from industrial,  
27 commercial, mining or from community activities but  
28 does not include solid or dissolved material in sewage,  
29 or solid or dissolved materials in irrigation return flows  
30 or industrial discharges which are point sources and  
31 have permits under article five-a, chapter twenty of the  
32 code, or source, special nuclear or by-product material  
33 as defined by the Atomic Energy Act of 1954, as  
34 amended, or a hazardous waste either identified or  
35 listed under article five-e, chapter twenty of the code or  
36 refuse, slurry and overburden regulated under article  
37 six, chapter twenty of the code;

38 (f) "Solid waste disposal" means the practice of  
39 disposing solid waste including placing, depositing,  
40 dumping or throwing or causing to be placed, deposited,  
41 dumped or thrown any solid waste;

42 (g) "Solid waste facility" means any system, facility,  
43 land, contiguous land, improvements on the land,  
44 structures or other appurtenances or methods used for  
45 processing, recycling or disposing of solid waste,  
46 including landfills, transfer stations, resource recovery  
47 facilities and other such facilities not herein specified;

48 (h) "Commercial solid waste facility" means any solid  
49 waste facility which accepts solid waste generated by  
50 sources other than the owner or operator of the facility  
51 and shall not include an approved solid waste facility  
52 owned and operated by a person for the sole purpose of  
53 disposing of solid wastes created by that person or such  
54 person and other persons on a cost-sharing or non-profit  
55 basis; and

56 (i) "Solid waste disposal shed" means the geographical  
57 area which the resource recovery — solid waste disposal



58 authority designates and files in the state register  
59 pursuant to section eight, article twenty-six, chapter  
60 sixteen of this code.

**§20-5F-4. Powers and duties; rules and rule making.**

1 In addition to all other powers, duties, responsibilities  
2 and authority granted and assigned to the director and  
3 chief in the code and elsewhere described by law, they  
4 are hereby empowered as follows:

5 (a) The director shall adopt rules and regulations in  
6 compliance with the West Virginia administrative  
7 procedures act to carry out the provisions of this article  
8 including modifying any existing rules and regulations  
9 and establishing permit application fees up to an  
10 amount sufficient to defray the costs of permit review.  
11 In promulgating rules and regulations the director shall  
12 consider and establish requirements based on the  
13 quantity of solid waste to be handled, including different  
14 requirements for solid waste facilities or approved solid  
15 waste facilities which handle more than one hundred  
16 tons of solid waste per day, the environmental impact  
17 of solid waste disposal, the nature, origin or character-  
18 istics of the solid waste, potential for contamination of  
19 public water supply, requirements for public roadway  
20 standards and design for access to the facilities with  
21 approval by the commissioner of the department of  
22 highways, public sentiment, the financial capability of  
23 the applicant, soil and geological considerations and  
24 other natural resource considerations. All existing rules  
25 and regulations of the department of health relating to  
26 solid waste disposal shall remain valid and be enforce-  
27 able by the department of natural resources on the  
28 effective date of this article until changed or modified  
29 by the director, in compliance with chapter twenty-nine-  
30 a of the code.

31 (b) The chief, after public notice and opportunity for  
32 public hearing near the affected community, may issue  
33 a permit with reasonable terms and conditions for  
34 installation, establishment, modification, operation or  
35 abandonment of a solid waste facility: *Provided*, That  
36 the director may deny the issuance of a permit on the

37 basis of information in the application or from other  
38 sources including public comment, if the solid waste  
39 facility may cause adverse impacts on the natural  
40 resources and environmental concerns under the direc-  
41 tor's purview in chapter twenty of the code, destruction  
42 of aesthetic values, destruction or endangerment of the  
43 property of others or is significantly adverse to the  
44 public sentiment of the area where the solid waste  
45 facility is, or will be, located. The director may also  
46 prohibit the installation or establishment of specific  
47 types and sizes of solid waste facilities in a specified  
48 geographical area of the state based on the above cited  
49 factors and may delete such geographical area from  
50 consideration for that type and size solid waste facility.

51 (c) The director may refuse to grant any permit if he  
52 has reasonable cause to believe, as indicated by docu-  
53 mented evidence, that the applicant, or any officer,  
54 director or manager, thereof, or shareholder owning  
55 twenty percent or more of its capital stock, beneficial  
56 or otherwise, or other person conducting or managing  
57 the affairs of the applicant or of the proposed licensed  
58 premises, in whole or part:

59 (1) Has demonstrated, either by his police record or  
60 by his record as a former permittee under chapter  
61 twenty of the code, a lack of respect for law and order,  
62 generally, or for the laws and rules governing the  
63 disposal of solid wastes;

64 (2) Has misrepresented a material fact in applying to  
65 the director for a permit;

66 (3) Has been convicted of a felony or other crime  
67 involving moral turpitude;

68 (4) Has exhibited a pattern of violating environmental  
69 laws in any state or the United States or combination  
70 thereof; or

71 (5) Has had any permit revoked under the environ-  
72 mental laws of any state or the United States.

73 (d) For the purpose of this section, the conduct and  
74 reputation of any owner may be imputed to the  
75 applicant.

76 (e) The director, chief or any authorized representa-  
77 tive, employee or agent of the department, may at  
78 reasonable times, enter onto any approved solid waste  
79 facility, open dump or property where solid waste is  
80 present for the purpose of making an inspection or  
81 investigation of solid waste disposal.

82 (f) The director, chief or any authorized representa-  
83 tive, employee or agent of the department may, at  
84 reasonable times, enter any approved solid waste  
85 facility, open dump or property where solid waste is  
86 present and take samples of the waste, soils, air or water  
87 or may, upon issuance of an order, require any person  
88 to take and analyze samples of such waste, soil, air or  
89 water.

90 (g) The director or chief may also perform or require  
91 a person, by order, to perform any and all acts necessary  
92 to carry out the provisions of this article or the rules  
93 promulgated thereunder.

94 (h) The chief or his authorized representative, em-  
95 ployee or agent shall make periodic inspections at every  
96 approved solid waste facility to effectively implement  
97 and enforce the requirements of this article or its rules  
98 and regulations and may, in coordination with the  
99 commissioner of the department of highways, conduct at  
100 weigh stations or any other adequate site or facility  
101 inspections of solid waste in transit.

102 (i) The director or chief shall require and set the  
103 amount of performance bonds for persons engaged in  
104 the practice of solid waste disposal in this state,  
105 pursuant to section five-b of this article.

106 (j) The director shall require (1) that persons dispos-  
107 ing of solid waste at commercial solid waste facilities  
108 within the state file with the operator of the commercial  
109 solid waste facility records concerning the type, amount  
110 and origin of solid waste disposed of by them; and  
111 (2) that operators of commercial solid waste facilities  
112 within the state maintain records and file them with the  
113 director concerning the type, amount and origin of solid  
114 waste accepted by them.

115 (k) The director may expend funds from the litter  
 116 control fund established pursuant to section twenty-six,  
 117 article seven, chapter twenty of this code to assist county  
 118 and regional solid waste authorities in the formulation  
 119 of their comprehensive litter and solid waste control  
 120 plans pursuant to section seven, article eight, chapter  
 121 twenty and in the construction and maintenance of  
 122 approved commercial solid waste facilities and collec-  
 123 tion equipment, including the provision of grants as well  
 124 as bonding assistance for those authorities which would  
 125 in the opinion of the director be unable to construct or  
 126 maintain an approved commercial solid waste facility  
 127 without grant funds.

**§20-5F-4a. Approval permits required for certain solid  
 waste disposal facilities; fee required.**

1 (a) *Approval permit required.* —

2 (1) For each commercial solid disposal waste permit  
 3 or similar renewal permit application filed with the  
 4 department of natural resources on and after the first  
 5 day of January, one thousand nine hundred eighty-nine,  
 6 prior to filing said application, a class A applicant shall  
 7 first obtain an approval permit from the county or  
 8 regional solid waste authority, as the case may be,  
 9 established in accordance with article nine of this  
 10 chapter, covering the geographic area in which the solid  
 11 waste disposal facility is to be located.

12 (2) For each such solid waste permit or renewal  
 13 permit application filed with the department of natural  
 14 resources after the effective date of this act but before  
 15 the first day of January, one thousand nine hundred  
 16 eighty-nine, a class A applicant shall first obtain an  
 17 approval permit from the county commission of the  
 18 county in which the solid waste disposal facility is to be  
 19 located.

20 (3) For each such solid waste permit or renewal  
 21 permit application pending before the department of  
 22 natural resources on the effective date of this act, a class  
 23 A applicant shall within thirty days of the effective date  
 24 of this act obtain an approval permit from the county  
 25 commission of the county in which the solid waste

26 disposal facility is to be located.

27 (4) Notwithstanding anything in this section to the  
28 contrary, nothing contained in this section shall be  
29 construed to require an applicant for such a solid waste  
30 disposal permit or renewal permit to obtain more than  
31 one approval permit from the county or authority  
32 relating to the same solid waste disposal facility.

33 (b) *Class A applicant defined.* —

34 (1) In General. — For purposes of this section, the  
35 term “class A applicant” means an applicant that  
36 applies for a commercial solid waste disposal permit or  
37 similar renewal permit, the effect of which would  
38 authorize such applicant to handle an aggregate of ten  
39 thousand tons or more of solid waste per month at one  
40 or more commercial solid waste disposal facilities in the  
41 county (or region if said county participates in a  
42 regional solid waste authority pursuant to article nine  
43 of this chapter) in which the solid waste disposal facility  
44 is to be located.

45 (2) Applicant. — For purposes of paragraph (1) of  
46 this subsection (b), the term “applicant” means the  
47 person applying for a commercial solid waste disposal  
48 permit or similar renewal permit and any person  
49 related to such person by virtue of common ownership,  
50 common management or family relationships as the  
51 director of the department of natural resources may  
52 specify including the following: spouses, parents and  
53 children and siblings.

54 (c) The fee for the approval permit is twenty-five  
55 dollars payable upon the filing of the application  
56 therefor with the county, county solid waste authority  
57 or regional solid waste authority, as the case may be.

58 (d) Each county commission and authority shall as  
59 soon as practicable promulgate reasonable rules includ-  
60 ing, but not limited to, rules for determining the effect  
61 of the proposed solid waste facility on residential,  
62 business or commercial property investment and values,  
63 and the social, economic, aesthetic and environmental  
64 impact on community growth and development in

65 utilities, health, education, recreation, safety, welfare  
66 and convenience, if any, before issuing any approval  
67 permit pursuant to this section. Each county commission  
68 and authority may deny an approval permit based upon  
69 said rules and regulations or upon a finding of adverse  
70 public sentiment.

71 (e) Any person adversely affected by a decision of a  
72 county commission or authority under the provisions of  
73 this section may appeal that decision to the circuit court  
74 for the county in which the proposed facility is to be  
75 located.

**§20-5F-5. Prohibitions; permits required.**

1 (a) Open dumps are prohibited and it shall be  
2 unlawful for any person to create, contribute to or  
3 operate an open dump or for any landowner to allow an  
4 open dump to exist on his property unless that open  
5 dump is under a compliance schedule approved by the  
6 chief. Such compliance schedule shall contain an  
7 enforceable sequence of actions leading to compliance  
8 and shall not exceed two years. Open dumps operated  
9 prior to the first day of April, one thousand nine  
10 hundred eighty-eight by a landowner or tenant for the  
11 disposal of solid waste generated by the landowner or  
12 tenant at his or her residence or farm shall not be  
13 deemed to constitute a violation of this section if such  
14 open dump did not constitute a violation of law on the  
15 first day of January, one thousand nine hundred eighty-  
16 eight and unauthorized dumps which were created by  
17 unknown persons shall not constitute a violation of this  
18 section: *Provided*, That no person shall contribute  
19 additional solid waste to any such dump after the first  
20 day of April, one thousand nine hundred eighty-eight,  
21 except that the owners of the land on which unautho-  
22 rized dumps have been or are being made shall not be  
23 liable for such unauthorized dumping unless such  
24 landowners refuse to cooperate with the department of  
25 natural resources in stopping such unauthorized  
26 dumping.

27 (b) It shall be unlawful for any person, unless he holds  
28 a valid permit from the division to install, establish,

29 construct, modify, operate or abandon any solid waste  
30 facility. All approved solid waste facilities shall be  
31 installed, established, constructed, modified, operated or  
32 abandoned in accordance with this article, plans,  
33 specifications, orders, instructions and rules in effect.

34 (c) Any permit issued under this article shall be  
35 issued in compliance with the requirements of this  
36 article, its rules and article five-a and the rules  
37 promulgated thereunder, so that only a single permit  
38 shall be required of a solid waste facility under these  
39 two articles. Each permit issued under this article shall  
40 have a fixed term not to exceed five years: *Provided*,  
41 That the chief may administratively extend a permit  
42 beyond its five year term if the approved solid waste  
43 facility is in compliance with this article, its rules and  
44 article five-a of this chapter and the rules promulgated  
45 thereunder: *Provided, however*, That such administra-  
46 tive extension may not be for more than one year. Upon  
47 expiration of a permit, renewal permits may be issued  
48 in compliance with rules and regulations promulgated  
49 by the director of the department of natural resources.

50 (d) All existing permits of the department of health  
51 for solid waste facilities under section nine, article one,  
52 chapter sixteen of the code shall continue in full force  
53 and effect until a permit is issued for that approved  
54 solid waste facility under this article: *Provided*, That all  
55 such existing permits of the department of health shall  
56 expire within five years of the effective date of this  
57 article. Within four years of the effective date of this  
58 article, all persons holding such department of health  
59 permits shall apply to the chief for a permit under this  
60 article: *Provided, however*, That the chief may require  
61 persons holding such existing health department  
62 permits to reapply under this section prior to four years  
63 from the effective date of this article if persistent  
64 violations of this article, any permit term or condition,  
65 orders or rules promulgated under this article, exists at  
66 that facility. Notwithstanding any other provision  
67 contained in this subsection, the department of natural  
68 resources may enter an extension order for a period of  
69 two years while an application for a permit pursuant to

70 this article is pending.

71 (e) No person may dispose in the state of any solid  
72 waste, whether such waste originates in-state or out-of-  
73 state, in a manner which endangers the environment or  
74 the public health, safety or welfare as determined by the  
75 director of the department of natural resources. Upon  
76 request by the director of the department of natural  
77 resources, the director of the department of health shall  
78 provide technical advice concerning the disposal of solid  
79 waste within the state.

80 The director of the department of natural resources  
81 shall promulgate rules pursuant to chapter twenty-nine-  
82 a of this code which reflect the purposes as set forth in  
83 this article.

**§20-5F-5a. Solid waste assessment fee; penalties.**

1 (a) *Imposition.*—A solid waste assessment fee is  
2 hereby levied and imposed upon the disposal of solid  
3 waste at any solid waste disposal facility in this state  
4 to be collected and paid as follows: (1) one dollar and  
5 twenty-five cents per ton or part thereof of solid waste;  
6 and (2) one additional dollar per ton or part thereof of  
7 solid waste for solid waste generated from sources  
8 outside the solid waste disposal shed in which the solid  
9 waste disposal facility is located. The fee imposed by this  
10 section shall be in addition to all other fees and taxes  
11 levied by law and shall be added to and constitute part  
12 of any other fee charged by the operator or owner of the  
13 solid waste disposal facility.

14 (b) *Collection, return, payment and records.*—The fee  
15 herein imposed shall be paid by the person disposing of  
16 solid waste at a solid waste disposal facility and shall  
17 be collected by the operator of the solid waste disposal  
18 facility and remitted to the state tax commissioner. The  
19 fee accrues at the time the solid waste is disposed of in  
20 this state. The fee imposed by this section shall be due  
21 and payable on or before the fifteenth day of the month  
22 next succeeding the month in which the fee accrued  
23 together with a return on such form or forms as  
24 prescribed by the state tax commissioner. Each person  
25 disposing of solid waste at a solid waste disposal facility



26 and each person required to collect the fee imposed by  
27 this section shall keep complete and accurate records in  
28 such form as the state tax commissioner may by  
29 regulation require.

30 (c) *Regulated motor carriers.*—The fee imposed by this  
31 section and section twenty-two, article five, chapter  
32 seven of this code shall be considered a necessary and  
33 reasonable cost for motor carriers of solid waste subject  
34 to the jurisdiction of the public service commission  
35 under chapter twenty-four-a of this code.  
36 Notwithstanding any provision of law to the contrary,  
37 upon the filing of a petition by an affected motor carrier,  
38 the public service commission shall, within fourteen  
39 days, reflect the cost of said fee in said motor carrier's  
40 rates for solid waste removal service.

41 (d) *Definition of solid waste disposal facility.*—For  
42 purposes of this section, the term "solid waste disposal  
43 facility" means any approved solid waste facility or open  
44 dump in this state. Nothing herein shall be construed  
45 to authorize in any way the creation or operation of or  
46 contribution to an open dump.

47 (e) *Exemptions.*—The following transactions shall be  
48 exempt from the fee imposed by this section:

49 (1) Disposal of solid waste at a solid waste disposal  
50 facility by the person who owns, operates or leases the  
51 solid waste disposal facility if the facility is used  
52 exclusively to dispose of waste originally produced by  
53 such person in such person's regular business or  
54 personal activities or by persons utilizing the facility on  
55 a cost-sharing or nonprofit basis;

56 (2) Reuse or recycling of any solid waste; and

57 (3) Disposal of residential solid waste by an individual  
58 not in the business of hauling or disposing of solid waste  
59 on such days and times as designated by the director of  
60 the department of natural resources by regulation as  
61 exempt from the solid waste assessment fee.

62 (f) *Procedure and administration.*—Each and every  
63 provision of the "West Virginia Tax Procedure and  
64 Administration Act" set forth in article ten, chapter

65 eleven of this code shall apply to the fee imposed by this  
66 section with like effect as if said act were applicable  
67 only to the fee imposed by this section and were set forth  
68 in extenso herein.

69 (g) *Criminal penalties.*—Notwithstanding section two,  
70 article nine, chapter eleven of this code, sections three  
71 through seventeen, article nine, chapter eleven of this  
72 code shall apply to the fee imposed by this section with  
73 like effect as if said sections were applicable only to the  
74 fee imposed by this section and were set forth in extenso  
75 herein.

76 (h) *Dedication of proceeds.*—The net proceeds of the  
77 fee collected pursuant to this section shall be transferred  
78 to an account designated by the director of the depart-  
79 ment of natural resources as such proceeds are received  
80 by the state tax commissioner. Twenty-five cents for  
81 each ton of solid waste disposed of in this state upon  
82 which the fee imposed by this section is collected shall  
83 be deposited into the “Solid Waste Reclamation and  
84 Environmental Response Fund” hereinafter created for  
85 the purposes hereinafter specified. The first fifty  
86 thousand dollars of the remaining net proceeds of the  
87 fee imposed by this section shall be transferred to the  
88 public service commission for the purposes of conduct-  
89 ing the study required by section one-b, article two,  
90 chapter twenty-four of this code. The next one million  
91 dollars of the net proceeds of the fee imposed by this  
92 section in each fiscal year shall be deposited in the  
93 “Solid Waste Enforcement Fund” hereinafter created  
94 and for the purposes hereinafter specified. The next two  
95 hundred fifty thousand dollars of the net proceeds of the  
96 fee imposed by this section in each fiscal year shall be  
97 deposited in the “Resource Recovery — Solid Waste  
98 Disposal Authority Reserve Fund” hereinafter created  
99 for the purposes hereinafter specified. The director of  
100 the department of natural resources shall allocate the  
101 remainder (if any) of said net proceeds among the  
102 following three special revenue accounts for the purpose  
103 of maintaining a reasonable balance in each special  
104 revenue account, which are hereby created in the state  
105 treasury:

106 (1) The "Solid Waste Enforcement Fund" which shall  
107 be expended by the director of the department of  
108 natural resources for administration, inspection, en-  
109 forcement and permitting activities established pursu-  
110 ant to this article;

111 (2) The "Resource Recovery — Solid Waste Disposal  
112 Authority Reserve Fund" which shall be exclusively  
113 dedicated providing a reserve fund for the issuance and  
114 security of solid waste disposal revenue bonds issued by  
115 the resource recovery — solid waste disposal authority  
116 pursuant to article twenty-six, chapter sixteen of this  
117 code;

118 (3) The "Solid Waste Reclamation and Environmental  
119 Response Fund" which may be expended by the director  
120 of the department of natural resources for the purposes  
121 of reclamation, clean-up and remedial actions intended  
122 to minimize or mitigate damage to the environment,  
123 natural resources, public water supplies, water resour-  
124 ces and the public health, safety and welfare which may  
125 result from open dumps or solid waste not disposed of  
126 in a proper or lawful manner.

127 (i) *Findings.*—In addition to the purposes and legis-  
128 lative findings set forth in section one of this chapter,  
129 the Legislature finds as follows:

130 (1) In-state and out-of-state locations producing solid  
131 waste should bear the responsibility of disposing of said  
132 solid waste or compensate other localities for costs  
133 associated with accepting such solid waste;

134 (2) The costs of maintaining and policing the streets  
135 and highways of the state and its communities are  
136 increased by long distance transportation of large  
137 volumes of solid waste; and

138 (3) Local approved solid waste facilities are being  
139 prematurely depleted by solid waste originating from  
140 other locations.

141 (j) *Severability.*—If any provision of this section or the  
142 application thereof shall for any reason be adjudged by  
143 any court of competent jurisdiction to be invalid, such  
144 judgment shall not affect, impair or invalidate the

145 remainder of this section, but shall be confined in its  
 146 operation to the provision thereof directly involved in  
 147 the controversy in which such judgment shall have been  
 148 rendered, and the applicability of such provision to other  
 149 person or circumstances shall not be affected thereby.

150 (k) *Effective date.*—This section is effective on the first  
 151 day of July, one thousand nine hundred eighty-eight.

**§20-5F-5b. Performance bonds; amount and method of  
 bonding; bonding requirements; period of  
 bond liability.**

1 (a) After a solid waste permit application has been  
 2 approved pursuant to this article, but before a permit  
 3 has been issued, each operator of a commercial solid  
 4 waste facility shall furnish bond, on a form to be  
 5 prescribed and furnished by the director, payable to the  
 6 state of West Virginia and conditioned upon the  
 7 operator faithfully performing all of the requirements  
 8 of this article, regulations promulgated hereunder and  
 9 the permit. The amount of the bond required shall be  
 10 one thousand dollars per acre and may include an  
 11 additional amount determined by the director based  
 12 upon the total estimated cost to the state of completing  
 13 final closure according to the permit granted to such  
 14 facility and such measures as are necessary to prevent  
 15 adverse effects upon the environment; such measures  
 16 shall include, but not be limited to, satisfactory  
 17 monitoring, post-closure care and remedial measures:  
 18 *Provided*, That the amount of the bond shall not exceed  
 19 eight thousand dollars per acre. All permits shall be  
 20 bonded for at least ten thousand dollars. The bond shall  
 21 cover either (1) the entire area to be used for the  
 22 disposal of solid waste, or (2) that increment of land  
 23 within the permit area upon which the operator will  
 24 initiate and conduct commercial solid waste facility  
 25 operations within the initial term of the permit pursuant  
 26 to rules and regulations promulgated by the director  
 27 pursuant to chapter twenty-nine-a of this code. If the  
 28 operator chooses to use incremental bonding, as succeed-  
 29 ing increments of commercial solid waste facility  
 30 operations are to be initiated and conducted within the  
 31 permit area, the operator shall file with the director an

32 additional bond or bonds to cover such increments in  
33 accordance with this section: *Provided*, That once the  
34 operator has chosen to proceed with bonding either the  
35 entire area to be used for the disposal of solid waste or  
36 with incremental bonding, the operator shall continue  
37 bonding in that manner for the term of the permit.

38 (b) The period of liability for performance bond  
39 coverage shall commence with issuance of a permit and  
40 continue for the full term of the permit and for period  
41 of up to ten full years after final closure of the permit  
42 site: *Provided*, That any further time period necessary  
43 to achieve compliance with the requirements in the  
44 closure plan of the permit shall be considered an  
45 additional liability period.

46 (c) The form of the performance bond shall be  
47 approved by the director and may include, at the option  
48 of the director, surety bonding, collateral bonding  
49 (including cash and securities), establishment of an  
50 escrow account, letters of credit, performance bonding  
51 fund participation (as established by the director), self-  
52 bonding or a combination of these methods. If collateral  
53 bonding is used, the operator may elect to deposit cash,  
54 or collateral securities or certificates as follows: Bonds  
55 of the United States or its possessions, of the federal  
56 land bank, or of the homeowners' loan corporation; full  
57 faith and credit general obligation bonds of the state of  
58 West Virginia, or other states, and of any county,  
59 district or municipality of the state of West Virginia or  
60 other states; or certificates of deposit in a bank in this  
61 state, which certificates shall be in favor of the  
62 department. The cash deposit or market value of such  
63 securities or certificates shall be equal to or greater than  
64 the sum of the bond. The director shall, upon receipt of  
65 any such deposit of cash, securities or certificates,  
66 promptly place the same with the treasurer of the state  
67 of West Virginia whose duty it shall be to receive and  
68 hold the same in the name of the state in trust for the  
69 purpose for which the deposit is made when the permit  
70 is issued. The operator making the deposit shall be  
71 entitled from time to time to receive from the state  
72 treasurer, upon the written approval of the director, the

73 whole or any portion of any cash, securities or certifi-  
74 cates so deposited, upon depositing with him in lieu  
75 thereof, cash or other securities or certificates of the  
76 classes herein specified having value equal to or greater  
77 than the sum of the bond.

78 (d) Within twelve months prior to the expiration of  
79 the ten-year period following final closure, the depart-  
80 ment will conduct a final inspection of the facility. The  
81 purpose of the inspection shall be to determine com-  
82 pliance with this article, the department's regulations,  
83 the terms and conditions of the permit, orders of the  
84 department and the terms and conditions of the bond.  
85 Based upon this determination, the department will  
86 either forfeit the bond prior to the expiration of the ten-  
87 year period following final closure, or release the bond  
88 at the expiration of the ten-year period following final  
89 closure. Bond release requirements shall be provided in  
90 regulations promulgated by the director.

91 (e) If the operator of a commercial solid waste facility  
92 abandons the operation of a solid waste disposal facility  
93 for which a permit is required by this article or if the  
94 permittee fails or refuses to comply with the require-  
95 ments of this article in any respect for which liability  
96 has been charged on the bond, the director shall declare  
97 the bond forfeited and shall certify the same to the  
98 attorney general which shall proceed to enforce and  
99 collect the amount of liability forfeited thereon, and  
100 where the operation has deposited cash or securities as  
101 collateral in lieu of corporate surety, the secretary shall  
102 declare said collateral forfeited and shall direct the state  
103 treasurer to pay said funds into a waste management  
104 fund to be used by the director to effect proper closure  
105 and to defray the cost of administering this article.  
106 Should any corporate surety fail to promptly pay, in full,  
107 forfeited bond, it shall be disqualified from writing any  
108 further surety bonds under this article.

**§20-5F-5c. Pre-siting notice.**

1 (a) Any person investigating an area for the purpose  
2 of siting a commercial solid waste facility where no  
3 current solid waste permit exists, in order to determine

4 a feasible, approximate location, shall prior to filing an  
5 application for a solid waste permit publish a Class II  
6 legal advertisement in a qualified newspaper serving  
7 the county where the proposed site is to be located. Such  
8 notice shall inform the public of the location, nature and  
9 other details of the proposed activity as prescribed in  
10 rules and regulations to promulgated as soon as  
11 practicable by the director. Within five days of such  
12 publication such person shall file with the director a  
13 pre-siting notice, which shall be made in writing on  
14 forms prescribed by the director and shall be signed and  
15 verified by the applicant. Such notice shall contain a  
16 certification of publication from a qualified newspaper,  
17 description of the area, the period of investigative  
18 review, a United States geological survey topographic  
19 map and a map showing the location of property  
20 boundaries of the area proposed for siting and other  
21 such information as required by rules and regulations  
22 promulgated pursuant to this section. The director, in  
23 his discretion, may hold a public hearing on the pre-  
24 siting notice if he receives information or public  
25 comment which warrants such a hearing. The director  
26 shall define pre-siting activities by promulgating rules  
27 and regulations pursuant to chapter twenty-nine-a of  
28 this code.

29 (b) On or after the first day of January, one thousand  
30 nine hundred eighty-nine, the pre-siting notice, as  
31 prescribed by the director, shall also be filed with the  
32 county or regional solid waste authority, established  
33 pursuant to article nine, chapter twenty of this code, in  
34 which the proposed site is located within five days of the  
35 publication of the notice provided for in subsection (a).  
36 Within ninety days of receiving such pre-siting notice  
37 the county or regional solid waste authority shall submit  
38 its comments and may make a recommendation to the  
39 director on the proposed siting of the solid waste facility  
40 based on the impacts such a site and facility would have  
41 upon transportation facilities, public water supplies,  
42 land use patterns, commercial, agricultural and residen-  
43 tial real estate values, environmental quality, aesthetics  
44 and socioeconomic conditions. The authority may hold  
45 public hearings and solicit public comment for the

46 purposes of this section.

47 (c) The director may deny pre-siting activities under  
48 subsection (a) and may deny issuance of a permit for a  
49 solid waste facility under this article on the basis of the  
50 siting recommendation of the county or regional solid  
51 waste authority.

**§20-5F-5d. Limitations on permits; encouragement of recycling.**

1 (a) The director shall by rules and regulations  
2 promulgated in accordance with chapter twenty-nine-a  
3 of this code establish standards and criteria applicable  
4 to commercial solid waste facilities for the visual  
5 screening of such facilities from any interstate highway,  
6 turnpike, federal and state primary highway or scenic  
7 parkway. The director and the chief shall not issue a  
8 permit under this article to install, establish, construct  
9 or operate any commercial solid waste facility without  
10 proper visual screening from any interstate highway,  
11 turnpike, federal or state primary highway or scenic  
12 parkway: *Provided*, That the director and the chief may  
13 renew such permits, and may also issue permits to  
14 renew those certificates of approval previously issued by  
15 the director of the department of health, for those solid  
16 waste facilities holding such a valid permit or certificate  
17 pursuant to this article on the first day of July, one  
18 thousand nine hundred eighty-eight: *Provided, however*,  
19 That no such permits or certificates of approval shall be  
20 renewed for a period extending beyond the first day of  
21 July, one thousand nine hundred ninety-three.

22 (b) The director and the chief shall give substantial  
23 deference and consideration to the county or regional  
24 litter and solid waste control plan approved pursuant to  
25 article nine of this chapter and to the comprehensive  
26 county plan adopted by the county commission pursuant  
27 to article seventeen, chapter eight of this code in the  
28 issuance or the renewal of any permit under this article:  
29 *Provided*, That the authority and discretion of the  
30 director and the chief under this article shall not be  
31 diminished or modified by this subsection.

32 (c) On or before the first day of July, one thousand



33 nine hundred ninety-one, the director is authorized and  
34 directed to promulgate legislative rules and regulations  
35 pursuant to chapter twenty-nine-a of this code encourag-  
36 ing each commercial solid waste facility and each  
37 person, partnership, corporation and governmental  
38 agency engaged in the commercial collection, transpor-  
39 tation, processing and disposal of solid waste to recycle  
40 paper, glass, plastic and aluminum materials and such  
41 other solid wastes as the director may specify.

42 (d) On or before the first day of July, one thousand  
43 nine hundred ninety-one, and concurrently with the  
44 promulgation of regulations pursuant to subsection (c)  
45 hereof, the director is authorized and directed to  
46 promulgate legislative rules and regulations pursuant to  
47 chapter twenty-nine-a of this code encouraging each  
48 person, partnership, corporation and governmental  
49 agency subscribing to solid waste collection services to  
50 segregate paper, glass, plastic and aluminum material,  
51 and such other solid waste material as the director may  
52 specify, prior to collection of such wastes at their source  
53 for purposes of recycling.

54 (e) Under no condition shall transloading solid waste  
55 materials be permitted within a municipality except  
56 those facilities owned or operated on behalf of the  
57 municipality in which the facility is located.

**ARTICLE 7. LAW ENFORCEMENT, MOTORBOATING, LITTER.**

**§20-7-25. West Virginia litter control and recycling programs; additional duties of director; grants to counties and municipalities; and regulations relating thereto.**

1 (a) In addition to all other powers, duties and respon-  
2 sibilities granted and assigned to the director of the  
3 department of natural resources in this chapter and  
4 elsewhere by law, the director, in the administration of  
5 the West Virginia litter control program created by this  
6 section, shall:

7 (1) Coordinate all industry and business organizations  
8 seeking to aid in the litter control and recycling effort;

9 (2) Cooperate with all local governments to accomp-

10 lish coordination of local litter control and recycling  
11 efforts;

12 (3) Encourage, organize, coordinate and increase  
13 public awareness of and participation in all voluntary  
14 litter control and recycling campaigns, including citizen  
15 litter watch programs, seeking to focus the attention of  
16 the public on the litter control and recycling programs  
17 of the state and local governments and of private  
18 recycling centers;

19 (4) Recommend to local governing bodies that they  
20 adopt ordinances similar to the provisions of section  
21 twenty-six of this article;

22 (5) Investigate the methods and success of techniques  
23 of litter control, removal and disposal utilized in other  
24 states, and develop, encourage, organize and coordinate  
25 local litter control programs funded by grants awarded  
26 pursuant to subsection (b) of this section utilizing such  
27 successful techniques;

28 (6) Investigate the availability of, and apply for, funds  
29 available from any and all private or public sources to  
30 be used in the litter control program created by this  
31 section;

32 (7) Promulgate regulations pursuant to article three,  
33 chapter twenty-nine-a of this code establishing criteria  
34 for the awarding of direct and/or matching grants for  
35 the study of available research and development in the  
36 fields of litter control, removal and disposal, methods for  
37 the implementation of such research and development,  
38 and the development of public educational programs  
39 concerning litter control;

40 (8) Promulgate regulations pursuant to article three,  
41 chapter twenty-nine-a of this code designating public  
42 areas where litter receptacles shall be placed in  
43 accordance with subsection (d), section twenty-six of this  
44 article. The director is further authorized to specify  
45 within such regulations the minimum number of litter  
46 receptacles required to be placed at each designated  
47 public area;

48 (9) Attract to the state persons or industries that

49 purchase, process or use recyclable materials; and

50 (10) Contract for the development, production and  
51 broadcast of radio and television messages promoting  
52 the West Virginia litter control program. The messages  
53 should increase public awareness of and promote citizen  
54 responsibility toward the reduction of litter. The  
55 director shall undertake the activities authorized in this  
56 subdivision no later than the fifteenth day of September,  
57 one thousand nine hundred eighty-eight.

58 (b) Commencing on the first day of July, one thousand  
59 nine hundred eighty-six, the director shall expend  
60 annually at least fifty percent of the moneys credited to  
61 the "litter control fund" in the previous fiscal year for  
62 matching grants to counties and municipalities for the  
63 initiation and administration of litter control programs.  
64 The director may promulgate regulations pursuant to  
65 article three, chapter twenty-nine-a of this code estab-  
66 lishing criteria for the awarding of matching grants.

67 (c) The director of the department of natural resour-  
68 ces in cooperation with the commissioner of highways,  
69 the department of commerce, the department of public  
70 safety, the United States forestry service, and other  
71 local, state and federal law-enforcement agencies, shall  
72 be responsible for the administration and enforcement  
73 of all laws and regulations relating to the maintenance  
74 of cleanliness and improvement of appearances on and  
75 along highways, roads, streets, alleys and any other  
76 private or public areas of the state and these other  
77 agencies shall make recommendations to the director  
78 from time to time concerning means and methods of  
79 accomplishing litter control consistent with the provi-  
80 sions of this chapter. Such cooperation shall include, but  
81 not be limited to, contracts with the commissioner of  
82 highways to operate the litter control program.

83 (d) All other state agencies and local governments  
84 shall cooperate with the director in effecting the  
85 purposes of the litter control program.

**§20-7-26. Unlawful disposal of litter; civil and criminal  
penalties; litter control fund; evidence;  
notice of violations; litter receptacle place-**

**ment; penalties; duty to enforce violations.**

1 (a) Any person who places, deposits, dumps or throws  
2 or causes to be placed, deposited, dumped or thrown any  
3 litter as defined in section twenty-four, article seven of  
4 this chapter, in or upon any public or private highway,  
5 road, street or alley, or upon any private property  
6 without the consent of the owner, or in or upon any  
7 public park or other public property other than in such  
8 place as may be set aside for such purpose by the  
9 governing body having charge thereof, is guilty of a  
10 misdemeanor, and, upon his or her first conviction, shall  
11 be fined not less than fifty nor more than five hundred  
12 dollars and may be required, in the discretion of the  
13 court, to pick up and remove from any public highway,  
14 road, street, alley or any other public park or public  
15 property as designated by the court, any and all litter,  
16 garbage, refuse, trash, cans, bottles, papers, ashes,  
17 carcass of any dead animal or any part thereof, offal or  
18 any other offensive or unsightly matter placed, depos-  
19 ited, dumped or thrown contrary to the provisions of this  
20 section by anyone prior to the date of such conviction.  
21 Upon his or her second conviction, such person shall be  
22 fined not less than two hundred fifty dollars nor more  
23 than one thousand dollars and imprisoned in the county  
24 jail not less than twenty-four hours nor more than six  
25 months. Upon such person's third and successive  
26 conviction, he or she shall be fined not less than five  
27 hundred dollars nor more than two thousand dollars and  
28 imprisoned in the county jail not less than forty-eight  
29 hours nor more than one year.

30 If any litter be thrown or cast from a motor vehicle  
31 or boat, such action is prima facie evidence that the  
32 driver of such motor vehicle or boat intended to violate  
33 the provisions of this section. If any litter be dumped  
34 or discharged from a motor vehicle or boat, such action  
35 is prima facie evidence that the owner and driver of  
36 such motor vehicle intended to violate the provisions of  
37 this section.

38 (b) Any litter found on any public or private property  
39 with any indication of ownership on it will be evidence  
40 creating a rebuttable inference it was deposited improv-

41 erly by the person whose identity is indicated, and any  
42 person who improperly disposes of litter shall be subject  
43 to either a civil fine of up to five hundred dollars for  
44 such litter or required to pay the costs of removal of  
45 such litter if the removal of such litter is required to  
46 be done by the department, at the discretion of the  
47 director. All such fines and costs shall be deposited to  
48 the litter control fund: *Provided*, That no inference shall  
49 be drawn solely from the presence of any logo, trade-  
50 mark, trade name or other similar mass reproduced  
51 identifying character appearing on litter found.

52 (c) Every person who is convicted of or pleads guilty  
53 to disposing of litter in violation of subsection (a) of this  
54 section shall pay the sum of not less than fifty dollars  
55 nor more than five hundred dollars as costs for cleanup,  
56 investigation and prosecution in such case, in addition  
57 to any other court costs that the court is otherwise  
58 required by law to impose upon such convicted person.  
59 The clerk of the circuit court, magistrate court or  
60 municipal court wherein such additional costs are  
61 imposed shall, on or before the last day of each month,  
62 transmit all such costs received under this subsection to  
63 the state treasurer for deposit in the state treasury to  
64 the credit of a special revenue fund to be known as the  
65 litter control fund which is hereby created. All moneys  
66 collected and received under this subsection and paid  
67 into the state treasury and credited to the litter control  
68 fund in the manner prescribed by section two, article  
69 two, chapter twelve of this code, shall be kept and  
70 maintained for expenditure by the director for the  
71 specific purposes as provided by law, and shall not be  
72 treated by the state auditor and treasurer as part of the  
73 general revenue of the state. At the end of each fiscal  
74 year, any unexpended balance of the litter control fund  
75 shall not be transferred to the general revenue fund, but  
76 shall remain in the litter control fund.

77 (d) The commissioner of motor vehicles, upon regis-  
78 tering a motor vehicle or issuing an operator's or  
79 chauffeur's license, shall issue to the owner or licensee,  
80 as the case may be, a copy of subsection (a) of this  
81 section.

82 The commissioner of highways may cause appropriate  
 83 signs to be placed at the state boundary on each primary  
 84 and secondary road, and at other locations throughout  
 85 the state, informing those entering the state of the  
 86 maximum penalty provided for disposing of litter in  
 87 violation of subsection (a) of this section.

88 (e) Any state agency or political subdivision that  
 89 owns, operates or otherwise controls any public area as  
 90 may be designated by the director by regulation  
 91 promulgated pursuant to subdivision (8), subsection (a),  
 92 section twenty-five of this article, shall procure and  
 93 place litter receptacles at his own expense upon his  
 94 premises and shall remove and dispose of litter collected  
 95 in such litter receptacles. After receiving two written  
 96 warnings from any law-enforcement officer or officers  
 97 to comply with this subsection or the said regulations  
 98 of the director, any person who fails to place and  
 99 maintain such litter receptacles upon his premises in  
 100 violation of this subsection or the regulations of the  
 101 director shall be fined fifteen dollars per day of such  
 102 violation.

103 (f) No portion of this section shall be construed to  
 104 restrict a private owner in the use of his own private  
 105 property in any manner otherwise authorized by law.

106 (g) Any law-enforcement officer who shall observe a  
 107 person violating the provisions of this section shall have  
 108 a mandatory duty to arrest or otherwise prosecute the  
 109 violator to the limits provided herein. The West Virginia  
 110 department of highways shall investigate and cause to  
 111 be prosecuted violations of this section occurring upon  
 112 the highways of the state as the term "highways" is  
 113 defined in chapter seventeen of this code.

**§20-7-27. Litter pickup and removal; education; govern-  
 ment recycling responsibilities; monitoring  
 and evaluation; study commission; repeal;  
 restrictions on beverage containers; report to  
 Legislature.**

1 (a) *Litter pickup and removal.*—(1) Each county  
 2 commission and the regional jail authority may establish  
 3 a jail or prison inmate program including a regular

4 litter pick-up work regimen under proper supervision  
5 pursuant to section four, article fifteen, chapter seven-  
6 teen of this code. Funding for said programs shall be  
7 from the litter control fund. Funding requirements may  
8 include salaries for additional personnel needed for the  
9 program. Said program may include the cooperative  
10 help of the department of highways or any other  
11 voluntary state, local, private, civic or public agency for  
12 personnel, equipment, or materials in establishing a  
13 county or region-wide, continual program of inmate  
14 litter pick-up. Upon final approval of the projected cost  
15 of the program for a given fiscal year, the director of  
16 the department of natural resources shall disburse the  
17 approved amount to the county or regional authority.  
18 The funds will be used by the authority to reimburse  
19 the county commission or regional jail authority for its  
20 expenses related to the program and to pay other costs  
21 related to the use of inmates for litter pick-up. Nothing  
22 contained herein shall preclude a county or counties  
23 from expending whatever additional funds its commis-  
24 sion or commissions may deem appropriate from any  
25 other revenue source in furtherance of said program.

26 (2) All persons involved with litter pickup may  
27 separate identifiable recyclable materials from other  
28 litter collected. The funds resulting from the sale of  
29 those recyclable materials shall be returned to the litter  
30 control fund.

31 (3) The county or regional solid waste authority may  
32 also contract with local governments, civic organizations  
33 or chief correctional officers in any county to implement  
34 litter pickup and removal pursuant to this act when the  
35 state offender work force is not available. In such cases,  
36 the contract provisions shall require that identifiable  
37 recyclable materials shall be separated from other litter  
38 collected, with resulting funds returned to the litter  
39 control fund. Priority shall be given to those contracts  
40 that maximize the use of community service hours by  
41 inmates and youth employment programs.

42 (b) *Education.*—(1) The department of education in  
43 cooperation with the department of natural resources  
44 shall distribute educational materials to the schools

45 based on the goals of litter cleanup and proper solid  
46 waste disposal, the rationale for said goals, and how  
47 primary and secondary school students can contribute  
48 to the achievement of such goals. The department of  
49 education shall further incorporate such information  
50 into the curriculum of the public school system as  
51 appropriate.

52 (2) The department of commerce, the department of  
53 highways and local governments shall conduct public  
54 awareness programs to notify the public of the provi-  
55 sions of this law and how they can participate, to inform  
56 them as to the rationale behind the provisions of this  
57 law, to advise them of other avenues for achievement of  
58 the noted goals and to encourage their participation.

59 (3) The department of natural resources and the  
60 resource recovery — solid waste authority shall provide  
61 technical assistance to local governments in the imple-  
62 mentation of this law.

63 (c) *Government recycling responsibilities.*—(1) All  
64 state agencies and regional planning councils may  
65 establish and implement aluminum container, glass and  
66 paper recycling programs at their public facilities. To  
67 the extent practicable, programs for other metals,  
68 plastics, rubber and other recyclable materials may be  
69 established and implemented. The moneys collected  
70 from the sale of such materials shall be deposited and  
71 accounted for in the litter control fund pursuant to the  
72 authority of section twenty-six, article seven, chapter  
73 twenty of this code.

74 (2) To further promote recycling and reduction of the  
75 waste stream, county and municipal governments shall  
76 consider the establishment of recycling programs as  
77 provided for in this section in the operation of their  
78 facilities and shall evaluate the cost-effectiveness of:

79 (A) Procedures that separate identifiable recyclable  
80 materials from solid waste collected; and

81 (B) Programs that provide for:

82 (i) The establishment of a collection place for recyc-  
83 lables at all landfills and other interim solid waste



84 collection sites and arrangements for the material  
85 collected to be recycled;

86 (ii) Public notification of such places and encourage-  
87 ment to participate;

88 (iii) The use of rate differentials at landfills to  
89 facilitate public participation in on-site recycling  
90 programs.

91 (d) *Monitoring and evaluation.*—Each affected agency  
92 and local government shall monitor and evaluate the  
93 programs implemented pursuant to this law.

94 (e) *Restrictions on beverage containers.*—(1) After the  
95 first day of January, one thousand nine hundred eighty-  
96 nine, no beverage shall be sold at retail within the state  
97 in a metal container designed and constructed so that  
98 the container is opened by detaching a metal ring or tab,  
99 unless the tab is made of tape, foil or other soft material.  
100 For the purposes of this section, “beverage” means  
101 alcoholic beverages, including beer or other malt  
102 beverages, liquor, wine, vermouth and sparkling wine,  
103 and nonalcoholic beverages, including fruit juice,  
104 mineral water and soda water and similar nonalcoholic  
105 carbonated drinks intended for human consumption.

106 (2) The department of natural resources shall impose  
107 an assessment of one hundred dollars for each violation  
108 of the provisions of subdivision (1) of this subsection. If  
109 the violation is of a continuing nature, each day during  
110 which such violation occurs shall constitute a separate  
111 and distinct offense and shall be subject to a separate  
112 assessment. All contested cases under this paragraph  
113 shall be subject to the provisions of chapter twenty-nine-  
114 a.

115 (3) Assessments collected pursuant to subdivision  
116 (2) of this subsection shall be deposited into the litter  
117 control fund.

118 (f) *Report to the Legislature.*—The director of the  
119 department of natural resources shall submit a report  
120 to the Speaker of the House and the President of the  
121 Senate not later than the first day of March, one  
122 thousand nine hundred ninety, and every five years

123 thereafter regarding the effectiveness of the programs  
124 authorized by this law.

**ARTICLE 9. COUNTY AND REGIONAL SOLID WASTE  
AUTHORITIES.**

**§20-9-1. Legislative findings and purposes.**

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

22 The Legislature further finds that the proper collec-  
23 tion, transportation, processing, recycling and disposal  
24 of solid waste is for the general welfare of the citizens  
25 of the state and that the lack of proper and effective  
26 solid waste collection services and disposal facilities  
27 demands that the state of West Virginia and its political  
28 subdivisions act promptly to secure such services and  
29 facilities in both the public and private sectors.

30 The Legislature further finds that other states of these  
31 United States of America have imposed stringent  
32 standards for the proper collection and disposal of solid  
33 waste and that the relative lack of such standards and  
34 enforcement for such activities in West Virginia has  
35 resulted in the importation and disposal into the state

36 of increasingly large amounts of infectious, dangerous  
37 and undesirable solid waste and hazardous waste from  
38 other states by persons and firms who wish to avoid the  
39 costs and requirements for proper, effective and safe  
40 disposal of such wastes in the states of origin.

41 Therefore, it is the purpose of the Legislature to  
42 protect the public health and welfare by providing for  
43 a comprehensive program of solid waste collection,  
44 processing, recycling and disposal to be implemented by  
45 state and local government in cooperation with the  
46 private sector. The Legislature intends to accomplish  
47 this goal by establishing county and regional solid waste  
48 authorities throughout the state to develop and imple-  
49 ment litter and solid waste control plans. It is the  
50 further purpose of the Legislature to restrict and  
51 regulate persons and firms from exploiting and endan-  
52 gering the public health and welfare of the state by  
53 disposing of solid wastes and other dangerous materials  
54 which would not be accepted for disposal in the location  
55 where such wastes or materials were generated.

**§20-9-2. Definitions.**

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

3 (a) "Approved solid waste facility" means a commer-  
4 cial solid waste facility or practice which has a valid  
5 permit under this article.

6 (b) "Director", "board", "chief", "person", "persons",  
7 "applicant", "water", "waters", "water resources",  
8 "sewage", "point source", "code" and "department" shall  
9 have the same meaning as defined in section two, article  
10 five-a, chapter twenty of the code;

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

15 (d) "Sludge" means any solid, semisolid, residue or  
16 precipitate, separated from or created by a municipal,  
17 commercial or industrial waste treatment plant, water  
18 supply treatment plant or air pollution control facility

19 or any other such waste having similar origin;

20 (e) "Solid waste" means any garbage, paper, litter,  
21 refuse, cans, bottles, sludge from a waste treatment  
22 plant, water supply treatment plant or air pollution  
23 control facility, other discarded material, including  
24 carcasses of any dead animal or any other offensive or  
25 unsightly matter, solid, liquid, semisolid or contained  
26 liquid or gaseous material resulting from industrial,  
27 commercial, mining or from community activities but  
28 does not include solid or dissolved material in sewage,  
29 or solid or dissolved materials in irrigation return flows  
30 or industrial discharges which are point sources and  
31 have permits under article five-a, chapter twenty of the  
32 code, or source, special nuclear or by product material  
33 as defined by the Atomic Energy Act of 1954, as  
34 amended, or a hazardous waste either identified or  
35 listed under article five-e, chapter twenty of the code or  
36 refuse, slurry and overburden regulated under article  
37 six, chapter twenty of the code;

38 (f) "Solid waste disposal" means the practice of  
39 disposing solid waste including placing, depositing,  
40 dumping or throwing or causing to be placed, deposited,  
41 dumped or thrown any solid waste;

42 (g) "Solid waste facility" means any system, facility,  
43 land, contiguous land, improvements on the land,  
44 structures or other appurtenances or methods used for  
45 processing, recycling or disposing of solid waste,  
46 including landfills, transfer stations, resource recovery  
47 facilities and other such facilities not herein specified;

48 (h) "Commercial solid waste facility" means any solid  
49 waste facility which accepts solid waste generated by  
50 the sources other than the owner or operator of the  
51 facility and shall not include an approved solid waste  
52 facility owned and operated by a person for the sole  
53 purpose of disposing of solid wastes created by that  
54 person or such person and other persons on a cost-  
55 sharing or non-profit basis; and

56 (i) "Solid waste disposal shed" means the geographical  
57 area which the resource recovery — solid waste disposal  
58 authority designates and files in the state register

59 pursuant to section eight, article twenty-six, chapter  
60 sixteen of this code.

**§20-9-3. Creation of county solid waste authority; appointment to board of directors; vacancies.**

1 (a) Each and every county solid waste authority  
2 authorized and created by the county commission of any  
3 county pursuant to former article sixteen, chapter seven  
4 of this code is hereby abolished on and after the first  
5 day of January, one thousand nine hundred eighty-nine.  
6 On and after the first day of January, one thousand nine  
7 eighty-nine, a new county solid waste authority is hereby  
8 created and established as a public agency in every  
9 county of the state and shall be the successor to each  
10 county solid waste authority which may have been  
11 created by the county commission: *Provided*, That such  
12 county solid waste authorities shall not be established or  
13 shall cease to exist, as the case may be, in those counties  
14 which establish a regional solid waste authority pursuant  
15 to section four of this article. The resource recovery  
16 — solid waste disposal authority may require a county  
17 solid waste authority to cooperate and participate in  
18 programs with other authorities if the need arises.

19 (b) The authority board of directors shall be com-  
20 prised of five members who shall be appointed as  
21 follows: One by the director of the department of natural  
22 resources, two by the county commission, one by the  
23 director of the department of health and one by the  
24 board of supervisors for the soil conservation district in  
25 which the county is situated. The members of the board  
26 shall be appointed for terms of four years for which the  
27 initial terms shall start on the first day of July, one  
28 thousand, nine hundred eighty-eight: *Provided*, That the  
29 first two members appointed by the county commission  
30 shall be appointed to initial terms of two and four years,  
31 respectively, and for terms of four years for each  
32 appointment thereafter. The members of the board shall  
33 receive no compensation for their service thereon but  
34 shall be reimbursed for their actual expenses incurred  
35 in the discharge of their duties. Vacancies in the office  
36 of member of the board of directors shall be filled for  
37 the balance of the remaining term by the appropriate

38 appointing authority within sixty days after such  
39 vacancy occurs. No member may have any financial  
40 interest in the collection, transportation, processing,  
41 recycling or the disposal of refuse, garbage, solid waste  
42 or hazardous waste.

**§20-9-4. Establishment of regional solid waste authorities  
authorized; successor to county solid waste  
authorities; appointments to board of direc-  
tors; vacancies.**

1 (a) On and after the first day of January, one  
2 thousand nine hundred eighty-nine, ~~or~~ any two or more  
3 counties within the same solid waste shed and with the  
4 approval of the resource recovery — solid waste disposal  
5 authority, <sup>MAY</sup> establish a regional solid waste authority.  
6 Such a regional solid waste authority shall be a public  
7 agency and shall be the successor to any county solid  
8 waste authority existing on the date of said approval by  
9 the resource recovery — solid waste disposal authority.  
10 The resource recovery — solid waste disposal authority  
11 may require a county authority to cooperate and  
12 participate in programs with other county and regional  
13 authorities if the need arises.

14 (b) The board of directors of the regional solid waste  
15 authority shall be comprised and appointed as follows:  
16 one by the director of the department of natural  
17 resources, two by the county commission of each county  
18 participating therein, one by the director of the  
19 department of health, one appointed by the board of  
20 supervisors for each soil conservation district in which  
21 a county of the region is situated and two municipal  
22 representatives from each county having one or more  
23 participating municipality to be selected by the mayors  
24 of the participating municipality from each such county.  
25 The members of the board shall be appointed for terms  
26 of four years for which the initial terms shall start on  
27 the first day of July, nineteen hundred eighty-eight:  
28 *Provided*, That the members appointed by the county  
29 commission shall be appointed to initial terms of two  
30 and four years, respectively, and to terms of four years  
31 ~~for~~ after the expiration of each such initial term. The  
32 members of the board shall receive no compensation for

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M. May  
Bryson*

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33 their service thereon but shall be reimbursed their  
34 actual expenses incurred in the discharge of their  
35 duties. Vacancies in the office of member of the board  
36 of directors shall be filled for the balance of the  
37 remaining term by the appropriate appointing authority  
38 within sixty days after such vacancy occurs. No member  
39 may have any financial interest in the collection,  
40 transportation, processing, recycling or the disposal of  
41 refuse, garbage, solid waste or hazardous waste.

**§20-9-5. Authorities as successor to county commissions  
and former county solid waste authorities.**

1 The county and regional solid waste authorities  
2 created herein, as the case may be, shall be successor  
3 to the county commissions of each county, or the solid  
4 waste authority previously created by said commission  
5 and abolished as of the first day of January, one  
6 thousand nine hundred eighty-nine, by this article, in  
7 the ownership, operation and maintenance of such  
8 dumps, landfills and other solid waste facilities, solid  
9 waste collection services and litter and solid waste  
10 control programs. The county commission of each  
11 county, or the solid waste authority thereof, shall, on the  
12 first day of January, one thousand nine hundred eighty-  
13 nine, transfer all ownership, operation, control and other  
14 rights, title and interests in such solid waste facilities,  
15 services and programs, and the properties, funds,  
16 appropriations and contracts related thereto to the  
17 county or regional solid waste authority established  
18 pursuant to this article.

**§20-9-6. Management of authority vested in board of  
directors; expenses paid by county commis-  
sions, procedure.**

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

4 (b) The expenses of any county solid waste authority  
5 incurred for necessary secretarial and clerical assist-  
6 ance, office supplies and general administrative ex-  
7 penses, in the development of the litter and solid waste  
8 control plan under section seven of this article and to

9 provide solid waste collection and disposal services  
10 under section nine of this article shall be paid by the  
11 county commission from the general funds in the county  
12 treasury to the extent that such expenses are not paid  
13 by fees, grants and funds received by the authority from  
14 other sources. The county commission shall have the  
15 authority to determine the amount to be allocated  
16 annually to the authority.

17 (c) The expenses of any regional solid waste authority  
18 incurred for necessary secretarial and clerical assist-  
19 ance, office supplies and general administrative ex-  
20 penses, or for the development of the litter and solid  
21 waste control plan under section seven of this article, or  
22 to provide solid waste collection and disposal services  
23 under section eight of this article shall be paid by the  
24 county commissions of each participating county from  
25 general funds in the county treasury to the extent that  
26 such expenses are not paid by fees, grants and funds  
27 from other sources received by the authority. Each  
28 county participating in the regional solid waste author-  
29 ity shall pay a pro rata share of such expenses based  
30 upon the population of said county in the most recent  
31 decennial census conducted by the United States Census  
32 Bureau. Prior to any county becoming liable for any  
33 expenses of the authority under this subsection, the  
34 authority's annual budget must first be approved by the  
35 resource recovery — solid waste disposal authority.

36 (d) An organizational meeting of each board of  
37 directors shall be held as soon as practicable at which  
38 time a chairman and vice-chairman shall be elected  
39 from among the members of the board to serve a term  
40 of one year after which such officers shall be elected  
41 annually. The board of directors shall also appoint a  
42 secretary-treasurer, who need not be a member of the  
43 board of directors, and who shall give bond in a sum  
44 determined adequate to protect the interests of the  
45 authority by the director of the department of natural  
46 resources. The board shall meet at such times and places  
47 as it or the chairman may determine. It shall be the duty  
48 of the chairman to call a meeting of the board upon the  
49 written request of a majority of the members thereof.



50 The board shall maintain an accurate record and  
51 minutes of all its proceedings and shall be subject to the  
52 provisions of the freedom of information act and the  
53 open governmental proceedings. A majority of the board  
54 shall constitute a quorum for the transaction of business.

**§20-9-7. Authority to develop litter and solid waste  
control plan; contents of plan; approval by  
resource recovery — solid waste disposal  
authority; development of plan by director;  
advisory rules.**

1 (a) Each county and regional solid waste authority  
2 shall be required to develop a comprehensive litter and  
3 solid waste control plan for its geographic area and to  
4 submit said plan to the resource recovery — solid waste  
5 disposal authority on or before the first day of July, one  
6 thousand nine hundred ninety. Each authority shall  
7 submit a draft litter and solid waste control plan to the  
8 resource recovery — solid waste disposal authority by  
9 the thirty-first day of March, one thousand nine hundred  
10 ninety. The comments received by the county or regional  
11 solid waste authority at public hearings, two of which  
12 shall be required, shall be considered in developing the  
13 final plan.

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

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

18 (2) The establishment of solid waste collection and  
19 disposal services for all county residents at their  
20 residences, where practicable, or the use of refuse  
21 collection stations at disposal access points in areas  
22 where residential collection is not practicable. In  
23 developing such collection services, primacy shall be  
24 given to private collection services currently operating  
25 with a certificate of convenience and necessity from the  
26 motor carrier division of the public service commission.

27 (3) The evaluation of the feasibility of requiring or  
28 encouraging the separation of residential or commercial  
29 solid waste at its source prior to collection for the

30 purpose of facilitating the efficient and effective  
31 recycling of such wastes and the reduction of those  
32 wastes which must be disposed of in landfills or by other  
33 nonrecycling means;

34 (4) The establishment of an appropriate mandatory  
35 garbage disposal program which shall include methods  
36 whereby residents must prove either (i) payment of  
37 garbage collection fee or (ii) proper disposal at an  
38 approved solid waste facility or in an otherwise lawful  
39 manner.

40 (5) A recommendation for the siting of one or more  
41 properly permitted public or private solid waste  
42 landfills and other facilities, whether existing or  
43 proposed, to serve the solid waste needs of the county  
44 or the region, as the case may be, consistent with the  
45 comprehensive county plan prepared by the county  
46 planning commission;

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

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

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

53 (9) A program to enlist the voluntary assistance of  
54 private industry and civic groups in volunteer cleanup  
55 efforts to the maximum practicable extent;

56 (10) Innovative incentives to promote recycling  
57 efforts;

58 (11) A program to identify the disposal of solid wastes  
59 which are not generated by sources situated within the  
60 boundaries of the county or the region established  
61 pursuant to this section;

62 (12) Coordination with the department of highways  
63 and other local, state and federal agencies in the control  
64 and removal of litter and the cleanup of open and  
65 unpermitted dumps;

66 (13) Establishment of a program to encourage and

67 utilize those individuals incarcerated in the county jail  
68 and those adults and juveniles sentenced to probation for  
69 the purposes of litter pick-up; and

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

76 (c) The resource recovery — solid waste disposal  
77 authority shall establish advisory rules to guide and  
78 assist the counties in the development of the plans  
79 required by this section.

80 (d) Each plan prepared under this section shall be  
81 subject to approval by the resource recovery — solid  
82 waste disposal authority. Any plan rejected by the  
83 resource recovery — solid waste disposal authority shall  
84 be returned to the regional or county solid waste  
85 authority with a statement of the insufficiencies in such  
86 plan. The authority shall revise the plan to eliminate the  
87 insufficiencies and submit it to the director within  
88 ninety days.

89 (e) The resource recovery — solid waste disposal  
90 authority shall develop a litter and solid waste control  
91 plan for any county or regional solid waste authority  
92 which fails to submit such a plan on or before the first  
93 day of July, one thousand nine hundred and ninety:  
94 *Provided*, That in preparing such plans the director may  
95 determine in his discretion whether to prepare a  
96 regional or county based plan for those counties which  
97 fail to complete such a plan.

**§20-9-8. Assistance of department of natural resources  
and the department of health to solid waste  
authorities.**

1 The director of the department of natural resources,  
2 the resource recovery — solid waste disposal authority  
3 and the director of the department of health shall  
4 provide such technical assistance to each county and  
5 regional solid waste authority as reasonable and

6 practicable within the existing resources and appropri-  
7 ations of each agency available for such purposes.

**§20-9-9. Mandatory disposal; proof required; penalty imposed.**

1 Each person occupying a residence or operating a  
2 business establishment in this state shall either  
3 (i) subscribe to and use a solid waste collection service  
4 and pay the fees established therefor or (ii) provide  
5 proper proof that said person properly disposes of solid  
6 waste at approved solid waste facilities or in any other  
7 lawful manner. The director of the department of  
8 natural resources shall promulgate rules pursuant to  
9 chapter twenty-nine-a of this code regarding an ap-  
10 proved method or methods of supplying such proper  
11 proof. A civil penalty of one hundred fifty dollars shall  
12 be assessed to the person receiving solid waste collection  
13 services in addition to the unpaid fees for every year  
14 that a fee is not paid.

**§20-9-10. Acquisition of land; operation of public solid waste landfills and other facilities; restrictions on solid wastes generated outside authority area; fees.**

1 Upon approval of the litter and solid waste control  
2 plan by the resource recovery — solid waste disposal  
3 authority, the authority may acquire, by purchase, lease,  
4 gift, or otherwise, land for the establishment of solid  
5 waste landfills and other solid waste facilities and is  
6 authorized to construct, operate, maintain and contract  
7 for the operation of such landfills and facilities. The  
8 authority may pay for lease or acquisition of such lands  
9 and the construction, operation and maintenance of such  
10 solid waste facilities from such fees, grants, financing  
11 by the solid waste program of the department of natural  
12 resources or funds from other sources as may be  
13 available to the authority. The authority may prohibit  
14 the deposit of any solid waste in such solid waste  
15 landfills and other facilities owned, leased or operated  
16 by the authority which have originated from sources  
17 outside the geographic limits of the county or region.  
18 The authority board of directors shall establish and

19 charge reasonable fees for the use of such landfills and  
20 facilities operated by the authority.

**§20-9-11. Use of prisoners for litter pick-up; funds provided from litter control fund; county commission, regional jail authority and sheriff to cooperate with solid waste authority.**

1 Upon the approval of the litter and solid waste control  
2 plan as provided in section seven hereof, each county  
3 and regional solid waste authority is hereby authorized  
4 and directed to implement a program to utilize those  
5 individuals incarcerated in the county or regional jails  
6 for litter pick-up within the limits of available funds.  
7 Such program shall be funded from those moneys  
8 allocated to the authority by the director of the  
9 department of natural resources from the litter control  
10 fund pursuant to section twenty-seven, article four,  
11 chapter twenty of this code. The authority may expend  
12 such additional funds for this program as may be  
13 available from other sources. The county commission  
14 and the sheriff of each county and the regional jail  
15 authority shall cooperate with the county or regional  
16 solid waste authority in implementing this program  
17 pursuant to section one, article eleven-a, and sections  
18 three and thirteen, article twelve of chapter sixty-two  
19 of this code.

**§20-9-12. Powers, duties and responsibilities of authority generally.**

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

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

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

10 (3) The authority board of directors shall promulgate  
11 rules and regulations to implement the provisions of

12 sections eight and nine of this article and is authorized  
13 to promulgate rules and regulations for purposes of this  
14 article and the general operation and administration of  
15 authorities affairs.

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

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

22 (6) Acquire, construct, reconstruct, enlarge, improve,  
23 furnish, equip, maintain, repair, operate, lease or rent  
24 to, or contract for the operation by any person, partner-  
25 ship, corporation or governmental agency, any solid  
26 waste facility or collection, transportation and process-  
27 ing facilities related thereto.

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

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

36 (9) Make and enter all contracts, leases and agree-  
37 ments and to execute all instruments necessary or  
38 incidental to the performance of its duties and powers.

39 (10) Employ managers, engineers, accountants, attor-  
40 neys, planners and such other professional and support  
41 personnel as are necessary in its judgment to carry out  
42 the provisions of this article.

43 (11) Receive and accept from any source such grants,  
44 fees, real and personal property, contributions and funds  
45 of any nature as may become available to the authority  
46 in order to carry out the purposes of this article.

47 (12) Cooperate with and make such recommendations  
48 to local, state and federal government and the private  
49 sector in the technical, planning and public policy

50 aspects of litter control and solid waste management as  
51 the authority may find appropriate and effective to  
52 carry out the purposes of this article.

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

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

61 All rules and regulations promulgated by the author-  
62 ity pursuant to this article are exempt from the  
63 provisions of article three, chapter twenty-nine-a of the  
64 code.

**§20-9-13. Liberal construction, provisions severable.**

1 The provisions of this article shall be liberally  
2 construed as giving the authority full and complete  
3 power reasonably required to give effect to the purposes  
4 hereof. The several sections and provisions of this article  
5 are severable, and if any section or provision hereof shall  
6 be held unconstitutional, all the remaining sections and  
7 provisions of the article shall nevertheless remain valid.

**CHAPTER 24. PUBLIC SERVICE COMMISSION.**

**ARTICLE 1. GENERAL PROVISIONS.**

**§24-1-3. Commission continued; membership; chairman; compensation.**

1 (a) The public service commission of West Virginia,  
2 heretofore established, is continued and directed as  
3 provided by this chapter, chapter twenty-four-a and  
4 chapter twenty-four-b. In addition, after having con-  
5 ducted a performance audit through its joint committee  
6 on government operations, pursuant to section nine,  
7 article ten, chapter four of this code, the Legislature  
8 hereby finds and declares that the public service  
9 commission should be continued and reestablished.  
10 Accordingly, notwithstanding the provisions of section  
11 four, article ten, chapter four of this code, the public

12 service commission shall continue to exist until the first  
13 day of July, one thousand nine hundred ninety-two. The  
14 public service commission may sue and be sued by that  
15 name. Such public service commission shall consist of  
16 three members who shall be appointed by the governor  
17 with the advice and consent of the Senate. The commis-  
18 sioners shall be citizens and residents of this state and  
19 at least one of them shall be duly licensed to practice  
20 law in West Virginia, of not less than ten years' actual  
21 experience at the bar. No more than two of said  
22 commissioners shall be members of the same political  
23 party. Each commissioner shall, before entering upon  
24 the duties of his office, take and subscribe to the oath  
25 provided by section five, article IV of the constitution,  
26 which oath shall be filed in the office of the secretary  
27 of state. The governor shall designate one of the  
28 commissioners to serve as chairman at the governor's  
29 will and pleasure. The chairman shall be the chief  
30 administrative officer of the commission. The governor  
31 may remove any commissioner only for incompetency,  
32 neglect of duty, gross immorality, malfeasance in office  
33 or violation of subsection (c) of this section.

34 (b) The unexpired term of members of the public  
35 service commission at the time this subsection becomes  
36 effective are continued through the thirtieth day of  
37 June, one thousand nine hundred seventy-nine. In  
38 accordance with the provisions of subsection (a) of this  
39 section, the governor shall appoint three commissioners,  
40 one for a term of two years, one for a term of four years  
41 and one for a term of six years, all the terms beginning  
42 on the first day of July, one thousand nine hundred  
43 seventy-nine. All future appointments are for terms of  
44 six years, except that an appointment to fill a vacancy  
45 is for the unexpired term only. The commissioners  
46 whose terms are terminated by the provisions of this  
47 subsection are eligible for reappointment.

48 (c) No person while in the employ of, or holding any  
49 official relation to, any public utility subject to the  
50 provisions of this chapter, or holding any stocks or bonds  
51 thereof, or who is pecuniarily interested therein, may  
52 serve as a member of the commission or as an employee



53 thereof. Nor may any such commissioner be a candidate  
54 for or hold public office, or be a member of any political  
55 committee, while acting as such commissioner; nor may  
56 any commissioner or employee of said commission  
57 receive any pass, free transportation or other thing of  
58 value, either directly or indirectly, from any public  
59 utility or motor carrier subject to the provisions of this  
60 chapter. In case any of the commissioners becomes a  
61 candidate for any public office or a member of any  
62 political committee, the governor shall remove him from  
63 office and shall appoint a new commissioner to fill the  
64 vacancy created.

65 (d) Effective the first day of July, one thousand nine  
66 hundred eighty-four, and in light of the assignment of  
67 new, substantial additional duties embracing new areas  
68 and fields of activity under certain legislative enact-  
69 ments, each commissioner shall receive a salary of  
70 thirty-nine thousand two hundred forty dollars a year  
71 to be paid in monthly installments from the special  
72 funds in such amounts as follows:

73 (1) From the public service commission fund collected  
74 under the provisions of section six, article three of this  
75 chapter, thirty thousand two hundred ten dollars;

76 (2) From the public service commission motor carrier  
77 fund collected under the provisions of section six, article  
78 six, chapter twenty-four-a of this Code, seven thousand  
79 five hundred twenty-five dollars; and

80 (3) From the public service commission gas pipeline  
81 safety fund collected under the provisions of section  
82 three, article five, chapter twenty-four-b of this code,  
83 one thousand five hundred five dollars.

84 In addition to this salary provided for all commission-  
85 ers, the chairman of the commission shall receive three  
86 thousand five hundred dollars a year to be paid in  
87 monthly installments from the public service commis-  
88 sion fund collected under the provisions of section six,  
89 article three of this chapter, on and after the first day  
90 of July, one thousand nine hundred eighty-four.

91 (e) Effective the first day of July, one thousand nine

92 hundred eighty-five, and in light of the assignment of  
93 new, substantial additional duties embracing new areas  
94 and fields of activity under certain legislative enact-  
95 ments, each commissioner shall receive a salary of forty-  
96 one thousand dollars a year to be paid in monthly  
97 installments from the special funds in such amounts as  
98 follows:

99 (1) From the public service commission fund collected  
100 under the provisions of section six, article three of this  
101 chapter, thirty-one thousand six hundred dollars;

102 (2) From the public service commission motor carrier  
103 fund collected under the provisions of section six, article  
104 six, chapter twenty-four-a of this code, seven thousand  
105 nine hundred dollars; and

106 (3) From the public service commission gas pipeline  
107 safety fund collected under the provisions of section  
108 three, article five, chapter twenty-four-b of this code,  
109 one thousand five hundred dollars.

110 In addition to this salary provided for all commission-  
111 ers, the chairman of the commission shall receive three  
112 thousand six hundred seventy-five dollars a year to be  
113 paid in monthly installments from the public service  
114 commission fund collected under the provisions of  
115 section six, article three of this chapter, on and after the  
116 first day of July, one thousand nine hundred eighty-five.

117 (f) Effective the first day of July, one thousand nine  
118 hundred eighty-eight, and in light of the assignment of  
119 new, substantial additional duties embracing new areas  
120 and fields of activity under certain legislative enact-  
121 ments, each commissioner shall receive a salary of forty-  
122 four thousand dollars a year to be paid in monthly  
123 installments from the special funds in such amounts as  
124 follows:

125 (1) From the public service commission fund collected  
126 under the provisions of section six, article three of this  
127 chapter, thirty-three thousand nine hundred dollars;

128 (2) From the public service commission motor carrier  
129 fund collected under the provisions of section six, article  
130 six, chapter twenty-four-a of this code, eight thousand

131 five hundred dollars; and

132 (3) From the public service commission gas pipeline  
133 safety fund collected under the provisions of section  
134 three, article five, chapter twenty-four-b of this code,  
135 one thousand six hundred dollars.

136 In addition to this salary provided for all commission-  
137 ers, the chairman of the commission shall receive three  
138 thousand six hundred seventy-five dollars a year to be  
139 paid in monthly installments from the public service  
140 commission fund collected under the provisions of  
141 section six, article three of this chapter, on and after the  
142 first day of July, one thousand nine hundred eighty-  
143 eight.

**ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE  
COMMISSION.**

**§24-2-1b. Additional jurisdiction of commission.**

1 Effective the first day of July, one thousand nine  
2 hundred eighty-eight, in addition to all other powers and  
3 duties of the commission as defined in this article, the  
4 commission shall establish, prescribe and enforce rates  
5 and fees charged by commercial solid waste facilities,  
6 as defined in section two, article five-f, chapter twenty  
7 of this code, that are owned or under the direct control  
8 of persons or entities who are regulated under section  
9 five, article two, chapter twenty-four-a of this code. The  
10 commission shall establish, prescribe and enforce rules  
11 and regulations providing for the safe transportation of  
12 solid waste in the state.

**§24-2-1c. Study and report by commission.**

1 The public service commission, in cooperation with  
2 the department of natural resources and after opportuni-  
3 ty for public comment, shall study the feasibility of  
4 mandatory separation of solid waste for recycling  
5 purposes and shall study the impact of said mandatory  
6 separation and recycling on costs incurred by regulated  
7 motor carriers. The results of the study shall be reported  
8 to the joint committee on government and finance on or  
9 before the first day of January, one thousand nine  
10 hundred eighty-nine.

**CHAPTER 49. CHILD WELFARE.**

**ARTICLE 5. JUVENILE PROCEEDINGS.**

**§49-5-13. Disposition; appeal.**

1 (a) In aid of disposition, the juvenile probation officer  
2 or state department worker assigned to the court shall,  
3 upon request of the court, make an investigation of the  
4 environment of the child and the alternative dispositions  
5 possible. The court, upon its own motion, or upon  
6 request of counsel, may order a psychological examina-  
7 tion of the child. The report of such examination and  
8 other investigative and social reports shall not be made  
9 available to the court until after the adjudicatory  
10 hearing. Unless waived, copies of the report shall be  
11 provided to counsel for the petitioner and counsel for the  
12 child no later than seventy-two hours prior to the  
13 dispositional hearing.

14 (b) Following the adjudication, the court shall conduct  
15 the dispositional proceeding, giving all parties an  
16 opportunity to be heard. In disposition the court shall  
17 not be limited to the relief sought in the petition and  
18 shall give precedence to the least restrictive of the  
19 following alternatives consistent with the best interests  
20 and welfare of the public and the child:

21 (1) Dismiss the petition;

22 (2) Refer the child and the child's parent or custodian  
23 to a community agency for needed assistance and  
24 dismiss the petition;

25 (3) Upon a finding that the child is in need of extra-  
26 parental supervision (A) place the child under the  
27 supervision of a probation officer of the court or of the  
28 court of the county where the child has its usual place  
29 of abode, or other person while leaving the child in  
30 custody of his parent or custodian and (B) prescribe a  
31 program of treatment or therapy or limit the child's  
32 activities under terms which are reasonable and within  
33 the child's ability to perform, including participation in  
34 the litter control program established pursuant to  
35 section twenty-five, article seven, chapter twenty;

36 (4) Upon a finding that a parent or custodian is not  
37 willing or able to take custody of the child, that a child  
38 is not willing to reside in the custody of his parent or  
39 custodian, or that a parent or custodian cannot provide  
40 the necessary supervision and care of the child, the court  
41 may place the child in temporary foster care or  
42 temporarily commit the child to the state department or  
43 a child welfare agency;

44 (5) Upon a finding that no less restrictive alternative  
45 would accomplish the requisite rehabilitation of the  
46 child, and upon an adjudication of delinquency pursuant  
47 to subdivision (1), section four, article one of this  
48 chapter, commit the child to an industrial home or  
49 correctional institution for children. Commitments shall  
50 not exceed the maximum term for which an adult could  
51 have been sentenced for the same offense, with discre-  
52 tion as to discharge to rest with the director of the  
53 institution, who may release the child and return him  
54 to the court for further disposition;

55 (6) Upon an adjudication of delinquency pursuant to  
56 subsection (3) or (4), section four, article one of this  
57 chapter, and upon a finding that the child is so totally  
58 unmanageable, ungovernable and antisocial that the  
59 child is amenable to no treatment or restraint short of  
60 incarceration, commit the child to a rehabilitative  
61 facility devoted exclusively to the custody and rehabil-  
62 itation of children adjudicated delinquent pursuant to  
63 said subsection (3) or (4). Commitments shall not exceed  
64 the maximum period of one year with discretion as to  
65 discharge to rest with the director of the institution, who  
66 may release the child and return him to the court for  
67 further disposition; or

68 (7) After a hearing conducted under the procedures  
69 set out in subsections (c) and (d), section four, article  
70 five, chapter twenty-seven of the code, commit the child  
71 to a mental health facility in accordance with the child's  
72 treatment plan; the director may release a child and  
73 return him to the court for further disposition.

74 (c) The disposition of the child shall not be affected  
75 by the fact that the child demanded a trial by jury or

76 made a plea of denial. Any dispositional order is subject  
77 to appeal to the supreme court of appeals.

78 (d) Following disposition, it shall be inquired of the  
79 respondent whether or not appeal is desired and the  
80 response transcribed; a negative response shall not be  
81 construed as a waiver. The evidence shall be transcribed  
82 as soon as practicable and made available to the child  
83 or his counsel, if the same is requested for purposes of  
84 further proceedings. A judge may grant a stay of  
85 execution pending further proceedings.

86 (e) Notwithstanding any other provision of this code  
87 to the contrary, in the event a child charged with  
88 delinquency under this chapter is transferred to adult  
89 jurisdiction and there tried and convicted, the court may  
90 nevertheless, in lieu of sentencing such person as an  
91 adult, make its disposition in accordance with this  
92 section.

**§49-5-13b. Authority of the courts to order fines; revoca-  
tion of vehicle privileges and restitution.**

1 (a) In addition to the methods of disposition provided  
2 in section thirteen of this article, the court may enter  
3 an order imposing one or more of the following penal-  
4 ties, conditions and limitations:

5 (1) Impose a fine not to exceed one hundred dollars  
6 upon such child;

7 (2) Require the child to make restitution or reparation  
8 to the aggrieved party or parties for actual damages or  
9 loss caused by the offense for which the child was found  
10 to be delinquent;

11 (3) Require the child to participate in a public service  
12 project under such conditions as the court prescribes,  
13 including participation in the litter control program  
14 established pursuant to the authority of section twenty-  
15 five, article seven, chapter twenty of this code;

16 (4) When the child is fifteen years of age or younger  
17 and has been adjudged delinquent, the court may order  
18 that the child is not eligible to be issued a junior  
19 probationary operator's license or when the child is

20 between the ages of sixteen and eighteen years and has  
21 been adjudged delinquent, the court may order that the  
22 child is not eligible to operate a motor vehicle in this  
23 state, and any junior or probationary operator's license  
24 shall be surrendered to the court. Such child's driving  
25 privileges shall be suspended for a period not to exceed  
26 two years, and the clerk of the court shall notify the  
27 commissioner of the department of motor vehicles of  
28 such order.

29 (b) Nothing herein stated shall limit the discretion of  
30 the court in disposing of a juvenile case: *Provided*, That  
31 the juvenile shall not be denied probation or any other  
32 disposition pursuant to this article because the juvenile  
33 is financially unable to pay a fine or make restitution  
34 or reparation: *Provided, however*, That all penalties,  
35 conditions and limitations imposed under this section  
36 shall be based upon a consideration by the court of the  
37 seriousness of the offense, the child's ability to pay, and  
38 a program of rehabilitation consistent with the best  
39 interests of the child.

40 (c) Notwithstanding any other provisions of this code  
41 to the contrary, in the event a child charged with  
42 delinquency under this chapter is transferred to adult  
43 jurisdiction and there convicted, the court may never-  
44 theless, in lieu of sentencing such person as an adult,  
45 make its disposition in accordance with this section.

## CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

### ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

#### **§61-11-17. Court to fix imprisonment and fine for misdemeanor.**

1 The term of confinement in jail of a person found  
2 guilty of a misdemeanor, where that punishment is  
3 prescribed, shall, unless otherwise provided, be ascer-  
4 tained by the court, and the amount of the fine, where  
5 the punishment is by fine, shall, except where it is  
6 otherwise provided, be assessed by the court, so far as  
7 the term of confinement and the amount of the fine are  
8 not fixed by law. In addition to or in lieu of any other  
9 punishment prescribed herein, the court may require

10 the person found guilty of such misdemeanor to partic-  
11 ipate in the litter control program.

**CHAPTER 62. CRIMINAL PROCEDURE.**

**ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.**

**§62-11A-1. Release for work and other purposes by  
courts of record with criminal jurisdiction.**

1 (1) When a defendant is sentenced or committed for  
2 a term of one year or less by a court of record having  
3 criminal jurisdiction, such court may in its order grant  
4 to such defendant the privilege of leaving the jail during  
5 necessary and reasonable hours for any of the following  
6 purposes:

7 (a) To work at his employment;

8 (b) To seek employment;

9 (c) To conduct his own business or to engage in other  
10 self-employment, including, in the case of a woman,  
11 housekeeping and attending to the needs of her family;

12 (d) To attend an educational institution;

13 (e) To obtain medical treatment;

14 (f) To devote time to any other purpose approved of  
15 or ordered by the court, including participation in the  
16 litter control program of the county unless the court  
17 specifically finds that this alternative service would be  
18 inappropriate.

19 (2) Whenever an inmate who has been granted the  
20 privilege of leaving the jail under this section is not  
21 engaged in the activity for which such leave is granted,  
22 he shall be confined in jail.

23 (3) An inmate sentenced to ordinary confinement may  
24 petition the court at any time after sentence for the  
25 privilege of leaving jail under this section and may  
26 renew his petition in the discretion of the court. The  
27 court may withdraw the privilege at any time by order  
28 entered with or without notice.

29 (4) If the inmate has been granted permission to leave  
30 the jail to seek or take employment, the court's probation



31 officers, or if none, the state's division of correction shall  
32 assist him in obtaining suitable employment and in  
33 making certain that employment already obtained is  
34 suitable. Employment shall not be deemed suitable if  
35 the wages or working conditions or other circumstances  
36 present a danger of exploitation or of interference in a  
37 labor dispute in the establishment in which the inmate  
38 would be employed.

39 (5) If an inmate is employed for wages or salary, the  
40 clerk of the court shall collect the same, or shall require  
41 the inmate to turn over his wages or salary in full when  
42 received, and shall deposit the same in a trust account  
43 and shall keep a ledger showing the status of the account  
44 of each inmate. Earnings levied upon pursuant to writ  
45 of attachment or execution or in other lawful manner  
46 shall be collected from the employer and shall not be  
47 collected hereunder, but when the clerk has requested  
48 transmittal of earnings prior to levy, such request shall  
49 have priority. When an employer transmits such  
50 earnings to the clerk pursuant to this subsection he shall  
51 have no liability to the inmate for such earnings. From  
52 such earnings the clerk shall pay the inmate's board and  
53 personal expenses both inside and outside the jail and  
54 shall deduct installments on fines, if any, and, to the  
55 extent directed by the court, shall pay the support of the  
56 inmate's dependents: *Provided*, That at least twenty-five  
57 percent of the earnings collected by the clerk on behalf  
58 of an inmate shall be paid for the support of such  
59 inmate's dependents, if any. If sufficient funds are  
60 available after making the foregoing payments, the  
61 clerk may, with the consent of the inmate, pay, in whole  
62 or in part, any unpaid debts of the inmate. Any balance  
63 shall be retained, and shall be paid to the inmate at the  
64 time of his discharge.

65 (6) An inmate who is serving his sentence pursuant  
66 to this section shall be eligible for a reduction of his  
67 term for good behavior and faithful performance of  
68 duties in the same manner as if he had served his term  
69 in ordinary confinement.

70 (7) The court shall not make an order granting the  
71 privilege of leaving the institution under this section

72 unless it is satisfied that there are adequate facilities for  
73 the administration of such privilege in the jail or other  
74 institution in which the defendant will be confined.

**ARTICLE 12. PROBATION AND PAROLE.**

**§62-12-3. Suspension of sentence and release on probation.**

1 Whenever, upon the conviction of any person eligible  
2 for probation under the preceding section, it shall  
3 appear to the satisfaction of the court that the character  
4 of the offender and the circumstances of the case  
5 indicate that he is not likely again to commit crime and  
6 that the public good does not require that he be fined  
7 or imprisoned, the court, upon application or of its own  
8 motion, may suspend the imposition or execution of  
9 sentence and release the offender on probation for such  
10 period and upon such conditions as are provided by this  
11 article; but in no case, except as provided by the  
12 following section, shall the court have authority to  
13 suspend the execution of a sentence after the convicted  
14 person has been imprisoned for sixty days under the  
15 sentence. Any person released on probation must  
16 participate as a condition of probation in the litter  
17 control program of the county to the extent directed by  
18 the court, unless the court specifically finds that this  
19 alternative service would be inappropriate.

**§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.**

1 (a) The board of parole, whenever it is of the opinion  
2 that the best interests of the state and of the prisoner  
3 will be subserved thereby, and subject to the limitations  
4 hereinafter provided, shall release any such prisoner on  
5 parole for such terms and upon such conditions as are  
6 provided by this article. Any prisoner of a penitentiary  
7 of this state, to be eligible for parole:

8 (1)(A) Shall have served the minimum term of his or  
9 her indeterminate sentence, or shall have served one  
10 fourth of his or her definite term sentence, as the case  
11 may be, except that in no case shall any person who  
12 committed, or attempted to commit a felony with the

13 use, presentment or brandishing of a firearm, be eligible  
14 for parole prior to serving a minimum of three years of  
15 his or her sentence or the maximum sentence imposed  
16 by the court, whichever is less: *Provided*, That any  
17 person who committed, or attempted to commit, any  
18 violation of section twelve, article two, chapter sixty-one  
19 of this code, with the use, presentment or brandishing  
20 of a firearm, shall not be eligible for parole prior to  
21 serving a minimum of five years of his or her sentence  
22 or one third of his or her definite term sentence,  
23 whichever shall be the greater. Nothing in this section  
24 shall apply to an accessory before the fact or a principal  
25 in the second degree who has been convicted as if he or  
26 she were a principal in the first degree if, in the  
27 commission of or in the attempted commission of the  
28 felony, only the principal in the first degree used,  
29 presented or brandished a firearm. No person is  
30 ineligible for parole under the provisions of this  
31 subdivision because of the commission or attempted  
32 commission of a felony with the use, presentment or  
33 brandishing of a firearm unless such fact is clearly  
34 stated and included in the indictment or presentment by  
35 which such person was charged and was either (i) found  
36 by the court at the time of trial upon a plea of guilty  
37 or nolo contendere, or (ii) found by the jury, upon  
38 submitting to such jury a special interrogatory for such  
39 purpose if the matter was tried before a jury, or  
40 (iii) found by the court, if the matter was tried by the  
41 court without a jury.

42 For the purpose of this section, the term "firearm"  
43 shall mean any instrument which will, or is designed to,  
44 or may readily be converted to, expel a projectile by the  
45 action of an explosive, gunpowder or any other similar  
46 means.

47 (B) The amendments to this subsection adopted in the  
48 year one thousand nine hundred eighty-one:

49 (i) Shall apply to all applicable offenses occurring on  
50 or after the first day of August of that year;

51 (ii) Shall apply with respect to the contents of any  
52 indictment or presentment returned on or after the first

53 day of August of that year irrespective of when the  
54 offense occurred;

55 (iii) Shall apply with respect to the submission of a  
56 special interrogatory to the jury and the finding to be  
57 made thereon in any case submitted to such jury on or  
58 after the first day of August of that year or to the  
59 requisite findings of the court upon a plea of guilty or  
60 in any case tried without a jury: *Provided*, That the state  
61 shall give notice in writing of its intent to seek such  
62 finding by the jury or court, as the case may be, which  
63 notice shall state with particularity the grounds upon  
64 which such finding shall be sought as fully as such  
65 grounds are otherwise required to be stated in an  
66 indictment, unless the grounds therefor are alleged in  
67 the indictment or presentment upon which the matter  
68 is being tried;

69 (iv) Shall not apply with respect to cases not affected  
70 by such amendment and in such cases the prior  
71 provisions of this section shall apply and be construed  
72 without reference to such amendment.

73 Insofar as such amendments relate to mandatory  
74 sentences restricting the eligibility for parole, all such  
75 matters requiring such sentence shall be proved beyond  
76 a reasonable doubt in all cases tried by the jury or the  
77 court.

78 (2) Shall not be under punishment or in solitary  
79 confinement for any infraction of prison rules;

80 (3) Shall have maintained a record of good conduct in  
81 prison for a period of at least three months immediately  
82 preceding the date of his or her release on parole;

83 (4) Shall have submitted to the board a written parole  
84 release plan setting forth proposed plans for his or her  
85 place of residence, employment and, if appropriate, his  
86 or her plans regarding education and post-release  
87 counseling and treatment, said parole release plan  
88 having been approved by the commissioner of correc-  
89 tions or his or her authorized representative;

90 (5) Shall have satisfied the board that if released on  
91 parole he or she will not constitute a danger to the

92 community.

93 Except in the case of one serving a life sentence, no  
94 person who has been previously twice convicted of a  
95 felony may be released on parole until he or she has  
96 served the minimum term provided by law for the crime  
97 for which he or she was convicted. No person sentenced  
98 for life may be paroled until he or she has served ten  
99 years, and no person sentenced for life who has been  
100 previously twice convicted of a felony may be paroled  
101 until he or she has served fifteen years. In the case of  
102 a person sentenced to any penal institution of this state,  
103 it shall be the duty of the board, as soon as such person  
104 becomes eligible, to consider the advisability of his or  
105 her release on parole. If, upon such consideration, parole  
106 be denied, the board shall at least once a year reconsider  
107 and review the case of every prisoner so eligible, which  
108 reconsideration and review shall be by the entire board.  
109 If parole be denied, the prisoner shall be promptly  
110 notified.

111 (b) In the case of any person sentenced to or confined  
112 under sentence in any city or county jail in this state,  
113 the board shall act only upon written application for  
114 parole. If such jail prisoner is under sentence on a felony  
115 conviction, the provisions hereof relating to penitentiary  
116 prisoners shall apply to and control his or her release  
117 on parole. If such person is serving time on a misdemea-  
118 nor conviction, he or she is eligible for parole consider-  
119 ation, upon receipt of his or her written parole appli-  
120 cation and after time for probation release by the  
121 sentencing court or judge has expired.

122 (c) The board shall, with the approval of the governor,  
123 adopt rules and regulations governing the procedure in  
124 the granting of parole. No provision of this article and  
125 none of the rules and regulations adopted hereunder are  
126 intended or shall be construed to contravene, limit or  
127 otherwise interfere with or affect the authority of the  
128 governor to grant pardons and reprieves, commute  
129 sentences, remit fines or otherwise exercise his or her  
130 constitutional powers of executive clemency.

131 The board shall be charged with the duty of super-

132 vising all probationers and parolees whose supervision  
133 may have been undertaken by this state by reason of any  
134 interstate compact entered into pursuant to the uniform  
135 act for out of state parolee supervision.

136 (d) When considering a penitentiary prisoner for  
137 release on parole, the board of parole shall have before  
138 it an authentic copy of or report on the prisoner's  
139 current criminal record as provided through the  
140 department of public safety of West Virginia, the  
141 United States department of justice or other reliable  
142 criminal information sources and written reports of the  
143 warden or superintendent of the penitentiary, as the  
144 case may be, to which such prisoner is sentenced:

145 (1) On the prisoner's conduct record while in prison,  
146 including a detailed statement showing any and all  
147 infractions of prison rules by the prisoner and the  
148 nature and extent of discipline and punishment admin-  
149 istered therefor;

150 (2) On improvement or other changes noted in the  
151 prisoner's mental and moral condition while in prison,  
152 including a statement expressive of the prisoner's  
153 current attitude toward society in general, toward the  
154 judge who sentenced him or her, toward the prosecuting  
155 attorney who prosecuted him or her, toward the  
156 policeman or other officer who arrested the prisoner and  
157 toward the crime for which he or she is under sentence  
158 and his or her previous criminal record;

159 (3) On the prisoner's industrial record while in prison,  
160 showing the nature of his or her prison work or  
161 occupation and the average number of hours per day he  
162 or she has been employed in prison industry and  
163 recommending the nature and kinds of employment  
164 which he or she is best fitted to perform and in which  
165 the prisoner is most likely to succeed when he or she  
166 leaves prison;

167 (4) On physical, mental and psychiatric examinations  
168 of the prisoner conducted, insofar as practicable, within  
169 the two months next preceding parole consideration by  
170 the board.

171 The board may waive the requirement of any such  
172 report when not available or not applicable as to any  
173 prisoner considered for parole but, in every such case,  
174 shall enter in the record thereof its reason for such  
175 waiver: *Provided*, That in the case of a prisoner who is  
176 incarcerated because such prisoner has been found  
177 guilty of, or has pleaded guilty to a felony under the  
178 provisions of section twelve, article eight, chapter sixty-  
179 one of this code or under the provisions of article eight-  
180 b or eighty-c of chapter sixty-one, the board may not  
181 waive the report required by this subsection and the  
182 report shall include a study and diagnosis which shall  
183 include an on-going treatment plan requiring active  
184 participation in sexual abuse counseling at an approved  
185 mental health facility or through some other approved  
186 program: *Provided, however*, That nothing disclosed by  
187 the person during such study or diagnosis shall be made  
188 available to any law enforcement agency, or other party  
189 without that person's consent, or admissible in any court  
190 of this state, unless such information disclosed shall  
191 indicate the intention or plans of the parolee to do harm  
192 to any person, animal, institution, or to property.  
193 Progress reports of outpatient treatment shall be made  
194 at least every six months to the parole officer supervising  
195 such person. In addition, in such cases, the parole  
196 board shall inform the prosecuting attorney of the  
197 county in which the person was convicted of the parole  
198 hearing and shall request that the prosecuting attorney  
199 inform the parole board of the circumstances surrounding  
200 a conviction or plea of guilty, plea bargaining and  
201 other background information that might be useful in  
202 its deliberations. The board shall also notify the victim,  
203 or the parents or guardian of the victim if the victim  
204 is still a minor, of the person being considered for parole  
205 in such a case.

206 Before releasing any penitentiary prisoner on parole,  
207 the board of parole shall arrange for the prisoner to  
208 appear in person before the board and the board may  
209 examine and interrogate him or her on any matters  
210 pertaining to his or her parole, including reports before  
211 the board made pursuant to the provisions hereof. The  
212 board shall reach its own written conclusions as to the

213 desirability of releasing such prisoner on parole. The  
214 warden or superintendent shall furnish all necessary  
215 assistance and cooperate to the fullest extent with the  
216 board of parole. All information, records and reports  
217 received by the board shall be kept on permanent file.

218 The board and its designated agents shall at all times  
219 have access to inmates imprisoned in any penal or  
220 correctional institutions of this state or in any city or  
221 county jail in this state, and shall have the power to  
222 obtain any information or aid necessary to the perfor-  
223 mance of their duties from other departments and  
224 agencies of the state or from any political subdivision  
225 thereof.

226 The board shall, if so requested by the governor,  
227 investigate and consider all applications for pardon,  
228 reprieve or commutation and shall make recommenda-  
229 tion thereon to the governor.

230 Prior to making such recommendation and prior to  
231 releasing any penitentiary person on parole, the board  
232 shall notify the sentencing judge and prosecuting  
233 attorney at least ten days before such recommendation  
234 or parole. Any person released on parole shall partici-  
235 pate as a condition of parole in the litter control  
236 program of the county to the extent directed by the  
237 board, unless the board specifically finds that this  
238 alternative service would be inappropriate.

*Wesley* *Wesley*  
*Wesley* *Wesley*



Enr. Com. Sub. for H. B. 3146 80

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Bruce A. Linn*  
-----  
Chairman Senate Committee

*Bernard V. Kelly*  
-----  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

*Todd C. Hicks*  
-----  
Clerk of the Senate

*Donald J. Kopp*  
-----  
Clerk of the House of Delegates

*Dan Tomlin*  
-----  
President of the Senate

*Robert C. Byrd*  
-----  
Speaker of the House of Delegates

The within *approved* this the *30th*  
*March* day of \_\_\_\_\_, 1988.

*Aaha Shaeji*  
-----  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/88

Time 8:38 p.m.

SECRET

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SECRET  
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